

MALABAR UNDER BOMBAY PRESIDENCY 1792-1802

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Abstract

This paper focuses the judicial administrative reforms of Malabar after the treaty of *Srerangapattanam* in 1792. For an effective administration, Malabar was annexed to the Bombay presidency. In spite of the many defects that accompany the judicial system implemented in Malabar by the British, it had its own salient merits and special significance that point to its importance in the administrative history of the region. With the clear aim of changing and regulating the judicial administration in Malabar, the colonial rulers made so many administrative reforms.

Keywords

Judiciary, Colonialism, Legal system, Modernity, Customs, Regulations, Justice

As a result of the treaty at *Srirangapatanam* in 1792 Malabar was annexed as a province to the Bombay Presidency. Before the advent of the British, even though justice was imparted by the kings and their trusted officers, in the best interests of the people, no organized and systematized judicature was in existence embodying the principle of equality of all before the law . At that time Malabar was in the most disorganized and disturbed condition. So many native states were existed in Malabar and there character was the worst form of feudalism. The condition was further deteriorated by the conquest of Haider Ali and Tippu Sulthan. In the words of William Logan, “at the cession of Malabar to the British by

the treaty of *Srirangapatnam* dated 22 February and 18th march 1792 the country was found to be split into a number of kingdoms and principalities” .

The main task of the British administration was to evolve order out of the chaos and also embodying the principle of equality of all before law. To fulfill the objective they introduced well organized courts, the powers and positions of the *Nairs* and *Rajas* were restored, Provinces were divided into three districts and the charges were given to the servants of the company and Recourse a new system of annual settlement of the revenues of the Company’s servants

The general character of the people, so responsive and temperate to authority, greatly contributed to the facilitation of the judicial organization in Malabar. As William Bentinck observed; “the independence in Malabar is said to be generally diffused through the minds of the people. They are described as being extremely sensible to good treatment and impatient of oppression, to entertain a high respect for courts and judicature and to be extremely attached to their old customs” .

Cornwallis realized the necessity of framing regulations for the efficient administration of the new acquisitions on the Malabar Coast. He sent a letter to Robert Abercromby in Bombay pointing out the importance of formation of a permanent system for the future government of Malabar. He made it clear that the appointment of Commissioners is the prime importance to the government to precede enquiries and get the supply of requisite information .

The government of Bombay appointed two Commissioners Farmer and Major Dow and later joined by Paze. They concluded temporary terms with several *rajas* and chieftains in respect to political and revenue arrangements. They prepare a new scheme for the administration of justice in the newly acquired territories. The commissioners therefore had to determine the number and constitution of the courts that would be necessary to ensure dispensation of equal justice to all classes of people .

As per the plan, the district was divided into general divisions and placed in charge of two Superintendents under a general Magistrate of the court. Their duty

was to preserve law and order, to administer justice and to receive the revenue under the control of the Supervisor.

Due to the insecurity, lawlessness, anarchy and chaos committed by the Mappilas and armed Nairs the administration suffered badly. The revenue officers followed implicit and injudicious haste. Farmer proposed that the collection of revenue of the district should be directly by the company .

Major dove urge the government to adopt Tippus plan. According to this plan *Moopans* were to be appointed to every district and armed *Mappilas* to assist them. These *Moopans* were entrusted with the collection of revenue and the preservation of peace was to be subordinate to the British superintendent of each division.

One of the commendable acts of the Joint Commissioners was the civil code prepared, passed and transmitted by them on 12th June 1793 for the administration of justice in civil cases . The superintendents would be judges except in the town of Calicut and the district of the supervisor ship . Subject to the approbation and confirmation of the chief magistrate the native officers were to be appointed and removed for good behaviors and integrity and in discharge of their respective functions.

Registrars and *Pundiths* were appointed under the regulation and they were attached to the provincial court of *Adalath*. The judges were assisted by the Registrars, whose prime duty was the power to hear and receive evidence, authorized by the Judge and making necessary translations as the judge might required. All the acts of the court were to be procured and executed after it's rising by the *Darogha* of that court. *Darogha* was also expected to assist the Registrar in arranging and keeping the records and papers of the court . To frame standing rules and orders for the administration of justice the provincial courts of *Adalath* were empowered.

The revenue suits and civil suits were clearly demarcated by the regulation of 12th June 1793. There existed a superiority of revenue administration over judicial administration. The court procedure regarding filing of suits and deterring cases

was very elaborate and minute in detail. The complaint presented to the provincial court of Adalath should be consented only if it mentions any land or house, not paying revenue, the annual produce thereof should be stated. It is very necessary that the complaint should be signed by the complainant or his Vakil properly authorized. It should be signed, numbered and dated in the order in which it was received by the judges of the court and should be registered in a book by a *Mohurrir* or officers of the court.

The law applicable in civil cases was the law of the defendant, Hindu law with respect to Hindus and Muhammeden law with respect to *Mussalmans*. As applicable to each case in point the *Maulavis* and Pundits should attend to expound the law of their religion. It was also laid down as a principle for the guidance of the judges that the general rule of the law of the defendant might, if required, be superseded by the received and ascertained customary law or local usage of the country.

The Provincial court judge has the power to refer the cases to the Raja or the chief of the district in which the subject of litigation lay to arbitration to be freely chosen by the parties, which is only possible with the free consent of the parties. Cases concerning, disputed accounts, partnerships, debts, doubtful or contested bargains, non-performance of contracts which should be instituted in the provincial Court. A radical change of the judicial administration of Malabar was the appointment of the pleaders. No other person could appear before the court to plead the case except the plaintiff. The rules to drawing up and delivering decrees should be laid down in the regulations. In every decree the judge should recite the title of every exhibit read in such case respectively on which the decree should be founded and the names of the witness whose deposition had been taken.

