Chapter III
The Bulwark of British Imperialism for Better Justice
and Colonial Modernity Verses Traditionalism
1802-1816

After the annexation of Malabar to Bombay, the supervisor and the superintendents of the colonial government were invested with different duties out of which the administration of justice was only one duty. The Englishmen realizing the importance of having a sound judicial system in the territories falling under their sway, started on the task of evolving a judicial system practically from the very outset of their administrative career.

In the initial phase of the colonial government, the main aim of the company was not in the implementation of a good government that can impart impartial justice to all and provide adequate protection of life and property of the subjects. Its major aim was in revenue collection from farming and collecting as much ‘black gold’ as possible so that the financial interest of the share holders could be protected. As a result of that, the officials mentioned above had more commercial activities to perform than activities associated with the functioning of Judiciary. A commission was formally formed comprising four members in 1796 and the office of supervisor was made a part of the commission for administrative purpose. Then in 1799 the office of the superintendents was abolished after which the whole Malabar province was divided into 12 circles or collectrate. To each of these circles or collect rates, the company appointed its officials for protecting its commercial interests as well as discharging duties of the home

government. In the very beginning of 1800 the Bengal government issued instructions to Bombay to transfer Malabar to the Madras Presidency in order to establish order and good government in that territory\(^2\).

Lord Clive was of the opinion that the form of government functioning in Malabar turned out to be incapable of enforcing its authority and retaining the supremacy of the British power both in terms of the collection of revenues and the enforcement of the sentences passed by the criminal courts. Hence he put forth the suggestion that the commission should be dissolved and the functions of the criminal courts should be suspended. Instead the commanding officer of the forces in Malabar should be provided with the power to handle and decide on issues having criminal nature. With regard to the civil government, one principal collector and subordinate collectors should be appointed and the collectors should continue to administer justice in civil cases. In accordance with this plan, these proposals were carried into effect and the district was committed to the administration of one military officer and three subordinate collectors\(^3\). As a result of this, the military began to be seen and depended on as a judicial agency for the time being. So, in those days, many native rebels who opposed the company administration were summarily brought to trial and punishment.

In September 1801, the commission was abolished and the district was under the control of a principal collector and three subordinate collectors whose official designations were sub-collector, Head Assistant collector. The important action that took place in 1802 was the judiciary was

\(^2\)The order of His Excellency the Governor-in-Council was passed on 18\(^{th}\) June 1801 respecting the annexation of the Province of Malabar and Canara to Fort St. George. Judicial Consultations,(J.C)pp.1132-38.

\(^3\)Firminger, Fifth Report from the select committee of the House of Commons, Calcutta,1917, p.242
separated from the executive. At Tellichery a provincial court was
established which was presided over by three judges. "Two years before
this, one Zillah court at Calicut and another at Angadipuram were instituted
as a result of a Regulation. After this a register’s court was established at
Calicut as part of the regulation.

For a better collection of revenue and set up a proper judicial
administration, Lord Clive, the Governor of Madras was to call upon the
local authorities in the province for information respecting its concerns and
modes. In the minute prepared on 5th September 1801, Lord Clive referred
to the affairs of Malabar in which he specified that the plan of civil
government was based on the work of the First commissioners who took
steps in the light of the information provided by the native interpreters. “The
prostitution of public authority under that form of government to purposes of
fraud, speculation and corruption required a modification of it’, he make it
clear that the military establishment retained under the government of
Bombay rendered the Malabar province “a burthensome in cumbrance to
the general finances of the company”. The collection of public revenue
entirely depended on the sufferance of the company than the obedience of
the subjects and that the administration of police force was rendered abortive
by the fear of ferocious banditti.

Though the new system was established in Madras in 1802, it was not
immediately extended to Malabar. The reason for this delay was that the
administrators were of the firm opinion that the political and social
conditions existing in Malabar were not really suitable and favorable for the
introduction and proper functioning of a regular system of courts. For that

4. Reg.11.1800, Sec.iii.
5. Firminger, Fifth Report, p. 240
aim in view a new regulation was passed. In Malabar, Canara and Soonda Balaghat the functioning of Foujdary Adalath was suspend again 7. The reasons put forth for this appeared to be strange and unconvincing. The numerous inhabitants of Malabar, disregarding their own interests and of the benevolent care of the British government for the welfare of its subjects had allowed themselves to be misled by the advice and ideas of evil people and assembled together to commit irregularities and acts of rebellion. As a result of that the peace and tranquility of the province had been disturbed and endangered the lives and properties of the peace loving and well-disposed people. Despite the establishment of a Foujdary Adalat for the trial of people accused of having committed criminal acts, the disturbance had only increased, reaching the level of open rebellion against the government. As a result of that legal proceedings at the criminal court became not only inefficient but also inoperative. Hence arose the necessity of strengthening the hands of the executive to be strengthened by the implementation of summery measures with the intention of suppressing rebellion and imparting justice.

Because of the paralyzing sense of calamity that prevailed over that country resulting from the armed insurrection under the Raja of Pazhassi and other chieftains, the judicial system introduced in Madras in 1802 was not immediately extended to Malabar8. In 1803 Rickards submitted a fresh plan to be adopted, pending the introduction of the Bengal Code in Malabar9. The Governor-General disapproved of this delay in extending the system to that district. His observation was that in the absence of these tribunals, private

8. Regulation IV,1803.
distress and personal suffering would compel the people to combine against
the Government.\footnote{Ibid.}

With the purpose of meeting the emergency situation that emerged
owing to the armed rebellion of Pazhassi Raja and his followers that was a
very real threat to the existence of the British in Malabar, the proper
functioning of the civil tribunals were considerably delayed and a form of
martial law and military government came to force on account of that
political expediency. The Governor of madras wrote to the Governor-in-
council Marquis Wellesley that after the restoration of normally as a result
of the suppression of the rebellion, it would not be necessary to suspend the
functions of the civil tribunals and the restoration of the authority of the civil
government could be considered. For the trial of criminal offences the
government resolved to establish a court of circuit and Foujdary Adalath.\footnote{J.C.1798, Vol.1 A, pp.640-643}

It is obvious that the decision reveals the contemptuous attitude of the
British towards the Indian people as if Indians themselves don’t know things
related to their security and normal life. It provides no restraint upon the
exercise of power sufficient to ensure the uniform impartial and general
operation of the laws and to inspire the people with a sense of confidence
and security in the ordinary conduct of private transactions and in the
undisturbed exercise of private rights’’ was the opinion of the Governor
General, disapproving the policy adopted by the authorities in Madras.\footnote{J.C.1804, 1117-1143.} For
getting justice of the government the people affords open resistance as the
sole mode of appeal. There is no alternative to the most peaceable,
industrious and dutiful people and they must resort to the ear of the
sovereign, whenever the laws shall afford no regular organ to convey the complaints of the subjects.\textsuperscript{13}

It was unfortunate to note that the Government of Madras could not clearly understand these good and feasible principles of counsel and ideal administration. Though one point of view, those who handle the weapon and machinery of the state may feel that efficiency of the arms and its ruthless use will solve the civil and political problem making them believers in the art of military. But political insight and mature foresight may persuade them to be in favor of prudence and careful management of the issue associated with government. It is well observed that the use of force may subdue for the time being; but it does not away with the necessity to subdue again. A nation which is perpetually to be conquered is not properly governed.

It should be observed in a way that the early British rulers in Madras who tried to rule Malabar using force believed that the effect of using force is terror which is good for an administrator and also that using weapons for achieving victory is good. Somehow they too could not properly understand that the most sacred and even divine obligation of the government in relation to its subjects was that only just and proper laws should be enacted and implemented with a view to ensuring the general welfare and security of the people and right and property of the individuals. With that purpose in view, just, judicial establishments should be founded which should be provided with sufficient power and other facilities to secure the prompt and impartial administration of laws with a views to impartial dispensation of justice. In the event of the non-introduction of proper legal courts and the suspension of the normal functioning of the legal proceedings, no excuse would absolve the government of the breach of trust that the people voluntarily entrusted

\textsuperscript{13} Ibid.
upon them. Hence the Governor-general put forth the suggestion that the need for the establishment of a proper system of government grounded on the solid and enduring basis of law and justice was more especially needed in those areas and territories adjacent and subject to Fort St. George because it was there that the greatest and the most intense resistance to the foreign domination and consequent authority of the present state had been present. “Instead of delaying the institution of courts of judicature, instead of suspending the authority of those already constituted, instead of conferring all the powers of government in the person of a collector of revenue, the judicial authority should be strengthened by equitable regulations; justice and mercy should temper the severity of power, and the control of fixed law show manifest the certainty of protection to the lives and properties of our obedient subjects."

As a result of the official proceedings followed and implemented by the Governor-in-Council of fort St. George in containing the positive results springing from a well regulated and structured system of judicial administration, the people were deprived of the due feeling of security and protection resulting from the attainment of the few facilities and objects related to life that function as the source of happiness. With the purpose of removing harm to the well-being of people in the society, the government of Madras was instructed to go on without delay to institute Zillah courts and the courts of appeal and circuit courts and also to widen the authority of the Suder Adalat and Fougdary Adalat all over the Carnatic, Canara, Malabar and other provinces which belong the jurisdiction of the Fort St. George.

Rickards prepared and submitted a report on 17th June 1803 to the Board of revenue outlining a blue print for a proper and well regulated...
system of judicature that was based on the existing regulations which were altered and modified in order to integrate it with the local conditions and social factors. Rickards, in his report dated 20\textsuperscript{th} February 1804, is of the opinion that this plan should be temporarily acted mainly because the advantages to be derived from the gradual operation of a judicial scheme\textsuperscript{15}.

On the whole, the people of Malabar were mild and obedient in their general attitude and behavior towards the company administration. Lord William Bentinck stated that ‘’they are described as being extremely sensible to good treatment and impatient of oppression, to entertain a high respect for courts of judicature and to be extremely attached to their old customs\textsuperscript{16}’’.

Thomas Warden, the principle collector of Malabar drafted a letter in which he stated the need for the widening of the jurisdiction of the special courts that did not form part of the regular judicial system. In order to try prisoners charged with treason, rebellion, revolt or other offences against the state, special commissions were instituted after passing special orders by the government. In Malabar these special commissions were working in an efficient manner. From the group of 200 prisoners in the Gaols in Malabar till 17\textsuperscript{th} September 1804, two thirds were charged with rebellion against the state that were intended to be tried in this manner. For the trial of all persons as might be confined in the different goals in Malabar charged with treasonable practice, Warden emphasized the extension of the powers of this commission\textsuperscript{17}.

In spite of the continued power and influence of the local Rajas in areas such Cotioti and Wynad, in provinces where the European agencies of power and administration existed, the influence and power of the local Rajas

\textsuperscript{15} Papers on the Administration of the Malabar District, Calicut, 1907, p.6

\textsuperscript{16} Ibid.

\textsuperscript{17} J.C.1804,PP.1271-72; J.C.1805,PP.265-67.
declined drastically. On the whole, the local Rajas were favorably inclined towards the company and they were contented with the financial and other concessions granted to them by the company. Only the total mismanagement complete stupidity on the part the local administration paved the way for the joining of forces against the government. In this context Richards’, the principal Collector of Malabar stated;’ Thus circumstanced, it would be impolitic to neglect the opportunity afforded of promoting and securing so important an object in the local administration; a judicial system may now be introduced, without opposition and with the best possible effect and it is the most powerful and certain means that can be devised, combined with moderate and equal assessment, of preserving tranquility on a firm and permanent footing, of finally detaching the inhabitants from the interest of the rajahs, of binding them to our government and of making them, in short, our real instead of nominal subjects\textsuperscript{18}.’

Eventually Zillah courts were established in Malabar. Also the courts of circuit and court of appeal for the western division were directed to exercise their civil jurisdiction. An increase in the establishment was required by the judges belonging to the provincial court to ensure just and regular function of the department. For removing the courts of Adalath established at Calicut and Angadipuram to Tellichery and Ponnani respectively, a regulation was passed.\textsuperscript{19}. Certain specific changes with regard to the territorial boundary of the different judicial divisions of the presidency were implemented by the government. The initial plan of the territory, that form part of the western division was made after considerably the scale and magnitude of revenue of each district and not on the basis of ancient bonds

\textsuperscript{18}Papers on the Administration of the Malabar District, Calicut, 1907, p.7
\textsuperscript{19}.Reg.III,1806
existing in terms of language or manner or habits of the people. As a result of the alteration implemented, it was decided that, the Zillah of north Malabar would receive the district of Bekul and reunite to itself, people and language, there by negating the displacement and fragmentation that resulted from the invasion and temporally administration of Tippu Sultan. As part of the arrangement, the Zillah of north Malabar would lose the district of Calicut and places adjacent to it from the south of the Cotah River to the south Malabar. Also it was decided that the Zillah court of north Malabar would function at Tellichery. As a result of thus alterations and reforms, the district of Calicut and its dependencies and the Cochin territory acquired from the Dutch would be annexed to the Zillah of south Malabar. By a proclamation by the Governor-in-Council, a regulation was passed to effect these rearrangements which were publicized.²⁰

The expansion of the judicial system to Cochin area was an notable development in this period. The Cochin town that situated on the bank of the river²¹ was around twenty miles away from the boundary of the Zillah, with the two dependencies of the Cochin Raja, that is, the island of Vaipeen and south end of Chetwai of Vaipeen and south end of Chetwai as the intervening area. The peculiarity of the place was that the circuit court could not visit the place without traversing the two territories of the independent prince because its insularity in terms of geography. The judge on circuit in the northern division of Malabar, Beily Hodgson put forth the suggestion to the Foujdyary Adalat to conduct a session of the circuit court at Cochin. Another possible official action suggested was in the form of a direction given to the magistrate of the Zillah of south Malabar to include the

²¹ The present Cannolay Canal which separates Malabar from the territory of the Raja of Cochin.
prisoners sent to jail by the acting local magistrate in his calendar and bring them for legal proceedings at Angadipuram or somewhere else. The settlement of Cochin was under the jurisdiction of the judge and magistrate of Angadipuram. A regular system of justice could be established there only in 1806 and as a result of territorial readjustment made two years later, when Cochin was incorporated within the Malabar District.

