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JUDICIAL ADMINISTRATION IN SOUTH KANARA: 1799-1862

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The present paper is an attempt to examine some crucial aspects of the judicial administration in early colonial South Kanara.¹ It tries to fill in a noticeable gap in the historiography of South Kanara as there is hardly any published literature on the subject. A Study of the system of judicature is very essential to comprehend the working of colonialism in its entirety. The early half of the nineteenth century saw the birth and growth of the British judicial system in the Madras Presidency which included South Kanara.

The origin of the Judicial system that existed in early colonial South Kanara is traced to the Cornwallis System, first introduced in Bengal in 1793 and subsequently extended to the Madras Presidency in 1802.² The Supreme Court of Madras was set up in 1801 and in 1802 a series of rules were approved in the Madras Presidency which established civil and criminal courts and defined their powers. In 1802, the courts of Zilla Magistrate, Court of Circuit, and Court of Faujdari Adalat were established under regulations defining the powers with which they were severally invested. As per Regulation VI of 1802 the office of Zilla Magistrate was joined to that of Zilla (Civil) Judge.³ Four Courts of Circuit were constituted (as per Regulation VII of 1802) under the Government of Fort St. George.⁴ Each Court of Circuit consisted of three judges, two of whom were engaged alternately in making half yearly circuits for the goal delivery of the several Zillas within their jurisdiction. In the course criminal courts were originally established. Further, alterations were made in the territorial jurisdiction of the four Courts of Circuit. They were designated as the Courts of Circuit of the Northern; Central, Southern; and Western Divisions of Provinces and their sub-Station were shifted to Masulipatam, Arnee, Madura and Tellicherry respectively. The Province of Kanara and Sonda of which South Kanara was a part fell under the Western Division.⁵

According to regulation VIII of 1802, the Court of Faujdari Adalat was established. It decided the criminal cases referred to it and also superintended the lower courts. It consisted of the Governor and Members of Council assisted by their Muhammadan law officers. Under the provisions of Section VIII, regulation VI of 1802, the Zilla Magis-

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trates were empowered to dispose of petty offences. The Zilla Magistrate had to forward all cases not included under their jurisdiction for trial before the Court of Circuit. The Court of Circuit referred the cases to the Court of Faujdari Adalat.

Till 1803 the Board of Revenue at Madras had the power to exercise judicial authority in the determination of certain cases of a civil nature appealed from the decision of the Collectors. The Collectors were entrusted with the administration of the revenues and distribution of civil justice in their respective districts. Regulation I of 1803 led to the creation of courts of judicature for administering civil and criminal cases. Ultimately the Madras Government considered it expedient to formally abrogate the judicial authority heretofore exercised by the Board of Revenue in those Districts where Zilla Courts were established.⁶ Further, Section XLVII of regulation II of 1803 defined the judicial powers of the Collector. In those Districts where no Zilla Court existed, Collectors had the authority to hear, try and determine cases of a civil nature. The Collectors had the power to decide the complaints of the ryots against the renters or public servants or other persons. Thus the Collector had both revenue duties and magisterial powers and in 1804 his designation was Collector and Acting Magistrate in South Kanara.⁷

It was in 1806 Zilla Courts were established in the various districts of Madras presidency. In the same year a Zilla Court was set up in Mangalore for the province of Kanara and Soonda. This court was presided over by an English Judge whose designation was Judge and Magistrate.⁸ According to regulation II of 1806, judicial powers exercised by the collectors earlier to the establishment of Zilla Courts were abrogated.⁹ Now the Collector was to discharge his revenue duties and he was the Executive Head of the Province but had no magisterial powers. Within the district, the Judge had the principal criminal jurisdiction. He was assisted by a Mufti (who explained the Muslim Law) and their staff along with the jail establishment.¹⁰

The Zilla Magistrate was empowered to dispose of all the petty criminal cases in accordance with the Muhammadan Law. He was assisted by a *Qazi* and a *Mufti*, and had to commit all the cases other than petty criminal cases for trial before the Court of Circuit. The Court of Circuit disposed of all cases committed for life. Such sentences were to be referred for confirmation to the Faujdari Adalat, which was the chief Criminal Court.¹¹

