The Making Of Colonial Law, Discipline And Corruption In British India

Dr. Santosh Abraham*

This article examines the making of colonial law during the early decades of company rule in British India. In the process, the colonial state constructed a 'collaborative network' in which the natives of India were recruited in the British Indian administration. However, this 'network' was brought under the direct control of the British when the colonial state defined disciplinary regulations for the native officers. This article is an attempt to argue that these were some of the precautionary measures against corruption in India by the colonial state. But during the course of time, the native officers became corrupt and the colonial rule of law was not powerful enough to manage the issue of corruption among the indigenous.

I. Introduction

The making of law was the central concern of the European colonizers in the colonies. Scholars have described law as the 'cutting edge of colonialism' and also as 'central to the civilizing mission of the British imperialism'.[1] This paper locates the region of Malabar[2] during the last decade of eighteenth century where the British was establishing a colonial state and law in south India modeled on Lord Cornwallis' governance in Bengal.[3] It was through various laws and regulations that

* Lecturer in Legal History, NALSAR University of Law. An earlier version of the present article was presented at CODESRIA/SEPHIS Equity Policy Dialogue on Corruption held at Dakar (Senegal – West Africa) during October, 2009. I would like to thank the coordinator Prof. Said Adejumobi, UNECA, Addis Ababa for his thoughtful remarks at the dialogue. I am grateful to Anindita Mukhopadhyay, History, University of Hyderabad for her comments and interventions. Thanks to Shalina Mathew, CRS, University of Hyderabad for her timely insightful suggestions. I also thank the anonymous referees of JILS for their comments.

1 *See* Martin Chanock, Law, Custom and Social Order: The Colonial Experience in Malawi and Zambia (Cambridge University Press, 1985) 4, and Philip Darby, The Three Faces of Imperialism (Yale University Press, 1987).

2 The region of Malabar - the territory between Cochin and Canara, the Arabian Sea and Western Ghats - comprised of the northern districts of present Kerala State, namely, Kasargod, Kannur, Wayanad, Kozhikode, Malappuram and Palakkad.

3 Since 1786, a series of legal reforms were initiated by Governor General of East India Company, Lord Cornwallis in India. The most important of them was the Cornwallis Code in 1793 which contained significant provisions governing policing and judicial and civil administration in Bengal territories.

the British colonial state endeavored to control and disciplining the indigenous population in India. The early colonial regulations were designed to ensure native participation and collaboration and thus to provide 'good colonial governance'. The regulations were prepared in such a way that it prevented the native officers from being corrupt in the exercise of their powers. This paper examines one such regulation in colonial Malabar in the year 1793 which was brought out for the maintenance of law and order mainly for the smooth functioning of trade in Malabar Coast. There were certain measures prescribed in the Malabar Civil and Criminal Regulations of 1793 which were precautionary measures and warnings against the native corruption and misuse of power. However, when the natives were lumped together with the colonial bureaucracy as the state, they translated the colonial power-bases into a quite profound authoritarianism. The Indian agents became corrupt in the process and the colonial state and law failed to ensure the spreading of corruption during the early career of British rule in India.

II. Discourses On Law And Corruption In Early British India

The beginning of British rule in India was a major turning point in the history of India. The East India Company, which ruled parts of India in the eighteenth century, took steps to introduce judicial and political administration in its territories. However, throughout the subcontinent, the British exercised power by adopting themselves to the contours of pre-colonial political systems, including law. As pointed out by Frykenberg, that 'in many of its structural features, as well as its substantive policies, the colonial state sustained what were essentially pre-colonial political forms until well into the nineteenth century'.[4] As a result, a new hybrid legal system with the elements of English institutions, Hindu and Muslim elements began to slowly emerge in India. The early British rulers were cautious not to introduce English rules in the Indian soil; they did not want to interfere in the working of the native society. At the same time, the British felt the need to create new instrumentalities of rule in colonial India, though ones that would be in tune with the local ethos. The attempts

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[4] R.E. Frykenberg, *Company Circari in the Carnatic, c. 1799-1859: The Inner Logic of Political Systems in India*, in Realm and Region in Traditional India (Richard G. Fox ed., Vikas Publishing House, 1977) 141-42.

by the colonial state to standardize customs all over the subcontinent for administrative case resulted in the creation of an Anglo-Indian legal system. The British, in consultation with the indigenous legal experts and classical jurists (the *pandits* and the *ulamas*) devised the, so-called, Anglo-Hindu for Hindus and Mohammedan law. Kartik Kalyan Raman has pointed out that, 'this was a process, whereby the British made compromises by supporting the symbolic expressions of indigenous policy and accordingly adapted their expectations to certain prevalent Indian legal forms, such as the appellations and form of tribunals or the applicable law'.[5]