In the light of the rules and regulation in force than, only through the interposition of Vakils or native agents the complainants could submit the complaint in the court of justice at Calicut and the complainant was not allowed to plead directly the cause concerned. Often the success or failure of the complainant was decided by the integrity, honor and activity of the native agents. Hence the disadvantages related to this condition and state of affairs was extremely clear with the result that further explanation was not needed. The people in different walks of life such as poor businessman or the owner of a house or garden or land who might have demands related to goods sold or in the form of rent [the income mainly enough to support themselves] were often unable to recover what was due to them by fair means with the result that they were obliged to submit to the injustice in silence because it was not possible for them to spend their last savings for initiating a nerve ending legal proceedings. So, often it happened that the tenants who refused to pay the rent and declined to vacate house remained in possession of the house till he decided otherwise. Also, the contracts were annulled by the proprietors of gardens or lands because they it to be favorable for them and they knew that tenant was not in a position to seek redress. On account of the absences of a well regulated police force, crimes like theft and robberies frequently took place. Many vacant houses in the

22 J.C.1808,PP.507-508
town could be pointed out to prove this state of affairs. As for the inhabitants of the gardens, they were living in a state of fear and insecurity. For the administration of the property of orphans the orphan colleges and institutions needed urgent interposition of legal authority, to prevent its falling from that state of anarchy and confusion which led to the loss of monies deposited there and a total dissolution.\(^{23}\)

The jurisdiction of the south Malabar Zillah was extended with the result that all causes and suits that would arise in that area of the Cochin territory earlier controlled by the Dutch and annexed by the British later from then as a result of the treaty signed on October 19\(^{th}\), 1795. The former rajas of cochin had granted certain powers to the Dutch in this area and these powers had to be exercised by the Zillah court in the same manner as if the powers had been granted to the British, with the condition that such powers did not interfere in opposition to the letter of the regulation now implemented in order to provide guidance for the courts. The Zillah court was situated at Angadipuram \(^{24}\).

The Governor-in-Council passed a regulation for Cochin that allowed provision for the establishment of a court of judicature which should be denominated the court of Adalath for the town of Cochin and its dependencies broadly in agreement with the above mentioned suggestions \(^{25}\). The jurisdiction of this court extend and include all civil suits that take place in the district and places that belong to the limits as specified by the Governor-in-council by issuing an order with the condition that alterations could be made in case they become necessary. It was empowered to apply

\(^{23}\) J.C.1811,Vo.58 B,pp.18-25.
\(^{24}\) Reg.XII,1802,Sec.iv
\(^{25}\) Reg.for Cochin,1812.
all powers and responsibilities that the former rajas granted to the Dutch in accordance with the judicial regulations.

The duty of the Hindu and Mohammedan law officers who were appointed to function at the court of the Zillah of south Malabar was to expound the law of their respective religious systems in cases that needed such an intervention and clarification. In the legal proceedings of such cases, the reference should be made through the medium of the Zillah judge. The judge should prepare a written statement containing the facts and also issues that require the clarification in the light of religious systems and after signing it, the same should be transmitted so that it should be handed over to the Mufthi or pundit for getting his considered opinion on the relevant point. The answer given by the law officer should be recorded on a blank space on the left side of the same paper used for specifying the question or on another paper attached to it. The answer thus provided by the law officer should be attested by the judge and the law officer’s signature also should be there on the papers along with the respective dates as to when the question was transmitted to the law officer and the answer given by him. In this case the judge should be the magistrate who should be guided in the execution of his duty by the provisions included in the regulation of 1802 and also by all the rules in force. According to the rules, the magistrate had the charge of the existing establishment of police in the town of Cochin and its dependencies. The provincial courts of appeal and circuit for the western division had the jurisdiction over this court. The jurisdiction over this court included the provincial courts of appeal and circuit for the western division.26

After the annexation of Malabar to the Madras presidency, the functioning of the judicial system revealed that the abuses were so prevent

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26 Ibid. This Regulation was rescinded by the Regulation IV of 1817.
that it undermined the credit and popularity of a reform with regard to hasty and urgent reform and changes, people involved were more enthusiastic than considerate, and their action often revealed signs of lack of prudence making it unjust to a certain extent. The absence of a balanced and objective approach to the totality of the problem related to administration and justice created a hindrance with regard to improvement in judicial administration. Different ingenious and roundabout methods were adopted at different stages in order to satisfy the convenience of the rulers and the existing conditions. In 1790 Lord Cornwallis wrote to the higher officials that he was determined on account of the shocking barbarity with which he (Tippu) was treated the Nair’s of Malabar to insist upon his setting those people free from future dependence upon him\textsuperscript{27}. The idea behind Cornwallis was to reinstate the Malabar rajas in their respective kingdoms and to collect tribute from them. He wanted to win them over, “and to agree to their becoming the dependents and subjects of the Honorable Company to which we shall add that in order to secure a willing obedience from the Malabar chiefs, we should be contended with their paying a very moderate tribute provided they will give the Company advantageous and privileges from carrying on a commerce in the valuable production of the Company”\textsuperscript{28}. The Cornwallis system was formally introduced in Malabar in 1806. Up to that time the administrative machinery functioned in Malabar was that the instructions and directions given by the higher authorities in Malabar from time to time\textsuperscript{29}.

\textsuperscript{27} Bombay Secreat & political Diary, March 22, 1790, no.40 pp.102-105.
\textsuperscript{29} The system of Cornwallis was not established in Malabar in 1802, unlike the other Districts of Madras Presidency. J.C.1803, Vol.4, p.773.
The manner in which the principles of administration were introduced and implemented in Malabar and the way in which they created circumstances appropriate for despotism, cruelty and hypocrisy need close scrutiny. Under the general management of the superintendent and his subordinates, until 1800 the prisons being part of the Revenue department. This branch of criminal law administration was completely unattended to in Malabar under the Bombay Government, Collection of revenue being the principal object of the Government, the expenditure on the construction of good prisons was looked upon with disfavor, because it was thought that the administration of criminal justice was gratuitous and unprofitable\textsuperscript{30}. Prisoners were confined in several scattered places, due to want of prison houses. George Weddel, the Acting Superintendent at Angadipuram wrote on 3\textsuperscript{rd} July 1799, that “Prisoners have often been confined from 12 to 14 months without a trial. I must also observe that the prisons hitherto built are extremely defective\textsuperscript{31}. In agreement with the principles incorporated in the regulation, prisoners who were convicted before the courts of judicature on account of rebellion or disaffection to the British government or who had taken up arms against the established authority, were removed from Malabar to Bengal, in order to prevent the possibility of their escape to the countryside that would disturb the tranquility of the area. This was a precaution taken to facilitate the trial of these criminals in a safe place away from home. This official action was made necessary as part of the instruction.

In his letter dated 22\textsuperscript{nd} December 1803, the Governor-General specified that the calendars prepared and provided by the principal collector


in Malabar pointing out the crimes charged against the prisoners who were
to be sent to Bengal revealed that a considerable portion of the prisoners did
not belong to the expected description and category. Some of the prisoners
who had been tried were actually convicted for murder, robbery, maiming
and other offences. In addition to that, there was no allegation that these
persons were charged with rebellion or disaffection to the British
Government. A list of such prisoners received from Malabar who had not
been brought to trial and whose characters were not considered dangerous
was transmitted by Thornton, the Magistrate of twenty-four Pergannahs in
Bengal to Dodwell, the Secretary to the Government on 5th April 1804\textsuperscript{32}.
Also it was not possible to infer from the crimes that they had any
considerable influence in the country. It was clearly observed that ‘’as those
persons had been sentenced to suffer specific punishments for offences of
which they had been tried and convicted, those punishments could not
consistently with the principles of justice, be subsequently increased or
aggravated\textsuperscript{33}. So in the name of justice, the Governor-General specified that
those prisoners who tried not yet been tried, should be brought to trial at
Fort. St. George or Malabar, in accordance with the prevailing laws, rules
and regulations. In accordance with this position, those prisoners had to be
returned either to Malabar or madras. The prisoners who had to be retained
in Bengal were those prisoners against whom charges of treason and similar
offences were leveled. These and some other irregularities and malpractices
in the transfer of prisoners to Bengal had to be explained by the principal
Collector\textsuperscript{34}.

\textsuperscript{32} J.C, 1805,PP.1351-3.
\textsuperscript{33} J.C.1804,PP.17-26.
\textsuperscript{34} There were several instance to show that prisoners against whom no charges were specified, were
In the case of an uneducated native when involved in such crimes, it was not possible that such a person would come up with facts and details related to the circumstances with precision and accuracy. Hence it was expected that the criminal judge should ascertain those precise points after conducting a detailed examination of the witnesses related to the case under consideration. In that manner, the crime of the persons thus accused can be proved with precision and accuracy. In that manner, the crime of the accused person could be correctly proved and also those people who were unjustly accused of crimes on account of mistaken or malevolent reasons would get the due chance to defend their innocence so that justice could be realized. There might be reason to doubt that the offence had been willful and complete, the Foujdary Adalath held that prosecution for perjury offences should not be instituted in cases. The evils of forgery and perjury were not so conspicuous during the regime of the native government, as was recognized even by the British administrators. They were essentially an off-shoot of the system promulgated by the British government in India. These evils at one time became so predominant that to administer justice became “a positive nuisance”.

Regarding the judicial administration prevailing in Malabar, employing the prisoners convicted for hard labor on private works was also observed to be a minor irregularity because according to the dictator of law, they should be employed only on public utilities and works. There existed examples and evidence to point out that some alterations in the court house were required in the case of the trial and mode of keeping of the convicts in

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35. Perjury is declared to be giving intentionally and deliberately, before a court of judicature, Magistrate, a false deposition upon oath, or under a solemn declaration taken instead of an oath, relative to some judicial proceedings civil or criminal, and upon a point, material to the issue thereof.


37. Minute dated 3rd April, 1855 by Cursetjee; Home;Judl.Cons.No.9of 17th October, 1856.
jail. As Thomas Newnham stated, ‘it was necessary that the magistrate should detail the beneficial consequences to the plan which could be attained as a result of the labor of the people who would otherwise be spending time in the jail unemployed’.  

The extremely deplorable conditions that prevailed in the jails and the pitiable sufferings of the prisoners as a result of over-crowding, malnutrition and lack of medical facilities were known to the servants of the East India Company. Shakespeare, the second Judge residing at Tellicherry, reported that a complaint was preferred to him on his visit to the jail of Cannanore by Karuvan Velu, a prisoner, that by the orders of the Fort Adjutant, he was subjected to 12 stripes of a rattan on his bare back for no reason at all. Two similar cases had come to his notice in the same area. The misery of the prisoners in confinement was intensified by the lack of adequate space and accommodation in the jails. Thomson Warden wrote in a letter acquaint the government regarding the gross inadequacy of facilities in jails “Hitherto the prisoners have been obliged to be confined in all most every district, there being no general gaols of sufficient size and strength in which all the prisoners can be confined in perfect security”. Regarding the legal proceedings and implementation of administrative decision, the indiscretion shown by officials was equal to injudicious tyranny and oppression. Offering awards on the head of criminals at large was a usual practice for magistrates who were in charge of the maintenance of law and order of the country. For the destruction of a sanguinary petty Chieftain, the principal collector secretly offered a reward to the tune of 200 pagodas.

As part of the procedure adopted in the administration of criminal justice there was the system that in each Zillah all convicts sentenced to be transported should be sent to Chingleput so that the execution of the sentence could be undertaken when the occasion becomes appropriate for the same. Proper official instruction was given to the criminal judge at Chingleput that after receiving them from other districts as part of the legal procedure, the convicts should be kept in readiness in the goal so that they could be sent to Prince of Wales Island at the first opportunity itself. For delivering the prisoners from the Zillah jail to Chingaleput, the legal procedure that should be adopted was complex and very specific in minute details. Hence this caused much suffering and problems to the convicts who were transported in that manner. Often convicts had to undergo long drawn out physical suffering and they lost some organs like limbs. Strictly according to the law, there was only the sentence of transportation, but sometimes it led to the death of the convicts during this legal action. The magistrate of south Malabar came up with the suggestion that the robbers and other antisocial elements, who were sentenced to temporary imprisonment might be shifted from that particular Zillah and be put in the jail or other public buildings belong to remand region so that possibility of disrupting law and order in the civil society could be avoided. This proposition was made on the belief and supposition that the peace and well being of the natives of Malabar could be protected by selecting a suitable place of confinement located on the coast of Corommandal province. In the light of consideration of humanity, the Foujdary Adalath opposed this suggestion because the climate of the coastal region was assessed to be no

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42. Circular Order, 22nd July 1814.
less fatal in comparison with that of the interior region.’ The proposed aim could be attained without taking the risk of the fatal consequences which were to be apprehended from exposing the prisoners of Malabar to another region so that there is a change of climate, according to the court, by transporting them to the jail in the Zillah of Canara 44.

In this case the Governor-in-Council declared the secret mode of after that had been proposed for the elimination of that particular person as objectionable. At the same time, sanctioning a public offer of reward to any person who would succeed in securing the person of the criminal was quite agreeable and proper, according to the Governor-in-Council. He stated; the object of good Government. He stated; the aim and object of good government must be to the attainment of the ends of public justice and to avoid any measure which might be liable to misconstruction45. The beginning and further development of a conflict between jurisdictions of his majesty’s honorable court of recorder at Bombay and the Sader Adalat at fort St. George that had power over the Zillah courts of Malabar should be noted as an important stage in the legal history of Malabar during this period. It had bearing on the nature and extent of the jurisdiction of the recorders court regarding the ancient settlement of Tellichery after the annexation of Malabar with the presidency of Madras in conformity with the act of legislature.

Owing to the existence of a lot of discrepancies, anomalies and errors in the practice of law, the administration of criminal justice in Malabar was in a deplorable condition. In actual practice and mode of application, the laws were deprived of their honorable and beneficial terrors that would

44 J.C.1804, Vol.96, pp.2905-08
45 J.C.1805, PP.20-21.
contribute to the maintenance of peace in the society. Often the implementation of law caused abhorrence and fear in the minds of people. It was observed with a fair measure of precision that extortion of confession using forcible means was the main spring of the existing system of judiciary. Since the Foujdary Adalat was clearly informed about the reprehensible practice, it made an attempt to convey the following proclamation to all magistrates and acting magistrates with the intention of creating a barrier against the existing evil practice. The proclamation read as follows:

Whereas, from the proceedings on trials referred by the courts of circuit to the final decision of the Foujdary Adalat, it has been observed by that court that confessions have frequently been extorted by persons apprehending criminals. And whereas there is reason to think that those highly reprehensible acts are not confined to the partial number of trials, referable under the regulations to the Foujdary Adalat and whereas, the court have deemed it expedient to prevent the recurrence of a practice so decidedly calculated as well, to defeat the ends of justice, as to disgrace the established system of judicial procedure wherefore you are hereby required carefully to instruct your immediate servants and all others employed by you, and generally, all persons within the limits of your jurisdiction, to abstain from all acts of violence towards persons apprehended by them or committed to their custody on charges of a criminal nature.

Some officials working in the East India Company took note of certain incidents involving the ill-treatment of the persons taken into custody and the brutal methods used to make them confess certain crimes with which they were charged merely on account of suspicion. For example, Grant, the Lient. Col. from Tellichery noted the following aspects in the lascar case:

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46 Circular Order, 27th May 1806; Circular Orders of the Foujdary Adalath, p.1
“While the Lascars were actually on duty, one going to the comissary’s warehouse, and the other orderly at the Fort Adjutant’s door, they were suddenly seized, bound with ropes and ignominiously dragged, a public spectacle, like the worst of felons through the streets of the town to Baber’s people. One of them to extort a confession from him was threatened, browbeat and struck by the magistrate, Baber, himself and afterwards put in irons’’.47.