The Zilla Judge in South Kanara followed the Hindu and Muslim laws as expounded by the native law officers. However, he was allowed to proceed according to justice, equity and good conscience,

where neither legal opinions, the Regulations or the works on Hindu and Muslim Laws guided him. The Zilla Judge was given the benefit of a Government pleader.¹² Below the Zilla Court, presided by the Judge, was the Registrar Court under which was the Native Commissioner's Court.¹³ In the absence of the judge the Registrar took charge of the duties of the Zilla.¹⁴ The Registrar was appointed from among the Company's convened civil servants. The Native Commissioners were chosen from among the respectable landlords, *jagirdars*, tradesmen, *qazis* etc. and were also known as *Sadr Amins*.¹⁵ Their designation was further changed as Principal *Sadr Amin* in 1843. They acted as arbitrators in any suit referred to them by the parties. They acted as *Munsifs* in suits which involved renters and ryots.¹⁶ The decisions of the Zilla Judge were final in suits not exceeding Rupees 1000/ in value. When the value of suits exceeded this limit, appeals were allowed to the Provincial Courts. In 1809, however, all decrees of the Zilla Judge in original trials were made appealable to the Provincial Courts. In the same year the jurisdiction of the Registrar was extended to suits upto Rupees 500/- in value. His power of final decision was also abolished. The Hindu and Muslim law officers of the Zilla Court came to be appointed as ex-officio *Sadr Amins* or Head Referees in the same year. They were given the power to decide suits upto the value of Rupees 100/-. Their jurisdiction was raised to Rupees 750/- in 1818 and Rupees 2500/- in 1833.¹⁷

It is interesting and important to note that in the Madras Presidency, the Mangalore Zilla stood second in terms of the cases decided - next only to Rajahmundry. This fact does not surprise us particularly when we perceive it in the context of the system of land holding in the region. Private proprietary right over the land popularly known as *mulawarg* in the region was hereditary in nature and it had a rich antiquity. Land became a major subject for litigation between the members of a family and also between the renters and the ryots. The large number of land disputes between the renters and ryots should be understood again in the context of the several land tenurial systems such as *mulageni*, *chalageni* and *vaidegeni* and also the British principle of maximisation of land revenue.¹⁸

The office of the Zilla Judge and Magistrate was abolished from Mangalore in July 1808 and was shifted to Honnavar in North Kanara. But due to the request and petitions made by the Principal Merchants and rich ryots, the court was shifted back to Mangalore by the end of 1812.¹⁹ In 1816, the Cornwallis system of Judicial Administration was replaced by the Munro System throughout the Madras Presidency.²⁰

Appointed as Special Commissioner (1814-1818) for the revision

of the Madras judicial system in 1814, Munro was instructed to carry out (for which he laboured from September 1814 to September 1816) the reforms recommended in the Court of Directors' despatch of 29th April 1814. Among the reforms suggested by the Court of Directors, Munro opined that the most important was the transfer of police magisterial duties from the Zilla Judge to the Collector. The Judicial Commission headed by Munro (his colleague Commissioner was George Stratton) held that the Zilla Judges hardly had any opportunity to acquire an intimate knowledge of the people as they were confined to their headquarters. They reported that such knowledge could be had only by the Collectors who toured the Districts to discharge their revenue duties. This was not accepted by the Governor's Council. The Council accepted the idea of transferring to the Collector only the superintendence and control of the police, but opposed to give the Magistrate's power to him. It did not want to unite the executive and judicial power in opposition to the whole basis of the Cornwallis tradition.²¹ The Commissioners reiterated the general case for transferring the office of Magistrate entirely to the Collector.²² It was not until 13th September 1816, that the seven Regulations implementing the 29th April Judicial letter drawn by Munro and Stratton, were finally promulgated as law by Hugh Elliot, the Governor of Madras Presidency. Munro believed that he found support for his arguments under conditions in Coimbatore, that is, the Kasi Setti case or the Coimbatore abuses.²³

