

## JUDICIARY AS A TOOL OF COLONIAL MODERNITY:

### REFLECTIONS IN THE STATE OF COCHIN

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Cochin state was geographically located in south India. Erstwhile Cochin was sharing its borders with Malabar district, Arabian sea and Travancore. In 1791, Rajah of Cochin threw off his allegiance to Mysore and entered into a treaty with English East India Company. Cochin became a subsidiary ally of British. Then British began to control the native society.

The British introduced many measures such as western education, census, Survey etc., to influence the natives. Establishment of new legal system was the most important step taken by the British to subjugate the natives. Colonel Munro caused drastic changes in the system of administration of Justice in Cochin.

The history of modern judiciary in Cochin starts with the advent of British, Cochin doesn't had a well established legal system before British. The mode of administration of justice was largely based on *maryada* (custom). The administration of justice was not uniform throughout the state. It varied from time to time, region to region and caste to caste. William Logan, The compiler of Malabar Manual writes, "if it were necessary to sum up in one word the law of the country as it stood before the Muhammedan invasion

and British occupation, that would undoubtedly be custom”. In Malayalam, it would be *Maryada, Margam and Acharam*- all signifying established rule and custom, all of them are Sanskrit words”.<sup>i</sup>

There was no scientific methods to find out the culprits. Torture was used to induce to confess the guilt. Serious offences were subjected to trail by ordeal. There was no special court houses for holding, judicial enquiries. During the period of Sakthan Thamburan<sup>ii</sup>, administration of justice was done with an iron hand and he had a clear vision of justice. The environmental consideration of Sakthan Thamburan was amazing in the administration of justice.

Capital punishment, whipping, imprisonment, slavery, excommunication, mutilation, fine etc., were the prominent punishment methods<sup>iii</sup>. It was not same for all classes, but varied according to the caste and status of the culprits. Brahmins and women were exempted from capital punishment. Sudras were given death penalty even for petty offences.

Even though the system was based on custom and traditions, the doctrine of *chaturvarnya* had a greater influence<sup>iv</sup>. The role of religion in the system can be well explained by the practice of “*Smartha Vicharam*”. It was the method adopted to conduct enquiry on Brahmin of Namboothiri lady who is alleged to have conduct sexual misconduct<sup>v</sup>. A case of *smarthavicharam* was reported in Cochin in 1829<sup>vi</sup>. In Cochin, the Christians had *palliyogams* as a dispute resolution mechanism. The foreigners like

the Jews and the Dutch had their own dispute resolution mechanisms. The Konkanyes could even kill thieves<sup>vii</sup>.

Thus, law was just a tool for maintaining status-quo of society. No rule of law which providing equal status and protection to all the subjects was prevailed in Cochin state before the advent of British. All these reasons were used by the British beaurocrats and missionaries to justify the imperial rule. The British introduced their notions of legality to a context in which religion, caste, custom, belief, law and justice are interconnected. The British dominance was not established through the sudden implementation of a legal system. But it was a gradual process. The British never argued that Cochin lacked a judicial system.

Colonel Munro, the first diwan of Cochin initiated reformations in administrative mechanism in 1812. Colonel Munro issued “*Chatavariyola*” during his diwanship in Travancore and established a principal court and five subordinate courts in Travancore. Munro wrote a letter to the Maharaja of Cochin seeking the introduction of the same in the Cochin state<sup>viii</sup>. Trail by ordeal was prohibited during the time of Munro. The major reformation by Munro was the establishment of law courts with regularly paid judges. Two subordinate courts at Trichur and Thripunithura and a Huzur Court at Ernakulam were established. Appeals were permitted against the decisions of subordinate courts in the Huzur court.

Subordinate courts in Trichur and Tripunithura were replaced as district courts at Trichur and Ernakulam by Diwan Nanchayyappa, the successor of Colonel Munro,

Huzur court was renamed appeal court at Ernakulam was known as *Anjikaimal zilla court* till 1958. Criminal courts in each district was established during the reign of Diwan Venkitta Subbayya. Raja's Court of appeal was established during the period of Diwan Govinda Menon. Diwan P Rajagopalachari renamed appeal court as Chief Court of Cochin. Chief court was consisted of one chief judge and three other permanent judges. Chief court became High Court of Cochin in 1937-38 during the period of Diwan Shanmugham Chettiyar. Munsiff courts were established at Taluk level for the disposal of petty civil cases during the time of Diwan Sankunny Menon. A Hindu, a Christian, a Brahmin and a Sastri were appointed as Judges in the subordinate courts during the time of Colonel Munro. There were four judges including Diwan, Sastri, Brahmin and Hindu in the Huzur court. Caste-religious considerations in the appointment of judges were abolished during the time of Diwan Venkita Subbayya.

The judicialisation of Cochin was developed in two stages. The first stage from 1772 to 1864 and the second stage from 1864 to 1947. It was part of an all Indian judicial strategy. It was not possible by the British to establish Rule of Law with a sudden action. In the first stage, they established colonial courts and native people were recruited to the system, through which they aimed indigenous support. Certain caste and religions were enjoying special privileges even after colonial rule. In the initial stage, British doesn't make any interference in such privileges. There is a court document in 1814 in Trichur in which, a theft committed against a Brahmin illam was tried according to Dharmasastras<sup>ix</sup>. Evidence of *Smarthavicharam* in 1829 in Cochin<sup>x</sup> shows that it was in practice even

during colonial rule. Palliyogams were also in practice. But later all these privileges were taken away. The emergence of lawyers as a professional class, legal education, period of limitation, court fee etc., were the attempts by British colonialism to hijack the existing system.