There were considerable irregularities in the trials undertaken in the lower courts. The first and the most important irregularity was related to the way in which the examinations of prisoners sent by police officers were connected with the confessions on the part of the prisoners, often done in the Taluk Cutchery. Often, that type of confessions had been done in many cases using force and that, too with the intention of making unnecessary taking of circumstantial evidence. They were taken in a manner that was out and out questionable. According to the rules related to the court procedure to be followed, when an offender voluntarily made a confession of the crime related to which he was accused by a person before a police officers or judicial officer, his declaration should be recorded in writing in the presence of at least two witnesses having integrity and credibility. During the whole period of the prisoner’s examination, they should be present whereas the present procedure was that the witnesses would be present when the signature of the prisoner was put on the paper. After writing the declaration, it should be read out to the prisoner and he should be enquired whether such a statement was done with his free will and voluntary consent. When the prisoner gives the positive replay, his signature or mark such as thump

47 J.C.1804, pp.1689-90.
impression should be affixed on the paper which should be counter attested by the two witnesses.

Regarding the judicial administration prevailing in Malabar, employing the prisoners convicted for hard labor on private works was also observed to be a minor irregularity because according to the dictator of law, they should be employed only on public utilities and works. There existed examples and evidence to point out that some alterations in the court house were required in the case of the trial and mode of keeping of the convicts in jail. As Thomas Newnham stated,’ it was necessary that the magistrate should detail the beneficial consequences to the plan which could be attained as a result of the labor of the people who would otherwise be spending time in the jail unemployed48.

With regard to the power and responsibility invested with the magistrates, a rigorous and literal adherence to the provisions and clauses contained in regulation VI, 1802 had created considerable disturbance in the society thereby defeating to a certain extent the aim and object of their institution. Citing a case in point is revealing. Clephane who was the magistrate of the Zillah of Tellichery openly revealed that regarding the cases forwarded to him by the Darogha in which the plaint had been proved either by acknowledging the party accused or by producing evidence, his practice was to bring out order for inflicting corporal punishment by the Darogha or for imposing the levy of a fine, depending on the nature of the case. This legal decision and its implementation was actually illegal. The regulation did not support and contain provision for inflicting corporal punishment or the discharge of persons against whom charges were leveled after conducting investigation by any other person except the magistrate or

the assistant magistrate. By greenway who was the secretary to government informed the magistrate that” the Governor-in-Council is not aware that the regulations under any latitude of construction will authorize a magistrate to direct punishment to be inflicted on the report of a police officer. The Governor-in-Council regrets that it should have been resorted to under the idea of promoting the convenience of the inhabitants of the Zillah of the northern division of Malabar, for whatever may be the advantage of a prompt infliction of punishment on convicted offenders, it is obvious that the delegation of power, by removing the restraints on its premature exertion, must open a door to great abuse’’ 49.

From this, it is obvious that the inclination shown by the judicial officers to abuse their powers was strongly criticized and even invited strong censure on the part of the executive. Whatever be the argument, nothing will convince and justify the implementation of a measure by these officials with the purpose of having greater convenience for themselves because the people belonging to Malabar will only find themselves in greater insecurity and also deprived of due protection than people belonging to other Zillah’s in the madras presidency. Often there was the hindrance to the smooth functioning of the court in that the business of the half yearly circuits would not have been completed before the arrival of the period specified for the commencement of the following circuit. Also there existed the necessity of detaining strangers coming to the port of Tellicherry as merchants or to the Hindu temples as pilgrims who would be bound to appear as prosecutors or witnesses related to cases pending trial at the sessions court. The above mentioned cases influenced the government to prepare and pass a regulation with the purpose of conducting quarterly jail delivery in Tellichery and also

49 J.C.1806Vol.37,pp.2590-92.
in some other Zillah’s which were specifically mentioned as part of part of the Regulation\textsuperscript{50}.

Governor-in-Council came to understand about the systematic resistance that was alleged to be in existence by the other departments against the authority of the judiciary. At times it developed into the form of private and personal action against the judges or magistrates by discontented and irritated British officers belonging to the armed forces. The scant respect offered to the courts by these types of officials is illustrated by the case involving Lieut. Brown\textsuperscript{51}. Sometimes it assumed the form of official action or interference on the part of the executives. The instance of Harrison, the assistant Collector who directed the native public servants belonging to the collect orate not to obey the orders of the court is an example that is relevant in this context\textsuperscript{52}.

The total ignorance of the servants of the company in the civil services regarding the provisions included in the Regulations and also about the difference between accepting a decree of the court and acquiescing in and remaining satisfied with it is proved here. The disrespect and resisted to the decrees of the court also came to light in this development. One case involving Brown who was the sea custom master shows that he tried to resist the order of the Zillah court to remit immediately against him into the court by adopting the procedure of non-compliance with it with the argument that he had presented the matter to his superiors for their consideration and decision. In this connection, the secretary to the government stated as follows. “The Board of Revenue will ever regret any instance which may

\textsuperscript{50} J.C.1816,Vol.56A ,pp.4329-34.
\textsuperscript{51} The case is reported on October 9\textsuperscript{th} 1812 by Thomas Baber, the Judge and Magistrate of North Malabar.J.C.1812,Vol.76,pp.4931-4935.
\textsuperscript{52} J.C.1813,Vol.79,pp.86-90.
render necessary the interposition of the power of the executive government to support the legal authority of the courts of judicature. But the case of Brown does not appear to have proceeded to this extremity since it is manifest from his correspondence that he acted under a misconception of the proper mode of securing the interest of government from apprehended injury, which on the other hand, the powers invested in the Zillah courts, for compelling obedience to their decrees have not been exerted towards him”\(^\text{53}\).

An insightful observer can comprehending undercurrent of irritation existing between two types of servants in Malabar province, that is, one group who were appointed by the Bombay government and still continuing and the others who were newly appointed by the Madras government. The enmity existing between these two types of public servants often rose to such an extent that the servants appointed by the Bombay government were quite disrespectful towards the servants appointed by the Madras government. Eventually the board of revenue came to have a clear understanding about the distempered feelings between the two categories of servants. As a consequence the Board of Revenue stated that ‘’it has more than once been under consideration whether so destructive and inveterate an evil did not stand in need of a radical cure. Although the Board cannot doubt that such a cure would be justified by the whole tenor of the acrimonious and recriminating correspondence between the parties or relating to them, with which the records of the government for several years past abound, they have no disposition to depart from that system of forbearance to depart from that system of forbearance upon which they have hitherto acted’’\(^\text{54}\).


\(^{54}\) J.C.1813,Vol.80,pp.499-503.
Hence the Government came to understand the seriousness of the situation and came up with a categorical warning that whatever be the circumstances, the condition should not be allowed to develop into worse and the long established animosity should not further deteriorate leading to greater risk in administration of region. Hence it seemed, incumbent on the government, in order to obviate many of these unhealthy actions and attitudes, to remove from the service in Malabar the officers whose action had led to the subversion of authority of the courts. The reason behind this action was taken to function as a warning to others not affected by it and to prevent recurring occurrences of an increase in the animosity prevalent among the public officers in Malabar.

In the beginning of the evolution of judicial system in India, the judges had not taken seriously the principle which pointed out that delay in the dispensation of justice defeats equity. Since they neglected the concept delay defeats equity, they let the business of the court go remiss. As a result of that, the Foujdary Adalat were influenced to communicate the rule that in the event of the number of cases decided in any mouth might happen to be below ten, the monthly report should incorporate an explanation of the causes and reasons that were behind the lowering of the number of decisions taken by the court. In case adequate and convincing reasons existed, they allowed even a lesser number of cases being taken up for trial in the court with the condition that in the monthly returns, such reasons should be stated clearly. This system that necessitated proper explanation had a positive effect with regard to the judicial procedure so that the judges took steps to

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55. Lt. Brown, Douglas, Gahagan and Mr. Harrison
do away with laziness involved in the approach of the judges and the judicial officers.

A perceptive student of the evolution of judiciary in India should not ignore the immensely positive influence exerted by the superior courts over the subordinate courts when one tries to make an objective analysis of the evolution of judiciary in India. It must be conceded that many deplorable state of affairs related to judiciary could be averted and the idea of justice could be saved which would have otherwise fallen into oblivion and disgrace.

The sole objection that may be raised against the judicial system that was implemented by the British was that it possessed a strange and somewhat foreign flavor with which the native Indians were not familiar. In addition to that, when the system was implemented by the European officials belonging to the east India company, its minor defects developed into considerable magnitude on account of the ignorance of European officials with regard to the peculiarities and qualities of India and the Indians. Hence, to a certain extent, the good qualities possessed by the judicial system faded out of picture and the defects appeared to be noticeable so that its overall general salutary effect did not elicit the due consideration it deserved in any impartial and objective evaluation of the judicial system coming from a foreign tradition.

If Warren Hastings turned merchants into revenue collectors, it was Lord Cornwallis who virtually cast them into judges. Lord Cornwallis, who succeeded Warren Hastings, came to India in September 1786 and continued as Governor-General up to 1793. The judicial scheme of 1781,

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57. Ramesh Chandra Srivastava, Development of Judicial System in India Under the East India Company from 1833 to 1858, Bombay, 1971, p.11.
introduced during Warren Hastings’s Governor-Generalship, envisaged a division of revenue and judicial functions. Sir John Shore, very senior civil servant supporting union of the two functions of revenue and judicial functions, stated that the Indians had always lived under an “arbitrary and despotic” government and, therefore, the form of the British Government should also be despotic, so that the Indians might be retained “in those habits of submission, which are natural and familiar to them”. Further, he said, it was impossible to draw a line between the revenue and judicial department with the result that they continually clashed in practice. The merger of functions advocated on the grounds of simplicity, efficiency and economy.

The Governor Generalship of Lord Cornwallis constitutes a very remarkable and a highly creative period in Indian legal history. During this period he introduced several important changes in the judicial and administrative system of India. His rule marks an epoch in the legal history of British administration in India. Several radical reforms were introduced in the administration of civil and criminal justice and great success was achieved in combating corruption. He solves the problem of land revenue, improve in the administrative machinery and introduce radical reforms in the judicial system. He introduced for the first time the principle of administration according to law. The Adalath system left behind by him won praise and encomium from all quarters. The Cornwallis System which was first established in Bengal in 1793 and later on extended to madras in 1802 by the British rulers should be seen as the beginning of the system of judicial administration through western perspective and state apparatus in India.

58. Bengal Revenue Consultation, May 18, 1785. Similar views were expressed by Stuart, a member of the Governor-Generals Council, in a minute on May 10, 1785; Harrington, Analysis of the Laws and Regulations of Bengal, Calcutta, 1809, P.34
origin of the modern system of judicature is to be traced to the Cornwallis Code which was extended to Madras in 1802.

In 1800, Malabar was made a part of Madras presidency. A series of Regulations passed in 1802 and a hierarchy of courts was established. Lord Cornwallis, who had already established his reputation as a man of honesty and integrity, reached India in the beginning of 1786 to investigate in the corrupt practices which had disgraced the former Governments, to root them out of the administration and reinstate the British prestige. He was directed to establish permanent rules for the settlement and collection of land revenue and for the administration of justice founded on the ancient laws and local usages of the country. So in the context of the evolution of the civil and criminal system of judicature in Malabar and other district of madras presidency, its evolution and history should be specifically related to Cornwallis system as providing the proper judicial framework.

In the affairs of Malabar Cornwallis took keen interest and wrote to Dundas on March 17th 1792, “The rajas on the Malabar coast were not independent, but now become our subjects, and if we can put them in some degree on the footing of the Bengal Zamindars and prevent their oppressing the people under them, the commerce of that country in pepper spices etc may become extremely advantageous to the company.” He also recognized the commercial and strategic importance of Malabar and point out that he was “anxious to introduce and establish with as much dispatch as may be practicable a system for their future government”. When he formulated and implemented the system, the major aim of Cornwallis was eradication of the evil effects of the old system of administration by the introduction of a

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62. Ibid, pp. 70-82.
new system which would affect the separation of the revenue and judicial functions of the district collector.

When he came to India in 1786, he was greatly dissatisfied with the existing system of the administration of justice. He found that the whole system was complicated, illogical, wasteful and suspected of being corrupt. He was faced with two difficult tasks- to simplify the complicated and expensive machinery of administration of justice and to uproot corruption from the grass root to the higher level of the company’s servants in the administration of justice. By a method of trial and error he reformed the whole system of civil and criminal justice. The directors gave instruction to him to bring simplicity, economy, rule of law, equity, good conscience and purity into the judicial system. The already existing separation of the revenue and judicial functions was removed and both the functions were united\textsuperscript{63}. In each and every district the Collector was responsible for the collection of revenue and to decide cases and revenue matters. In civil cases he was also to act as the judge in the Mofussil Diwani Adalath of the district. In his district he was also entrusted with magisterial powers. By the judicial reforms of 1787, Cornwallis united the judicial office and administration in the hands of one Englishman ie. Collector and it was a great step to suit the then existing conditions than the earlier separation of judiciary and executive. It was also intended that by this system, there would be the functioning of a regular system of appeals from the lower tribunals to the higher tribunals. The system envisaged judges as assigned with magisterial duties.

A serious of Regulations were adopted thereby implementing a hierarchy of civil and criminal courts in the presidency of Fort St. George

\textsuperscript{63} Morley. W. H. \textit{The Administration of Justice in British India}, London, 1858, pp.53-54.
there by clearly specifying there powers and jurisdiction. When this regulation came in to force, the prevailing judicial practices came to an end. This change in the focus of political powers is clearly articulated by Gleig when he commented on the Cornwallis code as the system that “swept away by one stroke every institution under which the natives of India had lived for ages and introduced a mode of acting, as nearly analogous to that pursued in England, as was at all compatible with the circumstances of the two countries\textsuperscript{64}”.

After the Munsiff the next higher class of Indian judicial functionaries was that of the Sader Ameens. They were for the first time appointed in Bengal in 1803\textsuperscript{65} in the time of Lord Wellesely. They were originally designated as head native commissioners. In Madras\textsuperscript{66} Sader Ameens were authorized to hear and decide appeals from district Munsiffs referred to them by the Zillah Judge. In the Madras and Bombay presidencies Sader Ammeens were appointed in 1809\textsuperscript{67} and 1831\textsuperscript{68} respectively. In Madras\textsuperscript{69} Sader Ammeens were empowered to pass sentence to the extent of six months imprisonment with corporal punishment not exceeding thirty rattans and a fine up to 200.