In framing the regulations, Munro and Stratton endeavoured, as they wrote, 'to adopt them as far as possible to the manners and institution of the people for whose use they are [were] intended, and to that end that were made as simple as possible.'²⁴ As far as Munro was concerned, the work of the commission was directed to one main end, that of employing Indians more extensively in the internal administration of the country. In every department, whatever could best be done by native servants should, he believed, be entrusted to them. He opined that in the discharge of all subordinate duties, especially judicial ones, Indians not only cost less, but being infinitely better qualified, were more efficient than Europeans.²⁵

The Regulations of 1816 or the Munro system of judicature resulted in far reaching changes in the whole of Madras Presidency. In 1816, the office of the Zilla Magistrate and the police duties were transferred from the Zilla Judge to the Collector of the Zilla. Further Criminal Courts were established in each Zilla, presided by the Zilla Judges, to which the Magistrates were required to commit all cases, not adjudicable by themselves, instead of, as before, committing the

cases direct for trial by the Courts of Circuit.²⁶ Thus, the principle of separation of Judiciary and Executive was not followed by Munro in the Madras Presidency. The Collector was the Chief Magistrate and also the Executive Head of the District in South Kanara as in other parts of the Presidency. In 1816, the heads of villages were appointed to be Munsifs. They could assemble village Panchayats within their village jurisdiction to adjudicate civil suits of any amount.²⁷ In the Taluk Headquarters, district Munsifs were appointed in 1816. In 1820, The Zilla Magistrate was given Jurisdiction over British Subjects residing in the interior for assaults and trespasses against Indians. But his conviction was removable by certiorari to the Supreme Court.²⁸

The next alterations of importance in the Criminal Law were introduced under Regulation II of 1822, when the Criminal Judges and Magistrates were vested with the power of placing persons under requisitions of security, Collectors, Sub-Collectors and Assistant and Deputy Collectors in charge of a division sat as Revenue Courts and exercised judicial powers under the Madras Regulation IX of 1822 and India Act XXXVI of 1837 and Madras Regulation VI of 1831. The Collector decided most of the civil suits at his discretion and made over most petty lands to arbitration.²⁹

In 1827, the Government of Fort St. George established Auxiliary (Civil and Criminal) Courts in those Zillas where there was the pressure of business before the Zilla Courts. For Kanara, the Auxiliary Court was set up in Honnavar. The Auxiliary Court had nearly all the powers of a Zilla Court.³⁰ Under Regulation VII of 1827, the offices of Native Criminal and Civil Judges were established. They were invested with the same powers as Magistrates, but without jurisdiction over Europeans and Americans.³¹

No further alteration took place in the constitution of Courts until 1843, when the judicial system in the Madras Presidency was thoroughly changed. For some years prior to 1843, the excessive delay in the administration of justice in those cases which fell within the jurisdiction of the Courts of Circuit, had attracted the attention of Government and the Court of Directors. To overcome this problem, the Madras Government in 1843 (as per Act VII of 1843) abolished the Provincial Courts of Appeal and Courts of Circuit. They were replaced by twenty new Zilla Courts. Further the former Civil and Criminal Zilla Courts were replaced by twenty Subordinate Civil and Criminal Courts established in each Districts.³² The new courts were given more powers. The original jurisdiction vested in the Provincial Courts were transferred to the Courts of *Sadr Amins* and Zilla Courts.³³ For South Kanara, the new Zilla Court presided over by the Civil and Session

Judge was set up in Mangalore. Besides a subordinate Civil and Criminal Court was also established.