In the second stage, the judicial courts in Cochin were westernized and it caused drastic changes in the traditional judicial institutions of Cochin. Caste assemblies which were part of judicial administration in Cochin lost significance by the half of 19<sup>th</sup> century. There were only two subordinate courts and an appeal court in the first stage of judicialisation of Cochin and existed dispute resolution mechanisms related to caste and religion. There was a considerable increase in the number of courts and litigations in Cochin in the second stage of judicialisation. Hierarchy of courts were also reorganized. The courts in Cochin were blindly following, British Indian laws or it had a close resemblance to British Indian laws in the second stage. Cochin witnessed codification of legal system in between 1860 to 1947. It was the period of unification of Judiciary of Cochin. The second stage of Judicialisation of Cochin started in 1860's.

The second phase of judicialisation of Cochin was led by Diwan Sankunny Menon. The laws enacted in this stage were coercive in nature. Eleven regulations were enacted during the period of Sankunny Menon for the modernization of Judiciary. Appointment of judicial officers with specific qualification was made compulsory. Barristers and law graduates were appointed as judges with high salaries as per Regulation o 1865<sup>xi</sup>. Lawyers were not possessing any particular qualification till the

passing of Regulation of 1041 ME. Lawyers who have passed competitive exams in 1864 or 1881 conducted by the Appeal Court were only permitted in Cochin bar<sup>xii</sup>. Regulation eleven of 1902 made qualifications to practice in Cochin Chief Court was made equivalent to that of Madras Presidency<sup>xiii</sup>.

Lawyers were a “new social class” introduced by British to the indigenous people. Thus lawyers were the byproduct of judicialisation process by British. Strict rules regarding qualification, enrolment, remuneration, code of conduct, professional ethics etc..of lawyers were introduced by the British and these qualified lawyers had remarkable role in the social and political upliftment of Cochin.

Modernisation of Judiciary was a profitable business for the British. In the initial stage indigenous judges and magistrates were permitted to conduct the trial of European and British subjects. Later European and British subjects claimed to be trailed by European judges. Government of India admitted the demand and made amendments regarding the trial of crimes committed by Europeans and British people in British India or in princely states. Cochin was also made under the purview of this amendment. European magistrates appointed for this purpose from 1870 onwards. Appeals may be filed against their decisions in Chief Court of Cochin.

Codification of laws and bifurcation between civil and criminal justice were the two remarkable changes during this period. Cochin civil procedure Code was adopted in 1882. Cochin penal code and Cochin Criminal procedure code were adopted in 1884 Evidence Act, Companies Act, Court Fee Regulation Act Stamp Fee regulation Act

etc..were also adopted in Cochin. All these acts had very close resemblances to British Indian laws.

New judicial system was used as a coercive methodology. The British enforced colonial judicial structure in the princely state of Cochin as part of an all Indian Judicial strategy. Caste based judicial system was replaced with westernized system. Colonial judicial reformations affected caste and religious equations of Cochin. It is to be noted that it was made possible in a princely state administering by a Hindu Rajah. It shows the immense strength of colonial power in the state of Cochin.

In the new system, caste-religious elements replaced with race and color. In other words, race and color became focal points instead of caste and religion. Can it be called as reformation?...can it be considered as the parameter of colonial modernity...? We cannot historicize the reformations initiated by British sovereign in princely states without considering these question. The colonial or imperial intentions of British were very clear in their judicial reformations. They were successful in making the notion of modernity. At the same time they were successful in using judiciary as a tool for enforcing their imperial or colonial agendas. White Colored became privileged in the new system. It was also the result of colonial modernity that the lawyer class who were the byproducts of colonial judicialisation were against colonialism and they supported national movement in Cochin.

## References

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<sup>i</sup> A Madhavan, *The Evolution of the Judicial System in Kerala*, Kerala Law Journal Vol.VII, The Mathrubhumi Printing & Publishing Co. Ltd. Calicut, 1963 p.3

<sup>ii</sup> He was powerful ruler of Cochin.

<sup>iii</sup> C Achyuta Menon, *The Cochin State Manual*, Government Of Kerala, Trivandrum, 1995, p.438.

<sup>iv</sup> Bhaskaranunny P, *Pathonpatham Noottandile Keralam (Mal.)* Kerala Sahithya Academy, Thrissur, 1987, p.453.

<sup>v</sup> Pandiyat Sankara menon, *Cochin and Her Courts of Law(A histrocial Survey)*, the Viswanatha Press, Ernakulam, 1937,p.33.

<sup>vi</sup> *News Letters*, Regional Archivers, Ernakulam, p 13.

<sup>vii</sup> *News Letters*, Regional Archives, Ernakulam,p.38.

<sup>viii</sup> *Letters of Communication From Colonel Munro to Rajah of Cochin*, 1811, Regional Archives, Ernakulam

<sup>ix</sup> *Trichur case*, Regional archieve, Ernakulam

<sup>x</sup> *News Letter*, Regional Archives, Ernakulam, P. 13.

<sup>xi</sup> *Regulation of 1865 for The Appoinment of Eligible Advocates*, Regional Archives, Ernakulam

<sup>xii</sup> CAchyuta Menon, op.cit.,p462

<sup>xiii</sup> Ibid.