The institution which was separately pointed out the Suder and Foujdary Adalat in its dual capacity of a civil and criminal court was at the highest position in the hierarchy of courts. It had its jurisdiction over the whole presidency. The institution below the hierarchy also had the similar duel capacity since it dearth with civil suits as provincial courts and handled

\textsuperscript{64} Gleig,G.B, \textit{Life of Sir Thomas Munro}, London, 1830, p.409
\textsuperscript{65} Home; judicial consultations.No.4 of 16\textsuperscript{th} April,1852.
\textsuperscript{66} Theobald;The legislative acts of the governor-general of India-in-council from 1834 to the end of 1867.clause 3,section VIIof act VII of 1843,pp.398-99.
\textsuperscript{67} Regulation VII of 1809;Clarke;Madras regulations,1802-47,p.214.
\textsuperscript{68} Regulation XVIII of 1831;Clarke;Bombay regulations,1827-50,pp.388-89.
\textsuperscript{69} Theobald; section XLVI of act VIII of 1843,p.402.
criminal cases as circuit courts. This court had its jurisdiction over a group of districts. The next institution in the lower hierarchy was the Zillah court which was also a civil and magisterial court. The Zillah Court was both Civil and Magisterial and the Zillah Judge combined in him the powers of a Civil Judge and a Magistrate. This institution had its jurisdiction over a district. At the same time, the Zillah Judge was empowered to function as a civil Judge and a Magistrate.

With the purpose of increasing the efficiency and speed of administration of justice and supervision of police in the Zillah, it was widely regarded and accepted that the existing system should be changed by shifting the duties of magistrate and superintendent of police from the collector to the Judge’s part of the earlier system, the judicial administrative function of collectors was often discharged in an unsystematic and imperfect manner. Hence the system of administration came to a halt when it dealt with revenue collection.

Cornwallis reunited the functions of revenue Collector, civil Judge and magistrate in one and the same person as it would lead to simplicity, justice and economy. European ideas of justice were to be introduced into the judicial system of India. His main task throughout his term was to reinstate British reputation in India. In his capacity as judge and Magistrate, the Collector received no additional financial incentive. The prevailing conditions associated with the system of British administration was such that the Collectors exertion or omission in his capacity as a judge were never observed whereas even a small failure or dealing in revenue collection lead to his superiors showing displeasure so that he would lose his

70. Cunningham, Judicial Regulation of the Governor of Fort St. George, Madras, 1802, p. 268
71. Cornwallis Correspondence part II, p.194 (Cornwallis August 8, 1789 and November 1789)
commission or sometimes he would be dismissed from service. The bad administration of criminal justice was sapping the very foundation of society and the situation called alone for remedy\textsuperscript{72}.

The existing system proved to be a burden over the people because it was easy to exercise despotic and unreasonable power over them. Since the officer presiding over the revenue Cutchery and the court of justice was the same person. It was self evident that a strict administration of justice by officers totally free from the duties connected with revenue collection could control abuses and violation of the law. Though there was the option to make an appeal to the government from the decisions of the collectors, it was a mere ineffective arrangement. This elicited no confidence in the minds of ordinary people because it was equal to make an appeal to the collector himself against the acts of the same collector. Always the petitioners were discouraged from giving evidence against the collectors because of the fear of consequence if and when they were restored to the office. The purpose of Cornwallis devising and implementing these Regulations was to rectify all these defects and problems that arose as part of the functioning of the legal system. He was of the firm view the combination of the functions resulted in the marked slowing down in the expected progress and improvement of the people. Cornwallis was successful after a short experience, it was considered impossible to draw a line between the revenue and judicial departments in such a manner as to prevent their clashing\textsuperscript{73}. Cornwallis directed the re-union of the functions of civil and criminal justice with those of the collection and management of revenue. He clearly argued’ The prosperity of the people; he contented, ‘largely depended upon the effectiveness with which the low

\textsuperscript{72} Aspinall. Cornwallis in Bengal, Manchester, 1931, p.267
\textsuperscript{73} Cowel.H. The History and Constitution of the Courts and Legislative Authorities in India, Calcutta, 1905, pp.110-111
protected the rights of property. People could have no confidence in the protection of the laws, when they so that an official whose duty was to punish oppressive acts, was invested with functions which enable him to commit such acts with impunity or to screen of his subordinates.\footnote{Aspinall, op.cit, p.86}

Sound government in the interest of the inhabitants was henceforth the touchstone of his policy rather than an enlargement of the company’s investment or an increase in territorial revenues. Due to his inexperience in the Indian affairs, Cornwallis largely depended on his advisers Sir John Shore, Jonathan Duncan and Sir William Jones. Cornwallis once wrote about Sir John Shore, an expert in administration and land revenue, “The abilities of John Shore, his knowledge in every branch of the business of this country and his character in the settlement render his help to me invaluable.”\footnote{Philip Woodroff, The Men Who Ruled India, Vol. I, London,1953, pp.146-48.}

Sir William Jones, an eminent oriental scholar and judge of the Supreme Court was his chief adviser in the field of judicial and administrative reforms and police regulations in India. As Munro who later improved the system clearly stated the judicial reforms of Cornwallis endowed upon the people of India,’ a greater degree of protection and security in their persons and property than they had before enjoyed.’\footnote{Arbuthnot, Major General Sir Thomas Munro, Vol.II, London, 1881, p.7} In addition to that the changes effected in the judicial system had a positive and progressive result of proving to than “that not only individuals, but public officers and Government itself, are accountable for every act done by them contrary to the laws and that it is the wish of the Government that its power should be founded on justice.”\footnote{Ibid.}
In 1790 Cornwallis introduced vital reforms in order to improve the law and order situation and punish the criminals. He realized that it will be a great blunder to leave the administration of justice in the hands of the natives. He further decided it as a matter of principle and not to give any important judicial and administrative office of responsibility to any native Indian. In the field of criminal judicature he resolved to abolish the authority of Nawab. Sader Dewani Adalath was the Court of Appeal. It took cognizance not only of judicial matters but also of the general state of police throughout the country. Proceedings of the courts were properly maintained. On the basis of the report of the trial magistrate, proceedings of the circuit court and written pleadings and defense of the parties only after the court decided cases in appeal. Mofussil Foujdari Adalats were abolished. The court of circuit was a moving or circulating court going from district to district in its respective circuit division. An appeal from the circuit court lay to the Sader Nizamat Adalath at Calcutta. In each and every district the collector was to act as magistrate and it was the lowest criminal court and it deals with trial and punishment in petty offences. The magistrate was to sent the criminal to the court of circuit for trial and punishment. These reforms not only granted security to life and property of the people, but also improved the law and order situation in general.

The Zillah court simultaneously functioned as civil court and magisterial court as a result of which the respective Zillah judge discharged duties of civil judge and magistrate. As part of their duties, the Judge handled petty criminal offences as well as civil cases. Till 1816, this arrangement was in force after which the magisterial powers were handled over from the Zillah judge to the collector. Before entering upon the
execution of magisterial duties the criminal jurisdiction of the Zillah judge included all subjects living in the specified territory of the Zillah with the exclusion of the European British subjects. All petty offences were disposed by the magistrate such as calumny, abusive language, affrays or inconsiderable assaults by awarding sentence of imprisonment for a term not exceeding 15 days or by a fine up to Rs. 50. He was authorized to impose a fine up to Rs. 200 in the case of Zamindars and other landed properties. He had the power to issue arrest warrant to all robbers, thief’s and other miscreants whose illegal behavior led to disturbance of law and order in the locality, with the purpose of conducting trail and inflicting punishment of them by way of corporal chastisement up to 30 rattans or by imprisonment up to one month. The court of circuit was the higher criminal tribunal and all other cases he had to commit for trial before the tribunal.

When magistrate get written complaint about crimes and offences, they would order arrest warrant to all offenders for executing legal action. As part of the legal proceedings, the prisoners were subjected to trail and necessary depositions were recorded. Then the prosecutor and witnesses were given order to give their depositions. Upon their examination provided the magistrate found no sufficient reason for commitment, the prisoners were let off, if they were found guilty, after executing bail bonds, they were released.

Since many innocent people were arrested, as a result of compliant instituted by prosecutors, this method proved to be defective in application. As long as the magistrate did not take initiative to conduct previous inquiry

78. Reg.VI.1802,Sec.II
79. Ibid, Sec. VIII
80. Reg.VII.1802
81. Reg.VI.1802.Sec.v
prior to issuing warrant for arrest, this defective procedure continued to cause suffering of innocent people. Hence a regulation was passed and implemented in 1811 so that this defect could be redressed. As part of legal procedure to be followed, the compliment was bound to establish the truth related to the complaint before the Zillah magistrate prior to submitting the written complaint. For this, either by the complainant or by other credible person, the charges had to be sworn under a solemn declaration before the magistrate. Only after the completion of the step, the magistrate need issue a warrant under his zeal and signature mentioning the crime charged and directing the officer to execute the warrant with the purpose of arresting the accused. In case the compliment was not in a position to be present in the court in person, the written plaint was accepted provided it was presented by an authorized agent and simultaneously corroborated by an oath of one or more persons present or the veracity of the complaint was personally informed to the magistrate. The magistrate was not compelled to adhere strictly to this elaborate process in the case of a person who was suspected to be involved in a heinous crime. Provided he entertained any doubt as to the verity of the charge preferred to him through the local police or by any other mode he might prefer, he could institute an enquiry.\textsuperscript{82} In case the result of such an enquiry proved to be against the accused, the magistrate was empowered to issue the warrant for apprehending and arresting him.

The specific mention of the offence that was charged against the accused and a requisition demanding either to attend in person or through the agency of Vakil to answer the charge or charges should be included in the summons of the magistrate. The magistrate was authorized to issue a

\textsuperscript{82}Reg.IV.1811,Sec.4
warrant for the arrest of the person if this summons was unanswered. Register [also a covenanted servant] and other subordinate officials should be entrusted with the executive business of each court. Simultaneously they had their civil functions also to perform. In case doubts arose as to the duty of the Zillah judge and magistrate in relation to cases where they might interpret the general rules laid down by the government in a different sense from the construction provided by the judges of the provincial courts of appeal and courts of circuit, a clear rule of conduct had to be framed and established in order to avoid delay in the administration of justice. If the Governor- in- Council passed a regulation in which the Zillah judge and magistrate considered any matters contrary to or unwarranted by the regulations, he were empowered to state objections to a perempt of the provincial courts or circuit courts and suspended execution till receipt of a second precept. The second precept should be immediately carried out. At the same time, the judge or magistrate could request a reference of the case to the Foujdary Adalat or Suder Adalat whose decision was regarded as final. For the proper and regular administration of justice, certain reforms were found necessary and the state declared the Mohammedan law was the criminal law.

Cornwallis was of the stern view that the Mohammedan criminal law was in many respects very defective and complicated. He found that some of its provisions were contrary to natural justice and in certain cases the punishment prescribed was too cruel. It also failed to check corruption. In 1790 he introduced certain very important reforms which modified rules of Mohammedan law. The relatives of a murdered person were now deprived

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83 Reg.IV.1811,Sec.6
84 Reg.XXII,1802.
85 Judicial Consultations 1803,Vol.IV, pp.720-21
of their right to pardon the criminal and the punishment of mutilation was abolished\(^{86}\). Later it was recognized that this system of law contained many serious defects. According to Abu Hanifa and the theorist of his school of Mohammedan legal thought, it was method and not the motive that determined the sentence. This doctrine found wide acceptance in actual implementation of law. As a result of that, how the murder was committed, whether blood was shed, how the wound was inflicted etc were closely examined so that the actual act of murder and the motive of it was not considered for imposing punishment. The Cornwallis system tried to rectify this defect by attempting to include the motive as the determining factor of crime. In addition to that the relatives of the murdered person were denied their power to pardon the criminal with the conviction that the law had to take its course. The magistrate were empowered to refer certain cases to their assistants and also he watched and superintended every proceedings and every instances mainly because to avoid accumulation of cases in the courts and for administrative expediency\(^{87}\).

A more important step on the part of the Governor-in-Council was to relieve the courts of circuit of the pressure of business and to speed up the trail of offenders whose crimes, might be of a less serious description then it was deemed absolutely essential to reserve for the decision of court of circuit. So a regulation was passed for empowering the Zillah magistrate, collectors and commercial residents to carry out quarterly sessions for the trail of such offenders. All the Zillah station a session should be held quarterly by the magistrate, the collector and the commercial resident of the


\(^{87}\) Reg.XII.1802
Zillah. Assisted by mufti of the Zillah court by the collector and judge were
might be no commercial resident. At the quarter sessions, the senior covenanted servant was empowered
to preside at the quarter sessions without reference to his local situations of judge, collector or commercial resident and the particular senior covenanted servant should have the deciding vote. It was decided as part of the proceeding that the sessions should be conducted on the first Monday of the months of January, April, July and October in every year and the sessions should be continued till a decision is taken in any matter or problem under consideration. Also there was decision to consider the register of the Zillah court as the register of the quarter sessions also.

The rules implemented as part of the regulation specified that the special court should taken up for consideration all criminal acts that was submitted or forwarded for their notice as part of which the magistrate, collector or the commercial resident should conduct the legal proceedings in the light of the rules formulated for the purpose of imparting guidance to the courts of criminal judicature. It was endowed with the power and authority to carry out its sentences, whether it was in favor of punishment of offenders or the release of the prisoners under trial when the guilt was not satisfactorily proved. It was stipulated that the written record of these proceedings should be forwarded to the circuit court. The rule specified that the sentences awarded by the quarter sessions should not cross the limit of a fine of 200 Arcot rupees or imprisonment for one year. The quarter sessions convened by the judge should take cognizance of all nuisances and should have authority to issue orders for their removal which might be represented to them. The complaints against the police officers were investigate by the

Reg.XII,1807
quarter sessions and have authority to punish and imposing fine if convicted\textsuperscript{89}.

It was required that the magistrate of the Zillah should prepare and forward an annual report in the month of January, covering up to 31\textsuperscript{st} December every year to the Foujdary Adalat. In addition to that, he had to prepare and forward in every January an abstract statement indicating details and facts related to robberies, murders and other crimes that happened in the previous year and also a monthly report to the circuit court. Crimes of serious nature should be reported without any delay to the circuit court, since the magistrate had no power to initiate legal proceedings in such cases. Until the arrival of the court of circuit to which they were to be delivered along with a calendar mentioning the details of the criminals, the person arrested for these offences should be held in custody in the Zillah jails. There were also provisions to announce rewards to the informers in cases the attempt to apprehend the culprits proved futile\textsuperscript{90}.

It was arranged that the senior judge of the divisional court should remain at the Suder station to superintend the business at the circuit court. With the purpose conducting trial of Sessions cases, one of the judges was sent on circuit with a Kazi and a mufti at regular intervals to the districts within its jurisdiction. The court dispose of all cases committed for trial. But in case of more serious gravity like involving sentence of death or imprisonment for life wherein it disposed from the fatwa of the Muslim law officers. There is also provision that such sentence were referred to the Foujdary Adalath for the final decision\textsuperscript{91}.