During the early half of the nineteenth century there was the origin and development of the British judicial system in South Kanara. The Munro system of judicature prevalent in the region was much different from the Cornwallis System introduced in Bengal and other parts of India. Munro's main argument was to transfer Magisterial and Police duties from the Zilla Judge to the Collector. This idea was strongly opposed by the Madras High Court as also the Madras Board of Revenue. But the Court of Directors supported Munro's stand. Probably the 'Coimbatore Abuses' or Kasi Setti Scandal strengthened the principal advocated by Munro though it went against the Bengal System where the Philosophy was the separation of judiciary from executive. Thus Munro became the originator of a new judicial system.³⁴ The British judicial system once introduced in the region gave rise to the development of an organised judicial bureaucracy. The powers, functions and privileges of the various officers from top to bottom were laid down. Judiciary became an important apparatus of colonial control and administration. The role of the *madhyastas*, zamindars and village headmen as settlers of disputes reduced considerably. The law courts ranging from the village Panchayat courts to the High Court of Madras with many complex rules and regulations, court fees and stamps really penetrated the political and socio-economic set up in the region. The impact of the overthrow of the Indian customs and institutions by the British judicial system was very well described by Sir Thomas Munro. Munro said: "By depriving these men (the head of the villages) of their ancient authority, they are prevented from settling litigations on the spot as they arise, which here go on accumulating to the Court of the European Judge, where but a small proportion of them ever can be heard. Their services are lost as village magistrates, to the great inconvenience of the country and their influence over the inhabitants, which is almost always exerted in the support of Government, and is more efficient than an army in maintaining internal tranquility is weakened".³⁵

From the beginning to 1816, the classification and organisation of civil and criminal courts in the Madras Presidency were the same as those of Bengal. It was in 1816 that the office of the Criminal Judge was created in the province of Kanara. Since 1816 the Collector was entrusted with the Magisterial powers and police duties.

The British judicial system prevalent in the region suffered from several defects. It was dilatory in nature and costly for the natives. The court fees, stamps and fines were new to the people and they

were unwilling to accept them.³⁶ During 1810-11 and 1830-31 when there were peasant unrests, and in 1837 when there was the eruption of the rebellion of Kalyanaswamy, the peasants and other participants complained of the costly and harsh nature of the judicial system. The administrative records themselves bore testimony to the injustice, red tapism and corruption that prevailed in the judicial administration.

Though Munro himself insisted that in a civilised populous country, like India, justice could be well dispensed only through the agency of the natives themselves, under the Munro system of judicature, the natives were not appointed for higher posts in the judicial branch of administration. It was only in 1827 that the office of the Native Criminal Judge was created. However he did not have jurisdiction over the Europeans.

Thus the first six decades of the nineteenth century saw the growth of an organised system of Judiciary in South Kanara.

NOTES AND REFERENCES

1. South Kanara, one of the Districts of Karnataka State today, was the southern division of the Province of Kanara and Sonda of the Madras Presidency during the period under study.
2. A.J. Arbuthnot (compiled), *Select Reports of Criminal Cases Determined in the Court of Foujdaree Adalut of Madras, 1826-1850*. (Madras, The Christian Knowledge Society's Press, Vepery, 1851), p.iii; S.U. Kamath (ed.), *Karnataka State Gazetteer, Uttara Kannada District* (Bangalore, 1985), p.671.
3. A.J., *Select Reports, op.cit*, p.iii, The Court of Circuit was also known as the Provincial Court. The Provincial Court was so called when it sat as civil court but when it sat as a criminal or sessions court it was called the court of circuit.
4. These were for the four divisions of Dindigul, Kistnagherry, Ellore and Chicacole.
5. As per Regulation XXIV of 1802, Regulation V of 1803 and Regulation V of 1806. For details see A.J. Arbuthnot, *Select Reports*, p.iv; B.S. Baliga, *Madras District Gazetteer, Coimbatore* (Madras, 1966), p.481; N. Retnaswamy, 'Judicial Organisation in the Madras Presidency 1862-1884, (unpublished M.Phil, Dissertation, Madurai Kamaraj University, 1989), p.39.
6. Proceedings of the Madras Judicial Department (hereafter *PMJD*), 1-1-1803, Sl.No.3, p.35 and pp.63-64.
7. *Ibid.*, p.37; E.C. Greenway's (Secretary to Government) letter from Fort St. George, dated 29-9-1804 to the Collector and Acting Magistrate in the Southern Division of Kanara, in *PMJD*, 29-9-1804, Sl.No.7, pp.1239-40.
8. Thomas Morris Keate was appointed as the Judge and Magistrate in the Zilla Court at Mangalore on 11-8-1806. He took the oaths of office before the principal Collector of Kanara, Alexander Read. T.M. Keate's (Judge and Magistrate) letter dated 6-8-1806 to the Secretary to the Government, Fort St. George in *PMJD*, 2-9-1806, Sl. No.19, pp.2867-70. Further in the same letter, Keate informed the Madras authorities about the poor facility available for the court and jail in Mangalore.
9. *PMJD*, 27-10-1806, Sl.No.19, pp.3186-87.