The resolution 12th June 1793 provided for the appointment of native Registrars, *Moulavies* and *Pundiths* to explain Hindu and Muhammeden laws and native Pleaders or *Vakils*. The general rule laid down for the guidance of the judges was that in all cases within the jurisdiction, the respective judges should act

according to justice, equity and good conscience . For the commencement of the case a deposit of 2% should be taken on every petition of appeals.

The conventional mind of the Malabar people was not suited to the proceeding of the court, which was inordinately elaborate and goes many technicalities involved in the procedural aspect. The laws when reduced into writing, turned out to be rigid. In deciding the civil dispute most of the customary practices were to be set aside as opposed to the rule of law. Another fact which destroyed the very object of the establishment of the courts was the potential threat constituted by the long and distressing delay.

One notable measure accomplished by the Joint Commissioners was the establishment of Foujdary Courts. To administer criminal justice in these courts *Daroghos* or native judges were appointed. The local and subordinate Magistrates jurisdiction was limited to the cases, dealing with petty offences such as abusive language, inconsiderable assaults or slight affrays and punishes them. The superintendent of the division was empowered to hear and decide cases of prosecution of a greater nature.

For the preparation of the criminal code all the rules related to the Hindus and Muslims were methodized, a general summery of the criminal laws of these communities then in prevalence was prepared and finally uniformly certified, so as to ensure justice to all equally. Seven *Daragas*, the native judicature were established on July 1st 1793 in *Cannanore, Quilandi, Tanur, Tirurangadi, Ponnani, Chettuvay and Palaghat* for the administration of criminal justice

Three Provincial Foujdary Courts were established at Calicut, *Cherpulcherry* and *Tellicherry* for dealing with the cases of greater magnitude handled by the supervision as Chief Magistrates and the superintendent as provincial magistrate with the assistance of native *Darogha, Muftee, Moulvee* and Brahmins together with other proper officers and servants.

The actual establishment of the court of appeals was done in 1795 when a special notification was made to that effect on 15th December of that year . By the directions of the Commissioners, the supervisor bound to make an annual report

to the state of Malabar Province to Bengal government. So that it might correct any errors in the existing regulations. The commissioners also required a copy of that report to be regularly transmitted to them. Containing under distinct heads, complete information up on every point whether revenue, judicial military or commercial.

The system of judicial administration established by the regulations of 1793 was defective in several aspects and in the actual working it failed miserably. Its object was laudable, but the trailing vagueness and imperfection made it flop. From the company's point of view it was "over burdened with exceptionable expense". The company's resources drained due to the introduction of several courts. It shall be avoided if they left the administration of justice in the hands of local Rajas.

In the early administration of justice in Malabar, the Mayors Court and Quarter Sessions of Bombay played remarkable role. The Mayors Court took cognizance of suits instituted against persons "residing under the Company's authority or against any other person whether native or European who enjoys the Company's protection and who may be a casual or fix inhabitant of *Tellichery*."

The new system was incompetent and doubtful. The system only organized the centers of oppression. For achieving the private ends, the courts turned out to be instrument of oppression. To the local people the court remind a mystery and they looked of them with suspicion and hatred. The system tended to give grief to the innocent. The very object of the establishment was defeated by distance to the court and delay in the trials. The English Magistrates and Judges were totally ignorant and knew nothing about customs, usages, conventions, language and religions of the inhabitants of Malabar. The customary law of Malabar was most complicated for outsiders and was a closed book for them. They tried to enforce the English law in a country which had nothing in common with England. The result was the creation of chaos among a vast multitude of disgruntled and frustrated masses.

The situation in Malabar was not yet normal. Hence, naturally the new arrangements were not satisfactory. Revolutionary changes were undergoing the

whole political, social and economic life. Ignorance, superstition and influence of feudal lords and Rajas create a war like spirit, were the evil forces against which the judiciary system had to contend. The Commissioners repeatedly maintained that until the native were disarmed no system could be introduced with effect. In the institutional history of Malabar, the system had its own merits and importance, despite these numerous defects. It was the first attempt to change and regulate the judicial administration of Malabar. It also marks the foundation of the modern judicial system in the country. It was a bold attempt to establish an orderly and regulated life in the state and to replace arbitrary rules in the administration of justice by the rule of law. The system of regulations definitely ended an age of customary law inaugurated an era of modern judiciary amend legislation.

BIBLIOGRAPHY

1. Ravindren .T.K. *Malabar under Bombay presidency, 1792-1802*, Calicut 1969.
2. K.N. Panikkar , *Against Lord and State, Religion and Peasant Uprising in Malabar 1836-1921*. Delhi, 1992.
3. Thomas Munro- A Report on the Judicial System in the Province of Malabar dated 4th July 1817, Calicut 1912.
4. R.C. Majumdar and others, *An Advanced History of India*, London, 1949.
5. Baskaranunni , *Pathempatham Nutadile Keralam-A Study*,(mal), Thrissur, 1988.
6. C. Vasanthakumari, *Judiciary and Social Cange in British Malabar 1792-1940*, Tellichery, 2012.
7. C.A. Innes, *Madras District Gazetteers- Malabar and Angengo*, Madras 1908.
8. M.R. Ragava Variar, *Keralolpathi Granthavari*, (The Kolathu Nadu Traditions) Calicut University Historical Series, 1984.
9. William Logan, *Malabar Manual Vol. I Thiruvananthapuram*, 1981.
10. Sreedara Menom, *Kerala District Gazetteers*, Cannore, 1972.