\textsuperscript{89} Judicial Consultations, 1807,pp.144-150
\textsuperscript{90} Reg.IV,1811
\textsuperscript{91} Reg.VII,1802.
The legal proceedings related to the trial of prisoners were undertaken in the manner specified as follows. The charge against the prisoner, his confession, if he plead guilty, or if he plead not guilty, the evidence on the part of the prosecutor, the prisoner’s defense, and any evidence which he may have to adduce being all heard before him, the Cauzy or Mufty is to write at the end of the record of the proceedings, the Futwa or law as applicable to the circumstances of the case; and to attest it with his seal and signature. The court shall attentively consider such Futwa and if it shall appear to them consonant to natural justice and also conformable to the Mohammedan Law, they are to pass sentence in the terms of the Futwa and to issue their warrant to the Magistrate for the execution of it without further reference or delay. Provided, however that in all cases where a prisoner may be condemned by such sentence to suffer death or imprisonment for life, the court shall transmit a copy of the sentence and of all the papers and proceedings read or recorded during the trial, with translates in English to the Foujdary Adalat and shall not execute such sentence but shall wait the final sentence of that court.

In taking its decisions, the court had to be guided entirely by the rules of Muslim law. It was noticed that at times, this law was inordinately cruel and even illogical. The important point that distinguished British law was that its end of justice was tempered with mercy. The Muslim law prescribed harsh penalties and it authorized to commute such penalties to imprisonment and other lesser punishments. In accordance with the fatwa of the Muslim law officer, in certain cases of a convict being awarded the punishment in the form of amputing two limbs, the Haud or punishment could be

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92 Reg.VII,1802,Sec.xv,cl.1
93 .Sec. XV Cl.2, Bengal Revenue Consultations,18th may 1785.
commuted for imprisonment with had labor for a term of 14 years. In case of
the prison was adjudged to lose one limp be imprisoned and imposed with
hard labor for 7 years in lieu of such punishment\textsuperscript{94}.

If the judges disapprove of any part of proceedings conducted during
trial or of the Futwa, they should not pass sentence in such cases, but should
complete the trial and hand over to the Foujdary Adalat a written copy of all
the legal proceedings and the fatwa, along with a letter specifying the
reasons for their disapproval. All decision taken by that court was binding
upon the circuit court. In such a circumstances that when the judge found the
Futwa contrary to the principles of natural justice or to the Mohammedan
law, there was no provision in the regulation respecting that particular point
of view. In such a case they were required obtaining the fatwa of the law
officer after completing the trial with a separate letter specifying their
objections there on and without passing sentence upon it and transmit the
entire matter to the Foujdary Adalath and wait the final decision of the court
\textsuperscript{95}.

Regarding all cases except when the Mohammedan law clearly
specified the prosecutor to appear in person, were granted permission to go
on with the prosecution by Vakil. There was the clear code specifying that
no punishment whatever should be inflicted on any prisoner upon the ground
of suspicion only especially when the evidence brought for against him did
not deserve credit and credibility or also when the presumption related to his
guilt was based on weak and flimsy grounds. The judge on circuit was
empowered to direct the Zillah magistrate regarding the cases of strong
suspicion, though not amounting to conviction, as well as upon proof of

\textsuperscript{94} Reg.VII ,1802,Sec.21
\textsuperscript{95} Ibid,Sec.22and 23
notorious bad character, he has to detain the accused in custody until the accused fulfill some conditions that appearance whenever required and gave sufficient security for his future good behavior\textsuperscript{96}. When any prisoner remained in prison for a period of one year or longer, on account of the inability to give the security needed for that and the execution of Mochulka [penal engagement] by him to pledge and ensure his future good behavior without security, the judge was empowered to consider all aspects of the circumstances of the case and the prisoner’s behavior and report the same to the circuit court at the next jail delivery, Then the court could conduct further investigation regarding the case through the examination of the prisoner and issue orders for his release after the execution of Moochulks [penal engagement]. The serious offences against the state like treason and rebellion, the accused were brought before all the judges of the circuit court for an immediate trial and for that purpose to which the parties were amenable or before a special court to be convened by the executive organ of the government\textsuperscript{97}. These special courts were given the same powers as the circuit court. Whether acquired or punishment, their sentences should be reported before carrying them in expediting the cases and their legal proceedings should be forwarded to the Foujdary Adalat.

The Governor-in-Council had the powers and authority to declare and establish martial law over any province in the presidency with the purpose of ensuring the safety of the British property and possessions and also for the security of the lives and property of the inhabitants by imposing immediate punishment of persons who would take up arms against the British or involved in any act of revolt or rebellion. When a person was convicted as a

\textsuperscript{96} Reg.XV.1803.Sec.II cl.6
\textsuperscript{97} .Reg.XX.1802.
result of the court martial, the punishment awarded could be death, ie, capital punishment itself usually it was by hanging until the person is dead. As a rule, the government seized the property, possession and effects of the convict. From all these, it can be clearly understood that in the early phases of administration, the military was an important and integrated part of the general and the judicial administration alike.

In the light of its historical evolution, it can be understood that the reforms prepared and implemented on 1\textsuperscript{st} January 1802 in Madras were purposefully charted out so that it would form the basis of an important legal system which would achieve greater perfection and inner strength later on. The main features of the original legal system are already outlined. Its further developments and possible lines of improvement in terms of its official hierarchy and mode of functioning began to take shape after 1804 in many districts of British India.

The lowest rank but numerically the largest; the Munsifs formed the most important\textsuperscript{98} class of Indian judicial servants. The jurisdiction of the courts of Adalath or courts of judicature for trial of civil cases was clearly defined and demarcated under Regulation 11\textsuperscript{th} of 1802. By this regulation officials functioning as the collector of revenue were freed of their judicial duties as a result of which they could concentrate on the work of revenue administration. As a result of this de linking of function and duties, the considerable inconvenience related to the combination of these two officers was done away with so that the respective official could be more responsible and effective in his particular official role. As part of the regulation now implemented, the duties of the Judge or magistrate would be discharged by a

\textsuperscript{98} Minute dated 4\textsuperscript{th} February, 1840 by Lord Auckland, Governer - General; Home; Judicial consultations No.12 of 23\textsuperscript{rd} March, 1840.
different person having necessary official role other than the collector. Courts of Adalath were established in several districts for the better and proper administration of justice\textsuperscript{99}. In Madras presidency the Adalath system framed on the plan of Lord Cornwallis was introduced in 1802, and “A regulation for granting commissions to natives to hear and decide civil suits for sums of money or personal property of a value not exceeding eighty Arcot rupees, and prescribing for the trial of the suits and enforcing the decision which may be passed upon them”\textsuperscript{100} was enacted on January 1\textsuperscript{st}.

The Zillah courts were empowered to take cognizance of generally to all suits of civil nature and complaints occurred within the limit of the Zillah respecting succession or right to real or personal property, revenues, land rents, accounts, debts, partnerships, contracts, marriage and climes to damages for injuries\textsuperscript{101}. The articulation of powers and the mode of functioning of different courts as defined and established in the reforms did not mean that the courts had equal power over all places and persons belonging to the geographical tertiary of the district. The British subjects formed a class belonging to themselves over whom theses courts had no jurisdiction. Now that the British subjects were an elite class, causes involving themselves could be tried only by the supreme judicature at fort St. George. Though it appeared to be harmless this contain was pre-judicial with regard to the cause of justice because it reinforced the racial superiority of the British with the help of legislation. This resulted in the conflict in the judicial relation between the natives and their colonel masters. For example, the British merchant living in the interior parts could file a case against the native or other non-British subjects with less expense in the Zillah court,

\textsuperscript{99} Regulation II,1802,Sec.1-11
\textsuperscript{100} Regulation XVI OF 1802;Clarke; Madras Regulations,1802-47, p.80.
\textsuperscript{101}Reg.II,1802,Sec.5
where as to sue a British subject, a native or non British person had to go to the supreme court of judicature at Malabar. This was possible only for very rich people because that required a very long journey to Madras. In addition to that, filing a case against their masters for small claims in a court of law where the proceedings were conducted in foreign language was almost impossible for native people, especially belonging to the interior.

In those days, English merchants had dealing with the local people belonging to the category of small manufacturers and farmers. In the case of disputes, these natives people could not made big claims and they were not in a position to file a case against their masters. This was equal to the denial of the rule of law and justice to the local people. This mockery of justice remained in the society for many decades. Another handicap and hardship faced by the native’s people was that the law administered in the Supreme Court was the English common law. Which was strange and foreign to native people. The Governor-in-Council deemed it necessary to pass a new regulation providing that the British subjects should not reside at a greater distance from the Fort St. George as a small measure of redress\textsuperscript{102}. Since this condition was never enforced, this rule aimed at the redressel of compliant was not effective.

In addition to the reform, a miner but notable change was incorporated in the jurisdiction of the Board of Revenue. In order to decide causes related to revenue collection, normally it was the duty of the collector to preside over the revenue courts. In the case of further dispute, for settlement, usually the apples were submitted to the Board of revenue which made that body to intervene in the judicial administration. The role of revenue courts and the judicial authority of the board of revenue was disappeared as a matter of

\textsuperscript{102}Reg.VIII,1802
repeal and curtail the judicial functions of the collector\textsuperscript{103}. The reforms thus implemented had very great impact in that for the first time, the troublesome duty arising out of a combination of business, civil, magisterial and revenue functions creating a heavy workload was lessened to a considerable extent thereby enabling collectors to discharge their particular duty located to revenue administration in a more effective and efficient manner. The free time at their disposal would help them to take up revenue duties with more dedication. This administrative reform helped to fulfill administration of revenue department without delay. Another benefit of this reform was that the possibility of a conflict between the judges of the Zillah courts and the authorities of the board of revenue could be prevented by de linking the functions of the collector and the judicial officers. The note so relevant distinction between civil cases and revenue cases and the separate courts and establishments for the trial caused much delay and created unnecessary troubles and thus could be avoided as a result of the reform. Cornwallis clearly stated as follows;’ the courts for the trail of matters relating to the revenue which involve the rights of all the various descriptions of land holders and cultivators of soil, scarcely merit the appellation of courts of justice\textsuperscript{104}.

The Zillah courts were prevented from adjudicating on an issue that had been decided by a former judge or officer endowed with suitable powers of jurisdiction. Contempt of court and perjuries committed in open court were considered the court but at the same time the courts prohibited from taking cognizance of any matter of a criminal nature\textsuperscript{105}. Hence it follows that

\textsuperscript{103} Reg.I,1803.
\textsuperscript{104} Aspinall,op.cit,pp.87-88.
\textsuperscript{105} Reg.III,1802,Sec.viii&xxii.
the Judges in the Zillah courts could use their powers of jurisdiction in civil cases.

In case the Governor-in-Council decided to consider the case for trial, the court had to send a written notification of the order to the petitioner. As part of the trial procedure, here, on behalf of the government, the officer who had done the act had to proceed with the suit. In matters related to dealing with the trial and such legal proceedings, that particular officer had the privilege of employing the service of the government pleader, who was appointed to that post for conducting that case. By a later enactment it was made clearer that for acts done in their official capacity, absolving the officers of liability to personal prosecution\textsuperscript{106}.

This change in the official procedure is a clear indication for the improvement in policy adopted by the system of administration led by British East India Company. As part of their official and non-official activities, the collectors and their innumerable subordinate officers used to enforce their authority over the natives for personal and official purpose, because they knew that their official status would exempt them from any punishment. The reason was that there had been in practice no protection other than making appeal to the government of which the government official was a part. It was obvious that only by making the government officials personally accountable for their unauthorized deviations from their official duties, the interest of the people could be protected. As a result of the provision incorporated in the reform, now there is a clear demarcation between personal suits and public suits against officers of the company’s government. Another constrictive change in the reform was that it provided the Governor-in-council with the up-to-date information without delay of all

\textsuperscript{106} Reg.III.1809.
the cases in which the natives were aggrieved by the acts done as a result of the special orders from different executive branch of the government. Hence adequate redressel could be affected without a time consuming and troublesome judicial procedure.

The Zillah judge and his subordinates belonging to judicial system followed a highly elaborate and complex official procedure which was outlined in regulation 111, X 111, and XV of 1802. When a written complaint was submitted related to any matter deemed to be cognizable by the Zillah courts, the court had to issue a summons to the defendant. The summonses should contain a brief description related to the complaint and it should demand the defendant either to go along with the officer who served the summonses or to provide him good and reliable security to appear and answer either personally or through a Vaki. The official duty of the Nazir was to serve the Summonse, if he could be found. He has also the power to take the person into custody and bring him before the court in the event of not giving the required security.\textsuperscript{107}

The Mohammadan law officer’s main responsibility was to propound Muslim law and to assist Zillah judges in dispensing civil and criminal justice. The Zillah judge got the assistance of a Kazi and a mufti when he handled cases that required the exposition of Mohammedan law. A pundit assisted the Zillah judge when the dispensation of justice headed the administration of Hindu law. These experts in personal law assisted the Zillah judge in handling cases related to succession, inheritance, marriage and caste and all religious customs and institutions. He could proceed according to justice, equity and good conscience nor the works on Hindu and

\textsuperscript{107} The processes of defense, reply, rejoinder and other methods of hearing are the same as in the case of Regulation of June 1793, Sec. 19.
Mohammedan law neither their opinion nor the regulations\textsuperscript{108}. He had very wide field within which to exercise his discretion in cases of no law of contract, no law of succession, no law of administration of diseased estates etc\textsuperscript{109}. The Muslim law officers by their Futwa gave findings after hearing the evidence and their verdict was not binding on the judge, but in case of a difference of opinion between the judge and the Muslim law officer, the instead of passing the sentence made\textsuperscript{110} a reference of the case to the court of Nizamat Adalath and in the event of a difference of opinion in the superior court, the final verdict was given on the basis of majority\textsuperscript{111} opinion in the Nizamat Adalath.

The Zillah judge had a registers court of try and divide cases involving limited value of money and personal possession. This expedient was used to preclude the difficulty related to incessant stream of petty suits in Zillah courts for which the judges of the Zillah courts had to devote their time and energy. The registers were appointed by the Governor-in-Council. They had to be covenanted servants of the company. The particular duties or business were empowered to assign these courts and carried out by the Zillah judges\textsuperscript{112}.