10. *PMJD*, 29-8-1806, Sl.No.19, pp.2773-77.
11. N. Retnaswamy, *op.cit.*, pp.55-56.
12. In 1808 Narnapah was the pleader in the Zilla Court of Mangalore. *PMJD*, 22-3-1808, Sl.No.35, p.938.
13. *PMJD*, 23-9-1808, Sl.No.34, pp.570-71; N. Retnaswamy, *op.cit.*, p.51.
14. *PMJD*, 31-5-1808, Sl.No.33, p.47; *PMJD*, 28-11-1809, Sl. No.47, pp.3484-85.
15. *PMJD*, 21-2-1815, Sl. No.104, pp.716-20; *Selection of papers from the Records at the East India House, relating to the Revenue, Police and Civil and Criminal Justice under the Company's Governments in India*, Vol.II (London, 1820), p.434.
16. N. Retnaswamy, *op.cit.*, pp.50-51; Richard Clarke, *The Regulations of the Government of Fort Saint George, In Force at the end of 1847; to which are added the Acts of the Government of India in force in that Presidency*, (London, 1848), pp.567-68.
17. N. Retnaswamy, *op.cit.*, p.51; *Selection of Papers ... etc.*, *op.cit.*, p.434.
18. *PMJD*, 23-2-1808, Sl. No.34, pp.570-71; *PMJD*, 23-2-1808, Sl. No.34, pp.570-71.
19. *PMJD*, 15-9-1812, Sl. No.76, p.4511; *PMJD*, 29-12-1812, Sl. No.78, p.6172.
20. B.S. Baliga, *Tanjore District Hand Book*, (Madras, 1957), p.327.
21. T.H. Beaglehole, *Thomas Munro and the Development of Administrative Policy in Madras 1792-1818*, *The Origins of Munro System* (Cambridge 1966), p.103.
22. For more details on the arguments made by the Commissioners, see the letter of Commissioners to Government, 28-3-1815, quoted in T.H. Beaglehole, *op.cit.*, p.104.
23. For details on Kasi Setti case, see T.H. Beaglehole, *op.cit.*, pp.107-08; Burton Stein, *op.cit.*, p.187 and 193 and pp.198-203.
24. T.H. Beaglehole, *op.cit.*, p.109.
25. *Ibid.*, p.119; Sir A.J. Arbuthnot, *Major General Sir Thomas Munro: Selections from his minutes and other official writings*, in 2 volumes, Vol.II, *Judicial*, (Madras, 1886), pp.278-86.
26. *PMJD*, 13-9-1816, Sl.No.116, pp.3243-44; B. Shalini Devi, "The History of Crime and Punishment in the Presidency of Madras in the 19th Century" (Unpublishment Ph.D. Thesis, University of Madras, 1966), p.475.
27. *PMJD*, 19-8-1815, Sl. No.108, pp.2913-3028;
28. N. Retnaswamy, *op.cit.*, p.57.
29. *Manual of the Administration of the Madras Presidency*, Vol.I, p.213.
30. *PMJD*, 15-6-1827, Vol.No.200A, pp.1837-38, *Minutes of Evidence*, XXB-151-2, p.533.
31. A.J. Arbuthnot, *Ibid.*, pp.XIII-XIV; V.C. Gopalaratnam, *A Century Completed: The Madras High Court 1862-1962*, (Madras, 1962), p.99.
32. *Ibid.*, pp.XV-XVI; *Manual of the Administration of the Madras Presidency*, Vol.I, Part II (Madras, 1885), p.272.
33. *The Madras High Court 1862, 1862-1962 Centenary Volume* (Madras, 1962), p.18.
34. P.E. Roberts, *History of British India*, (Delhi, 1980), p.231 and 289; Burton Stein, *Thomas Munro op.cit.*, pp.178-203.
35. *Selection of Papers*, *op.cit.*, p.106.
36. *Report of the Commissioners*, *op.cit.*, p.CXXV.