The orders passed by the registrar were required to be ratified and countersigned by the Zillah Judge. If they were not countersigned by the judges, they were regarded as invalid. Hence the Zillah Judge had to revise the whole proceedings of the register as a result of which much of his time was required for this repetition of trail. This resulted in defeating the very aim behind the appointment of register. The Zillah judge has the

\textsuperscript{108} Reg.II,1802,Sec.17
\textsuperscript{110}Sections LIII and LIV of Regulation IX of 1793;Bengal Regulations, Vol. I.
\textsuperscript{111}Stated by William Leslie Melvile,ex-commissioner,Bareilly circuit before a select committee of British Parliament on 12\textsuperscript{th} April,1832; House of Commons, Vol.Xii of 1831-32,Paper No.735 IV,p.64.
\textsuperscript{112}Reg.XII.1802 Sec.v
discretionary power to revise the decision of the registrar if it appeared unjust or erroneous, in order to do away with this express inconsistency\textsuperscript{113}. Appeals were permitted to be submitted from the decisions of the registers to the provincial courts of appeal. As it interfered with the important function of the provincial court of appeals, a modification was passed that required that appeals from the registers decision should be submitted only in the Zillah courts. It was divided that within 30 days after the date of the decision, petition of appeal should be presented. If these were sufficient and good cause for not having filed the petition within the time limit, the judge had the right to admit the appeal when it was proved to his satisfaction.

As part of the judicial administration in those days, there were some native commissioner’s courts which were subordinate to the Zillah judge. The native commissioners were appointed from respectable Indians belonging to aristocratic classes like landowners, Jagirdars, Tradesman, Kazis, and the like. They were chosen to the possession of native judge by commissioners issued by the Zillah judge with the prior approval of the Suder Adalet. As for the number of native commissioners to be appointed, the Zillah judge had the discretion and power in this case. With regard to their official duties and functions, they had a triple role to be performed. In suits for money or other personal property not exceeding Rs.80 in value they were functioned as referees. In any suit referred to them by the parties without the intervention of the court under a written arbitration bound they acted as arbitrators. In suits against under renters and ryots in Jagirs they acted as Munsiffs \textsuperscript{114}.

\textsuperscript{113} According to Sec.xi of Reg.XII,1802 in certain cases the decision of the regulation was final. This was rescinded by clause 3,Sec.VIof Reg.Vii of 1809 and also sec. IIIReg.XV of 1816

\textsuperscript{114} Reg.XVI,1802.
Not precisely a part of the regular cadre of Indian judicial functionaries, Hindu and Muslim law officers popularly called Pandits and Kazis or muftis played a fairly substantial role in the dispensation of justice. The need for the appointment of the Hindu and Mohammedan law officers of civil and criminal courts of judicature was clearly specified in the regulation xi of 1802 which is outlined as follows.’ It is essential to the due administration of justice, that the law officers in the courts of judicature should be held by men of integrity, well versed in the laws, and that they should be so constituted as to render persons possessing the requisite qualification solicitous to obtain them and to afford every encouragement to such persons, when appointed, to continue to discharge their duty with uprightness. It is likewise necessary, upon general principles, that the law officers should be subject to penalties for misconduct, in order that they may be deterred from abusing their important trusts”. They were first appointed in Bengal\textsuperscript{115} in 1793 and in Madras\textsuperscript{116} in 1802 and in Bombay\textsuperscript{117} in 1827.

The Governor-in-Council appointed them and they could not be removed unless misconduct or incapacity in the performance of their public duty was proved or on account of any act of open and downright profligacy in their private life. In the trail of cases, to help the native commissioners, the pundits clarified the laws and usages in the light of Hindu Dharma Shastras and the Kazis explained the laws on the basis of Koran and related Scriptures. The Regulation IX of 1809 endowed the law officers with judicial power.

Another notable aspect of the judicial reform was the provision to appoint a number of licensed Hindu and Mohammedan Vakels or pleaders to

\textsuperscript{115} Regulation XI of 1793;Bengal Regulations, Vol.I
\textsuperscript{116} Regulation XI of 1802;Clarke;Madras Regulations,1802-47,pp.67-70.
\textsuperscript{117} Section XIII and XXIX of Regulations Iof 1827;Clarke;Bombay Regulations,1827-50,pp.8,9,and 13.
handled cases. In the case of suitors who were not willing to handle their own cases, these Vakils performed as the legal representatives of the parties. The regulation provides a more systematic basis to Vakils and pleaders in the discharge of their functions in the Bengal presidency, and this model was subsequently adopted in the presidencies of Madras\textsuperscript{118} and Bombay\textsuperscript{119} as well. In the Zillah courts, provincial courts of appeal and Suder Adalat, adequate number of pleaders were permitted to discharge their duties related to the trail of cases. According to the value of the suit the fees they were entitled to charge were carefully graduated \textsuperscript{120}. This regulation was adopted and implemented with the aim of eradicating the unwelcome results connected with the practice of employing private advocates who were, generally, inclined to protract cases because that enabled them to collect more fees by delaying the case. There was the possibility for the parties involved in the dispute to bribe the pleader of the opposite party. As a safeguard against their possibility of malpractice, the government took steps to make their profession, more sober and strict. For this, only properly qualified persons were permitted to plead in the courts. This instilled a spirit of novelty, imparted a new orientation, and endowed a new vision to the profession of lawyers. When a pleader belonging to one court, intend to plead in another court, special permission was required to undertake the legal procedure.

Regarding the system of pleaders connected with courts, it should be noted that the pleaders establishment exercised a wholesome and salubrious effect on the judicial organization, though certain unwelcome trends found its way into the establishment later on. One immediately noticeable positive

\textsuperscript{118} Regulation XVI of 1816; Clarke; Madras Regulations, 1802-47, pp. 167-170.
\textsuperscript{119} Regulation II of 1827; Clarke; Bombay Regulations, 1827-50.
\textsuperscript{120} Reg. X, 1802,
change was that suitors got the opportunity to have expert advice and guidance in the legal matters. The pleaders establishment and the associated organization exerted a great beneficial influence and contributed much of positive value to the legal system in Indies because they could rely on the consolidated experience of many years of legal practice along with the western concepts of justice and propriety that led to the gradual emergence of a perfect legal practice to ensure equitable justice. Since they were eminent men having abundance of knowledge and well versed in legal practice, they proved to be a reasonable and effective check and control on the arbitrary authority of the judges. Thus, instead of nurturing and enjoying a state of independent greatness in their elevated status, they proved themselves to be a source of check and balance to ensure the dispensation of imparting justice. This point was clarified by Cornwallis in the following words”, they would not only inform the judge by their pleadings but also be a good check upon their conduct; no act of partiality or deviation from the laws could escape their notice, or fail to be exposed. They lay the judges under the necessity of making themselves acquainted with the laws and regulations and of administering them impartially; they would put a stop to all the numerous abuses which are daily practiced by the ministerial officers of the court\textsuperscript{121}.

The Sader Adalat was empowered to grant sanad to the pleaders who could plead the causes of the parties in the suits in which the name of the pleader, the date of appointment and the court to which the pleader was admitted were specified and ratified under its seal\textsuperscript{122}. These details were entered in the register of each court which entitled pleader to undertake the

\textsuperscript{121} Aspinall, op.cit, pp.89-90
prosecution or defense of a suit in accordance with the articles of the regulations. The party for whom he undertook the duty of a pleader had to give him four annas as remuneration for giving legal aid. Once this remuneration or retaining fee was accepted, the pleader was bound by law to handle the case in the proper manner the failure of which was punishable in the form of removal from the profession. The pleader was bound by law to accept only the specified fee mentioned for that purpose.

After the establishment of the courts, there was a steady flow of different types of suits to the courts. Which created a hindrance in the normal working of the legal system. With the purpose of finding a solution for this problem, the administrators devised a new strategy which was mainly focused against the litigiousness of the natives. Stamp duties were introduced on all pleadings in the courts of civil judicature, on all copies of paper furnished by the courts and on the Sannads of appointment granted to Kazis and authorized pleaders and for requiring certain complaints punishable by the magistrate to be written on stamped paper and with this effect passed a new regulation.\textsuperscript{123}.

In order to distribute several denominations of stamped papers for preparing official documents, the collectors were empowered to appoint Tahsildars and other agents considering the number of people inhabiting the place and the geographical area under the jurisdiction. If an application not prepared in stamped papers of specific value was allowed to be filed for taking up legal proceedings, a registers or any other official in the particular court could be dismissed. At the same time, the respective courts had the power of discretion to dispense with stamp duties in the case of petitions submitted by pampers.

\textsuperscript{123}.This was rescinded by Regulation XIII of 1816.
The government formulated a very effective method to control the institution of silly and baseless complaints by enforcing specific remission of fees for accepting suits and conducing the formal trail of the same in the courts of judicature and also before the native commissioners. But it becomes very clear that the regulations had not been very effective from the number of cases pending for trail. Also this state of affairs resulted in considerable difficulties and impediments. Lord Cornwallis tried to find a solution for this drawback in Bengal province by doing away with the deposit fee in connection with filing of suits. He reasoned that’ the evil which this regulation\textsuperscript{124}. He reasoned that the evil attributed under this regulation is intended to get rid of a wrong message to the common people. It causes the dilatoriness and inefficiency of the administration of justice and not to be ascribed to the litigiousness of the people\textsuperscript{125}.’

The government of Madras, actually neglected the advice given by Cornwallis when it re introduced these duties that were earlier seriously criticized. Instead of ensuring increases access to the courts of justice for all people including rich and poor, in effect, regulations attempted to limit the scope of them so for as the poor people were concerned. As a result of that, it provided either directly or indirectly protection to many people who were, consciously or unconsciously involved in illegal and unlawful activities.

With the purpose of speeding up the general administration of justice in the Zillah courts, it was deemed essential that the judges should have the necessary authority and power to refer for trail to their registrars suits having greater value or amount than the sum at present restricted according to regulations. The jurisdiction of the registrars was extended according to the

\textsuperscript{124}.Regulation passed in 1787 in Bengal which required a deposit of from 2 to 5\% from a plaintiff who instituted the suit.
\textsuperscript{125}.Aspinall,op.cit.p.89.
regulations. But with regard to their power of hearing, it was reduced with the condition that no appeals from the native commissioners should be presented before them. Also they were denied power to take final decision. With regard to appeals from the decision taken by the native commissioners, the decision of the Zillah Judges becomes final. In spite of that, there was provision for an appeal to be presented in the provincial court. However, an appeal was made to recline from them to the provincial court.\textsuperscript{126}

The provincial courts of appeals were the second order of courts in the hierarchy of civil courts and they were established for hearing appeals related to the decision taken in the different Zillah courts. These appellate courts were to be known as the Provincial Courts of Appeal. They were not only to hear appeals but also supervise functioning of the Diwani Adalats. To make these courts respectable and effective, only those persons were to be appointed in them as judges who were distinguished for their integrity, ability and knowledge of the people’s customs, manners and language.\textsuperscript{127}

The regulation prescribed and defined their powers and jurisdictions and the rules for receiving and deciding upon appeals and other causes of which they were declared to have cognizance.\textsuperscript{128}

The judicial officers attached to the provincial court of appeal were three law officers, a Kazi, a pundit and a Muffti with a registrar and ministerial staff. Only a qualified person who had previously worked as judge or magistrate of a Zillah court for a period of not less than three years was regarded as qualified to be appointed to the office of the judge of the provincial court.

\textsuperscript{126} Judicial Consultations 1809, Vol.42, pp.645-48
\textsuperscript{127} Jain. M.P. op. cit, p.132
\textsuperscript{128} Reg. IV, 1802.
Regarding its appellate jurisdiction, it was empowered to try cases that were forwarded for hearing from the Zillah courts. The party seeking justice should send a petition specifying his case along with the attested copy of the decree to the court that passed the decree. After that, it was the duty of the Zillah judge to forward the petition to the provincial court along with proper endorsement for further action. He passed the power of discretion to reject it for which a copy of the rejection order should be delivered to the appellate. If the appeal was granted, the Zillah judge should forward the petition of appeal, all records, and original papers related to the case to the provincial court.

For proposing new regulations or alterations in the procedure on account of changed conditions or as a result of contingency, it exerted a type of advisory jurisdiction. These proposals should be endorsed by the Suder Adalat and forwarded to the governor in council or after specifying reasons, reject them. When the governor in council approved them, they would be accorded the status of regulations.

With regard to trial of cases where the judges arrive at different opinion in relation to the judgment, the opinion of the majority should be considered to decide the issue. In case this happens involving two judges, the senior judge should have a casting vote. On the proceedings of the court each gudge had the liberty of recording the grounds of his opinion\[129\].

With regard to the institution of this court, the main objects to protect the interests of the people against the unjust and erroneous decisions of the Zillah judges to ensure that the proceedings are undertaken strictly in lower courts with the help of review and revision of the judgments, and also to prevent the subordinate courts from being treated as instruments for

\[129\] Reg.XV,1802.
effecting procrastination, litigiousness and rapacity. To borrow the expression from Cornwallis, these course were ‘’ the great security to government for the due execution of the regulations and removal of the barriers to the rights and property of the people’’. If any charges occurred against the corruption of the judges of the local courts they were empowered to receive the complaint\textsuperscript{130}.

Before the establishment of these courts, the Board of revenue heard these appeals. In those days, only the Governor in council had the control over the board of revenue. This complex system regarding the appeals as a rule created hindrances and difficulties. So many people did not get access to the establishment. With the purpose of rendering beautiful service to the people, so that they would be persuaded to look up to them with confidence, the provincial courts were designed and implemented.

The highest courts of justice established by the Company were the Sader Diwani and Nizamat Adalath in civil and criminal cases respectively. During the regime of Cornwallis the constitution of these courts underwent radical change and by his code ushered in a system which subsequently formed the steel-frame of British Indian judiciary. In the Madras presidency the Adalath system framed upon the plan of Cornwallis, was introduced in 1802\textsuperscript{131}.

The fifth regulation of 1802, which led to the establishment of the highest appellate tribunal of the presidency of fort St. George, has an

\textsuperscript{130} Aspinall, op.cit, p.88
\textsuperscript{131} Regulation V and VIII of 1802 deal with the constitution of Madras Sader Adalath and Foujdary Adalath. These regulations were passed by the Governor-in-council of Fort St.George on 1\textsuperscript{st} January,1832 and were based on regulation VI and IX of 1793 of Bengal code; Clarke; Madras regulations, 1802-47.
introductory section to it in which the following seminal statement is recorded. “The courts established in the several Zillah’s having co ordinate jurisdiction in respect to one another, it become necessary to establish, in every province courts of appeal, to receive appeals from their decisions and to regulate their respective jurisdictions, but these courts of appeal being subject, in several instance to the occurrence of similar questions as to their separate jurisdictions, it is requisite that a common superior should be erected, in which may be centered the powers of regulating and determining whatever relates to the courts of appeal. Decrees should be liable to be ultimately brought before the same tribunal that the public law may be known and established and similar cases determined by like principles. And to this end that the judges in the inferior courts may at all times be amenable for the due discharge of their duties, it is further essential that the said superior tribunal should hold powers of receiving charges in respect of their conduct and causing the same to be regularly investigated and determined”\textsuperscript{132}. This statement provides a brief picture highlighting the importance of the institution of the Suder Adalat and the range of powers invested as part of it.

In 1802 the Sader Adalath was constituted consisted of the Governor and his Council\textsuperscript{133}. Little amendment was occurred in its constitution in 1806 that the Governor functioning as the chief judge and the other two judges being selected other than the members of the council and they were the covenanted civil servants of the Company \textsuperscript{134}. Further changes were introduced in the year 1807. As a result, the Governor ceased to be the chief judge. Instead the Governor begun to appoint the chief judge first from the

\textsuperscript{132} From the Provincial Court of Appeal.
\textsuperscript{133} Reg.V.1802,Sec.2 and Reg.VIII.1802,Sec.3
\textsuperscript{134} Reg.IV 1806,Sec.3
group of covenanted civil servants who were outside his council and later on, from the members of his own council. The three other judges selected from the covenanted civil servant and the commander-in-chief become a judge\textsuperscript{135}.

The court of directors in England laid great emphasis\textsuperscript{136} on the superintending duties of the Suder Courts. In the sphere of appellate jurisdiction\textsuperscript{137} the Sader Diwani Adalath was mainly to hear regular appeals, admit special appeals, and receive petitions for admission of special appeals relating to civil justice, while Sader Nizamat or Foujdary Adalath was the supreme body for hearing criminal appeals from below.

Two Kazis, two muftis, two pundits and the ministerial staff attached to the court were there to render assistance to the judges in supervising the legal proceedings. The Suder Adalat was empowered to accept original suits or complaint that might be cognizable in any Zillah court and to instruct the judge of that particular court to accept the petition or complaint and to go on with the legal proceedings for pronouncing judgment. If the judge in the lower court refused or omitted to proceed in it and the complaint had applied to the provincial court and that such court omitted or refused to command the judge to receive or proceed in it for the satisfaction of that court, proof should be previously produced for this purpose\textsuperscript{138}.

The Sader courts had no real success in satisfying the judicial needs of the people and the ends of justice were not adequately met on account of the vexations delay that occurred in deciding civil appeals preferred to them\textsuperscript{139}. The main reason for this denial of justice was attributed to the

\textsuperscript{135} Reg.I.1807 Sec.3
\textsuperscript{136} Judicial letter from court dated January 11, 1832.
\textsuperscript{137} Minutes dated 6\textsuperscript{th} September, 1855 by J.P. Grant on the state of affairs of the Bengal Sader Court; home judicial consultations. No. 10 of 7\textsuperscript{th} December, 1855.
\textsuperscript{138} Reg. V 1802, Sec. 4(a)s
\textsuperscript{139} Ramesh Chandra Srivastava, op. cit, p. 71.
system under which all regular\textsuperscript{140} and special\textsuperscript{141} appeals were to be heard by a bench of three or more judges in contradistinction to the one-judge-bench\textsuperscript{142} system. On 6\textsuperscript{th} August 1861, the British parliament passed the Indian High Court Act under which the supreme and Suder Courts were abolished and in each of the presidency towns the authority was given to the Indian government to erect and establish a high court of judicature

A set of 48 regulations known as Cornwallis code which dealt with the commercial system, with civil and criminal justice, with the police and with the land revenue were prepared. The main objective behind the regulations were intended to ensure disciplined administration and prevent any return to the chaos and abuses of the past\textsuperscript{143}. In this set of regulations he attempted to codify the existing law and procedure and it was an honest attempt to establish the rule of law in India\textsuperscript{144}.

The judicial system of 1787 was inherently weak as it could not provide an effective method to check actual cases of oppression and injustice. Cornwallis called the system as ‘preposterous’ under which no improvement in the cultivation of the country could be hoped for\textsuperscript{145}. The Bengal code formulated by Lord Cornwallis was adapted and reformed to prepare the judicial system of 1802 which was the furring together of elements of justice springing from Indian and English traditions with greater importance being accorded to the condimental aspects. In a sense, it exhibited only a minor consideration being given to Indian tradition. Still, it was not totally isolated from the special native tradition and circumstances. As for the totality of native tradition, it came into existence on account of

\textsuperscript{140} Act no.II of 1843; Theobald, Vol.I, p.390.
\textsuperscript{142} Judicial letter No.17 of May, 1859 from secretary of state for India.
\textsuperscript{144} Thompson and Garratt, Rise and Fulfillment of British Rule in India, London, 1935, p.196.
\textsuperscript{145} Cornwallis’s Minutes, Bengal Revenue Consultations, 1793.
different factors, such as the customs, manners, usages, cast laws, personal laws and religious rituals and prejudices. These heterogeneous combinations of laws and caprice proved to be formidable obstacles with regard to practical positive changes in the framework of the society. In this context, Munro stated, "it appeared from the reports of the local authorities of Malabar from the period of its cession to the British Government, that both its ancient institutions and the manners of its inhabitants differed widely from those which generally prevailed over the peninsula of India". Hence it was inevitable that the newly introduced system would give rise to conflicts in Malabar province.

By Regulation II of the code of 1793 Mal Adalath or revenue courts were abolished. The collectors were deprived of their vast powers which were given to them in reforms of 1787. All the judicial powers of the collector were taken away and given to the Diwani Adalats which were reorganized. The duties collectors became merely administrative officers to collect revenue of the district. To try civil as well as revenue cases ordinary civil courts were empowered. He reorganized the civil courts and the provincial courts of appeal. Indians were allowed to be Munsiffs. Regulation XIII provided for the establishment of the registrar’s court. In cases relating to marriage, inheritance, caste, religious usages and institutions the personal laws of Hindus and Muhammedans will be applied. Section 10 of regulation III provided that all the executive officers of the government including collector will be subject to the court’s jurisdiction. The aim of introducing this provision was to observe the rule of law. He abolished the court-fees which make justice cheap. The magisterial powers of the collectors were

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146. A Report on the Revision of the Judicial System in the Province of Malabar, p.3 (T.N.A)
taken away and the judges of the Diwani Adalaths were empowered to exercise this jurisdiction. The courts of circuits which were created in 1790 and the provincial courts of appeal which were proposed in 1793 were united.

By regulation VII of 1793, first time the profession of law was created and organized in India and as a result a well organized and regulated professional lawyer came into existed in India. This was progressive step in order to assist the illiterate litigants who were unaware of the technical procedure of the courts and also the technicalities of the law. He divides each regulation into sections and sections were divided into sub-sections and clauses which were duly numbered in serial order. This process of the collection of regulations periodically in a set-form introduced certainty and uniformity of law. He also introduced permanent settlement\textsuperscript{148} to solve the prevailing uncertainty about the collection of land revenue. On 22\textsuperscript{nd} March, 1793 the permanent settlement was sanctioned\textsuperscript{149}. The regulation of 1793 introduced many radical reforms. Cornwallis was printed and issued a set of 48 regulations on 1\textsuperscript{st} May 1793, known as Cornwallis code and as a result it gained such a great reputation amongst the Anglo-Indian administrators that in 1797-99 it was introduced into Bombay and forced upon Madras in 1802.

The aims and objects of the system that was newly introduced should be regarded positive and praiseworthy. The following salient features and essentials for a modern society such as a written code outlying laws, rules and regulations, separation of the judiciary from the executive, grading different tribunals with specific functions well marked jurisdictions, enforcement of personal laws of the Hindus and Muslims in civil cases and

\begin{footnotesize}
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\item\textsuperscript{148} Philips. C.H. *The East India Company*, 1784-1834, p.69.
\end{enumerate}
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Mohammedan law alone in criminal cases and the tendency and inclination to encourage regularity in all transactions and dealings should be regarded as the immensely positive and notable contribution of the British rule drawing inspiration from, however distant it may be from the ideal, the political principle of justice. “if we cannot introduce a system of jurisprudence as perfect as might be wished, it is our interest as rulers of the country and duty we owe to our subjects, to see that the law, as it exists, is duly administered, that the evils resulting from the maladministration of it may not be super added to those which are consequent of its inherent defects”\textsuperscript{150}. As and when the judicial system was put into actual operation, in spite of the above mentioned well intentions, the system turned out to be not up to the mark in its mode of working and the overall affect in the society. It should be observed that the people had great admiration for the high and noble principles that provided the theoretical platform for the judicial administrative system. But they did not have very high regard for the means that had been adopted to achieve those aims because the judicial system was “regarded by them rather as one of good intention than of efficient operation”\textsuperscript{151}.

Drawing the largest possible revenue from the country that is colonized with the purpose of maintaining extensive military establishments and prosecute schemes of conquest was the main object of the governments that preceded the British in India. The welfare and conflict of the people who were governed were neglected and the main object was always kept in view. In order to attain the main object, different measures were adopted to satisfy the capricious and arbitrary nature thereby causing abuse of manifold

\textsuperscript{150}\textsuperscript{Bengal Revenue Consultations,3rd December 1790.}
\textsuperscript{151}\textsuperscript{Arbuthnot,\textit{Munro},Vol.II, London, 1881, p.7}
nature and undermining the moral sensibility of the people. Though these provisions were transferred to the authority of the British Government, the measures that were adopted from the initial days onwards to effect the collection of revenue to the maximum were in force for long. In this connection, it was observed that “the Joint Commissioners worked with untiring industry and introduced many excellent measures. But their mistaken revenue policy retarded for years the pacification of the district and culminated ultimately in the fierce blaze of the Pazhassi rebellion”\textsuperscript{152}. Probably on account of the fallout related to this, the open and stark mercenary characteristics of the company as evident in the administration of the country were on the wane, especially in later period. The systematic and well functioning judicial administration established in the country showed a deeply felt desire on the part of the colonial rulers for an ordered and peaceful life in the society that they intend to govern.

In effect, the newly introduced judicial system had left the principle of justice more different to attain than it was before on account of the occurrence of the collision of authorities, absence of a more brief process in dealing with petty suits and the complete disappearance of the age old jurisdictions under the supervision of the heads of villages. The major defects of the newly introduced judicial system were specified by Munro in the following words; “it is too artificial and too little adapted to the state of society in India; that it proceeds upon the assumption that the natives are altogether unworthy of trust, and, in consequence, it requires too little native and too much European agency; and that it takes the duties of magistrate and superintendent of police from the collector, by whom alone they can be adequately discharged, and throws them upon the judge, who has no time to

\textsuperscript{152} Guide to the Records of Malabar District, Vol. 1, p. 6
attend to them, and who cannot engage in them without deranging the municipal institutions of the country, which connect them inseparably with the office of collector”’.

Pearson, who was the judge and magistrate of south Malabar, after gaining immense experience by serving in different official capacities in the said province, stated that, “the most prominent defects in the present system originate with regard to the judicial branch in a deficiency in the number of respectable natives of education required to assist in the trial and decision of civil actions, and in the magisterial to the want of an efficient superintendence on the part of the magistrate of the more general duties of police, at present quite impossible from his whole time being occupied in reading through the current business which is daily brought before him in numerous cases of crime and misdemeanor, which, to prevent the business falling in arrear, must be tried and decided upon without delay and in Zillah’s where the number of prisoners apprehended in each month average 350, the magistrate under the present regulation can expect no respite”’.

At first there was the official step taken to solve this problem by the imposition of inordinate deposit fees and stamp duty. Later it was realized that this desperate action only caused confusion and further delay. It was widely realized that the remedy used in this context caused worse effects thereby undermining the system further. At the same time, these measures influenced the working of the system in such a way that the number of vexatious suits declined. Also, the direct taxation in the form of stamped paper for preparing written pleadings and institution of fees resulted in the increase of expenses related to processes and proceedings in the courts as a

result of which a number of people were discouraged from trying to avoid judicial solution for their problems. The expenses that would incur as and when people seek the means of getting legal redresses thwarted the end of the system thereby increasing the distress of the people concerned. Imposition of the deposit fees and stamp duties for the purpose of reducing the volume of litigation led to the denial of justice to the poor allowing the culprit to go scot free\(^{155}\). This state of affairs was almost equal to the denial of justice and become a source of pain and suffering for those people who sought to seek the help of the judiciary to prove their cause there by persuading them not to seek the assistance of the judicial system in future.

In their Judicial Dispatch of 29\(^{th}\) April 1814, the Court of Directors alluded to these defects and suggested their immediate remedies such as making the revenue collector more powerful by giving him magisterial functions, so that the police might be effectively controlled, employment of Indians in the lower judicial posts, revival of time-honored legal institutions of India like the Panchayats and fully utilizing them in creating a climate of confidence in the minds of people and rendering justice cheaper by the establishment of a larger number of courts\(^{156}\).

In the Madras Presidency when the system was introduced and allowed to operate in 1802, these principles were not given its due importance and seriousness. Hence the court of directors pointed out the fact clearly in the following words; ‘‘To form a tolerably correct idea on the subject especially in regard to the Zillah courts, we must bear in mind the number of persons who may be deterred from applying to them for redress from the despair of having their disputes and grievances settled within any

\(^{155}\) Selection from the Records of Fort St. George. Papers regarding the Village Panchayat and other judicial system of administration, 1812-16.

\(^{156}\) Ibid.
reasonable time as well as from the great distance they must travel for justice; the expense of the journey and the interruption which it must occasion to their private concerns called away as they are from their homes at the very season when their absence cannot be dispensed with, without serious injury to their cultivation of the land”\textsuperscript{157}.

The judicial administration that existed in those days was not fully developed and organized as to satisfy the wants and needs of the native people. The wide area falling under the jurisdiction belonging to the Zillah and provincial courts was the reason for this defect. Hence the court of directors took the stand that even after the accomplishment of the increase in the number of these courts so that their respective jurisdiction would decrease to one half of their present area which would require expenditure of company’s fund on account of which they are not fully inclined to implement the same modification, it would function only as an incomplete and partial solution. So the condition of administration of justice would be really inadequate in the light of its intended function and aim\textsuperscript{158}. With regard to the people’s wish to approach the courts to seek the help of the machinery of judiciary, the distance to be covered to reach the location of the courts becomes a hindrance for ordinary people.

The Cornwallis system worked in Malabar with varying degrees of success and failure. At present we are going to deal with different issues related to the judicial system that caused it to develop harm and even malfunctioning. The executive rise in the number of depending suits in different tribunals and the resulting long delay in the application of laws and the attendant hardships experienced by the people should be pointed out as

\textsuperscript{157} Cornwallis. Minutes of 11\textsuperscript{th} Feb.1793. Quoted in the Judicial Despatch from the Court of Directors, 29\textsuperscript{th} April 1814.

\textsuperscript{158} Ibid.
an important defect in the working of the system. Lord Cornwallis had pointed out this delay as “ruinous to the suitors as defeating the ends of justice and as striking at the root of the prosperity of the country”. He highlighted effective and quick settlement of causes as the essential and most important aim that to be achieved with regard to the establishment of the legal system. “The constitution of the courts” he stated, “should be so framed as to put it out of the power of the judges to deny or delay justice, that individuals should by a mere application, be able to command their interposition for the redress of injuries from whomsoever sustained.” With the purpose of achieving this, he argued that “there should be courts of justice to punish oppression and exaction and that the people must be satisfied that the remedy must be certain and effectual and that it can be expeditiously applied”.

In fact, the principles and legal procedure incorporated in the regulations were not suitable in the context of the orthodox and unsophisticated nature and temperament of the people for whom the complicated procedure and process appeared to be foreign and out of place. In a sense, the steps in legal procedure and high principles of justice and discretion were distilled out of the concrete experience of western society and countries belonging to western hemisphere so that they appeared to be highly abstract and ideal for the unsophisticated and superstitious people belonging to India.

The mental makeup and predominant temperament of people belonging to India at the beginning of the 19th century found the abstract principle of justice and its manifestation in complicated legal procedure somewhat alien and out of place. As a result of reforms, the right of appeal

159 Ibid
reached dimension that was impractical and the too much refinement of the legal procedure slowed down the free movement of the machinery of justice. The legal processes and the forms and steps involved in the application of judicial machinery were closely modeled on the one commonly followed in the establishment tribunal in England and they were referred to using the same technical terms. The simple people having less sophisticated temperament were ill at ease on account of the absence of less complicated forms, processes and steps even in the case of petty suits. Actually for centuries the natives were familiar with summery processes and quick decisions even in big problems and serious cases. When Ravenshaw stated that “it is cheaper for complainants to submit to be plundered than to seek redress,” he was expressing an idea that really reflected the current state of affairs.

The high idealism and its apparent failure in actual application become clear and evoke a life of sadness because we know that the originator of the new system was inspired by noble intentions and also by an abiding and real desire to improve the condition of the natives by conferring the benefits of good and just administration on them. We are led to realize that with that desire to provide the benefits to the people, he tried to make everything as English in sprit, principles and working as possible in a country that had little or no similarity with England.

The out and out complete incompetence of the European agency employed for the discharge of duties of judges and registers in the Zillah courts was an important defect that resulted in the weakness of the judicial system. Since the European judges were not familiar with the languages the

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160 The pleadings of the court are almost in every case written and they proceed by Petition or Declaration, Replication and Rejoinder, supplemental answer and Reply. Ibid.
conventional laws, religious pursuits and many others special features of the people, they had no option other than to depend upon their native subordinates as a result of which the system and its functioning suffered abuse, mal functioning and the ends of justice often failed miserably. With regard to the piling up of cases and the accumulation of arrears in the Zillah courts, there were reasons such as the inability of the judges to pursue and understand what really happened in the progress of trial and hearing a case as a result of which they used a long winding and complicated method of expression in their reports and dispatches. Sir. Henry Stratchey, a noted judge belonging to Indian judiciary of the period openly stated as follows: ‘’we cannot study the genius of the people in its own sphere of action. We know little of their domestic life, their knowledge, conversation, amusements, their trades and castes or any of these natural and individual characteristics which are essential to a complete knowledge of them; every day affords us examples of something new, and surprising and we have no principle to guide us in the investigation of facts, except the extreme diffidence of our opinion, a consciousness of inability to judge of what is probable or improbable’’.161

Another important factor to be noted that adversely affected the whole system and its mode of functioning was the complete dissociation of Indian agency from the totality of the native country and its traditions. One of the main reasons for keeping Indians deliberately out of the administrative field was the fear162 of the authorities that if the natives were given greater administrative responsibility, it might eventually mean the liquidation of the

161 Ibid.
162 Evidence given by David Hill, an ex-member of the Calcutta Finance Committee on 30th March, 1832; House of Commons, Vol.XIIof 1831-32; Paper No.735 IV, pp.39-40.
British rule. They think that Indians did not possess\textsuperscript{163} the necessary aptitude or requisite moral faculty so as to be entrusted with the task of administration of justice and it was the duty of the white man’s burden. To be honest, Lord Cornwallis had little faith and less admiration with regard to the efficiency and effectiveness of Indian genius as and when they were employed to take up and discharge duties in reasonable and responsible positions and contexts. Cornwallis system was an adaptation of the Indian and English elements of justice. It evinced scant respect for Indians and their institutions. The heterogeneous character of law, not unmixed with caprice, presented an insurmountable barrier to the effective implementation of the system\textsuperscript{164}. When it came to the actual functioning of the system, the failure of the factitious scheme came to light and the urgent need to demolish the false façade so that Indians could enter the inner sanctuary of judicial administration came to the conscience of those who interact with the present system. Even the eloquent advocates of British imperialism like Munro and Stratchey opposed the substitution of Indian by European agency. As Stratchey stated, “I am fully convinced that a native of common capacity will after a little experience, examine witnesses and investigate the most intricate case with more tamper and perseverance with more ability and effect than almost any European”\textsuperscript{165}.

The method of recording in writing all depositions that were delivered orally in open court was an innovative practice that had no previous model or corresponding system in English legal establishment. On account of this insistence on keeping records, the time taken for conducting and completing

\textsuperscript{163} Second part of the Reforms of the Mofussil courts Etc.; House of Commons, Vol.VI of 1830; paper no.646,p.510.
\textsuperscript{164} Munro, A Report on the Revision of the judicial system in the Province of Malabar. 4\textsuperscript{th} July 1817, Calicut,1912
\textsuperscript{165} Judicial Despatch of the Court of Directors, 29\textsuperscript{th} April 1814.
trials continued for long thereby causing inordinate and unnecessary delay. The regulation VII of 1809 removed the restrictions imposed by way of the original regulations on appeals from the registrar or the Zillah judges. With regard to suits tried by the Zillah judges in appeal from the native commissioners, the appeals were allowed. The delay in disposal and overcrowding of suits was caused by this latitude in appeals. Hence the court of directors came up with the concrete suggestion that ‘’no further appeal be permitted to lie from the decision of a Zillah court on an appeal from the register or from any native tribunal‘’.

Owing to the highly defective nature of the administration of criminal justice, it was possible for criminals and offenders to escape from punishment using many loopholes in the system. For many months at a stretch, some innocent people had to remain in prison without trial on account of the inordinate delay in deciding cases.

With regard to two important points, the part of the judicial system related to the detection and punishment of crimes appeared to be highly defective and faulty. Of these two points, the first is related to the superintendence of police which was entrusted with the Zillah judges whose attention on thus was not active even in cases where a particular establishment was refined with that purpose in view. As a result of this, there was sufficient condition for negligence with regard to the discharge of duty. The second point was in connection with the mode of administering criminal justice. This was in the form of half yearly goal deliveries which was so that petty offenders sentenced to imprisonment for two or three months as the proper punishment for the crimes would have to remain in confinement for four or five months. Then only they would be tried in court

\[\text{Ibid}\]
“The period of punishment prescribed by law is thus postponed to so late a date after the commission of the crime that the advantage of the example is lost, while the real punishment suffered by the delinquent may perhaps be in a triple proportion to his demerits.”\textsuperscript{167}

The failure of the system of administration of justice was the combination of judicial and executive authority in one and the same hand. It was rightly pointed out; “The union of magistrate and collector has been stigmatized as incompatible, but the function of the thief-catcher with judge is more anomalous in theory and more mischievous in practice”\textsuperscript{168}. The notable disadvantage of discouraging and in a sense, preventing people from informing against or initiating prosecution against public offenders was the striking and negative aspect of the present mode of administration. The reason for this was that initiating or informing against public offenders would led to expense and loss of time and also add to their miseries so that instead of benefits, they would have to shoulder much responsibilities and expose themselves to so much risks. It seems that the administrators belonging to the early period of colonial rule did not really understand the real scale and importance of this innate and inbuilt threat to the welfare of the people and the society.

Citing the words of Gleig, we can easily and lucidly pinpoint and summarize the ill effect of the present system of administration. “The immediate consequence of this was, that the collector ceased to be in the slightest degree useful beyond the mere routine of levying and getting in the taxes; for he was not permitted to decide any dispute, all such being cognizable by the Judge and Magistrate alone. A variety of forms were

\textsuperscript{167} J.C.1807, Committee of General Police, Letter, pp.54-55
\textsuperscript{168} Said by Halliday and quoted by J.P. Grant in his minute dated 8\textsuperscript{th} May, 1855; Home; judicial consultations. No.14 of 15\textsuperscript{th} May, 1857.
invented without paying strict attention to which no business could be done: a legal language was introduced, entirely unknown to the mass of people; depositions were required in all cases, to be taken down in writing; oaths were fabricated, repulsive to the religious prejudices of the community; nay a distinct class of Vakils or advocates was created, without the intervention of one or more of whom no suit could be tried, not any cases determined. As a matter of course, the business of every court fell under such circumstances, rapidly into arrear till at least the evil become so glaring, as to demand the application of some immediate remedy”\textsuperscript{169}.

A close and minute study of the administrative system leads to a clear and notable awareness regarding the level of knowledge that the originators of the system possessed about India and the teeming millions of people who inhabited that wide and bewilderingly complex geographical area. It become almost clear that the administrators who move the new system, had an awareness that was confined to the pages of books and the feeling of sensibility that showed towards the land and the people was conspicuous by absence of sensibility which was almost equal to callousness. Regarding the truth incorporated in the tone of lament expressed earlier by notable orators and statesman Edmund Bruke, there is a fair and impressive measure of truth and veracity. As Burke pointed out; “Even some of the reformers seem to have forgotten that they had anything to do but to regulate the tenants of a manor or the shopkeepers of the next county town”\textsuperscript{170}.

The system of providing license to pleaders or Vakils created a lot of illegal practice and also corruption in affairs conducted in Zillah and provincial courts. The court of directors stated that “this measure, though

\textsuperscript{170} Edmund Bruke, \textit{Speech of East India Bill, December 1st 1783}
intended for the convenience of the suitors is accompanied with injurious effects by placing the plaintiff and defendant very much at the mercy of a set of men who for the most part, we hear, are wanting in respectability of character, with little sense of reputation and depending for their subsistence on encouragement and fermentation of frivolous and vexatious litigation” 171.

In the early and so to speak, unsettled and to a very great extent disorganized state of the society, it was necessary and even absolutely essential that there should have been the perfect co-ordination of revenue, judicial and magisterial powers in the official person of all officers while discharging their duties in true with their respective position the official hierarchy. The separation of duties as we come across in the Cornwallis system was not really suitable in the initial stage of administration in Malabar with the above mentioned absence of organization and presence of much conflicts and disputes. In a society having the circumstances characterized by conflicts and disunion, separation of powers led to disintegration of authority, thereby undermining the civil structure of the society. In addition to that, in the light of the political and social condition that prevailed in Malabar in the past, it should be noted that the people were not familiar with the separation of functions such as judicial, revenue and magisterial as the case sometimes divided out later to be. In troubled times especially, the people should know precisely to whom to carry their complaints and also from whom to get orders in relation to their problems. In a sense, the underdeveloped genius and mental orientation of the people should be handled in such a manner that the mode of finding solutions for their problems and grievances should be brought to their immediate

171. Judicial Despatch of the Court of Directors, 29th April 1814.
presence, much as in the case of an in fact being fed by the nurse for its survival and safety.

In fact, against their own will and desire, the spirit and vision of the rulers that favored reform and change assumed the uncompromising form of revolution by affecting a complete rupture with the past. As the concrete changes that were implemented as part of the path carved out in the form of reform, existing institutions were ignored for new ones, effective ways of local usages and conventions were superseded and the past history of the country was belittled with the introduction of new codes and system of laws which led to discharging of ancient traditions and the existing social life. His racial superiority was reflected in his policy of excluding Indians from the judicial administration of the country. Cornwallis system was “entirely founded upon European notions of justice and European forms of practice”172”.

In a province like Malabar which was characterized by the existence of the thrones of feudal concepts and conventions, and also the influence of superstitions and unreasonable inclinations and dispositions exerting its cultural hegemony, the rule of justice inspired by high ideals and principles and not mere rule of laws of supreme significance and importance. It was sad to note that the administrators failed to recognize the impossibility of dealing with a multitude of races using a uniform law which was introduced into a foreign land by a foreign government which created a division between the rulers and the ruled. This disparity was later well recognized and assessed by Johy Lawrence while he was dealing with Punjab province. They were unaware of the difficulty of arriving at a decision in the words of

John Lawrence “as to what rule will be observed, what rights upheld, what laws introduced, under what conditions and to what extent each law will be superseded by custom”\(^{173}\).

Hence, a non-regulation, with the place of Cornwallis system of regulation, should have been selected, adopted and implemented in Malabar for achieving a more efficient and effective functioning of the government. As Aitchison stated in this connection which is worth quoting, “in time the, non-regulation system came to be synonymous with all that is best for the government of a newly-conquered country”\(^{174}\). Actually the untutored and unsophisticated Indian mind was actually when it confronted the multiplicity of authority that divided into revenue, judicial and magisterial etc, as created by the salient aspect of Cornwallis system. It was an honest attempt to establish the rule of law in India\(^{175}\). In the words of M.P. Jain: “This scheme forms the high watermark in the whole of Indian Legal History, as it was based on certain postulates which are regarded as essential and fundamental for the organization of the judicature in any civilized country\(^{176}\).” Hence, in the given social and political context of Malabar, the benefits accruing from a non-regulation system would have been greater than the merits that can be drawn out of Cornwallis scheme of administration, precisely on account of the above mentioned factors and reasons.

Cornwallis laid down the foundation of rule of law in this country. John Strachy observes, “Although much had been done by Warren Hastings to perform and organize branches of the public service, the main foundations

\(^{173}\) Aitchison, Lord Lwarence, Calcutta, 1929, p.65
\(^{174}\) Ibid., pp.69-71.
\(^{175}\) Thompson and Garratt, op.cit, p.196.
\(^{176}\) Jain.M.P, op.cit, Bombay, p.20.
of the existing administration of justice in India were laid in the time of Lord Cornwallis\textsuperscript{177}. It was fortunate that Cornwallis was free from the handicaps which seriously interfered with the work of Hastings. He had fully realized that an effective procedure and provision of correction by appeals were equally necessary if administration of justice was to be efficient and free from corruption and individual vagaries. He fully realized that security of persons and property were the very basis of natural, commercial and criminal progress. It can rightly be said that Cornwallis laid down the foundation of modern judicial administration in India and Madras presidency in particular. Many of the merits and the defects of the modern judicial system in India can be traced in one way or the other to the work of Cornwallis\textsuperscript{178}. His treatment of the judicial system was a mere palliative and it failed to affect a permanent cure of the malady\textsuperscript{179}.

\textsuperscript{177} John Strachy, *India*, Bombay, 1962, p.123
\textsuperscript{179} Ramesh Chandra Srivastava, op.cit., p.1.