Along with the ideological making of Anglo-Indian legal system in India, the British established colonial courts and recruited indigenous officers in the sub continent. It created a situation where the British and the native worked either separately or in co-operation, but for a single government in which native officials had well–defined duties and clearly slotted into a subordinate administrative category. The aim, in general, was to legitimise the British rule by deploying an indigenous covering to mitigate what might otherwise seem an alien and threatening institution. The indigenous participation in the British Indian colonial bureaucracy was necessary to carry out the revenue and judicial administration at the lower level. The inclusion of the indigenous natives in the British bureaucracy was also understood as the 'means of winning public support for the legal system'.[6] Moreover this gave 'legal weight to certain categories of indigenous population'[7] where the British recruited the legal officers for the Company courts from among the natives. In the process, a new administrative culture was initiated in which the native chiefs and nobles were given limited and controlled powers. But this collaborative network was transformed into a more formal and 'disciplined' level, when the colonial rulers insisted on controlling the native agency strictly and ensured 'quality' and 'merit' in the creation of a disciplined and formal British

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[5] Kartik Kalyan Raman, *Utilitarianism and the Criminal Law in Colonial India: A Study of the Practical Limits of Utilitarian Jurisprudence*, 28 (4) Modern Asian Studies 739, 740 (1994).

[6] Radhika Singha, A Despotism of Law: Crime and Justice in Early Colonial India (Oxford University Press, 1998) 303.

[7] Anindita Mukhopadhyay, Behind the Mask: The Cultural Definition of The Legal Subject in Colonial Bengal, 1775 – 1911 (Oxford University Press, 2006) 73.

Indian bureaucratic structure. At this juncture, it is seen that in the making of colonial law in the subcontinent, the British were seeking for better administrative strategies to prevent corruption among the native officers in the Company courts in India. This naturally raises the question, why did this concern against corruption develop in colonial India?

Corruption appears to be a social phenomenon deeply rooted in the historical formation in the west. The origins of corruption in the west can be traced back to the period of industrial revolution where complex economy and complicated rule of law aided the growth of corruption in the west.[8] Later, when the western financiers became the colonial rulers, these behaviors were instilled into the colonized societies and were later carried into the post-colonial era. Today, one of the major impediments to economic, social and political development in India is corruption. The Transparency International's *Corruption Perceptions Index 2010* ranked India 87th position out of a 178 countries.[9] The score has improved from 2.7 in 2002 to 3.3 in 2010. Today the terms like corrupt leaders, corrupt administration, and corrupt civil servants have become the catch words of the print and visual Medias. Although there is an extensive literature explaining the entrenchment of this pandemic in the present day perspectives, the explanations ignore the role of British colonialism in the genesis, sustenance and prevention of corruption in India. The issues of corruption among the eighteenth century British officials in India and its possible and dangerous overflow into the Indian agents were firstly suggested by Edmund Burke in his speeches on the impeachment of Warren Hastings.[10] British discourses of corruption in

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[8] G.Robb, White-collar Crime in Modern England (Cambridge University Press, 1992). Robb argues that the industrial revolution gave birth to a complex economy characterised by an increasing dependence of finance and investment and consequently, enormous banking networks, stocks and credit and a complicated legal system. These factors coupled with the increase in lawyers, financiers and other professionals greatly aided the potential and expansion for white-collar crime.

[9] Corruption Perceptions Index, 2010 Results, available at<http://www.transparency. org/policy_research/surveys_indices/cpi/2010/results> (Last visited on April 10, 2011).

[10] P.J.Marshall, ed., The Speeches and Writings of Edmund Burke, V, First Report of the Select Committee: Observations (Clarendon Press, 1987), esp. 183 -184. The first Governor-General of India, Warren Hastings was notably impeached on accounts of corruption in 1787. For a critical evaluation of the impeachment of Warren Hastings, *see* Mithi Mukherjee, India in The Shadows of Empire: A Legal and Political History (Oxford University Press, 2009), Chapter I.

India also suggested that 'the incompatibility of indigenous values and traditional practices (e.g., gift giving) with the norms of a modern, rational administrative system results in endemic corruption'.[11] In this discourse, the British colonialism in India portrayed the natives of the subcontinent as endemically 'corrupt' requiring constant British supervision and control. This was the construction of a universalizing knowledge of the eastern population[12] where they promoted the vision of moral imperial Britain and Englishmen as a 'privileged class' in which the Indians were marginalized and uncompromisingly labeled as 'corrupt'.

The question at hand in the present paper concerns with the British attempts at precautionary measures against corruption among the native officers of British Indian bureaucracy. It was in the last decade of eighteenth century that the British colonial state in India established a court system and a hierarchy of native officers in the conquered regions, specifically in Malabar.[13] This was crucial in the making of the colonial state in India as the British Indian government was extolled for providing 'good governance' to colonized regions. This can also be read as the reflection of the regime of discipline and administrative thought which was fast growing in Europe during the late eighteenth and early nineteenth century.[14] Further, this was the beginning of the utilitarian manner of administrative thinking, which was taking shape on the experimental axis of governance both in India and Britain.[15] Consequently in the process, certain 'formalities of practices' were applied to the native bureaucracy in the form of oath, penal obligations and the system of writing and

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[11] Vinod Pavarala, *Cultures of Corruption and Corruption of Culture: The East India Company and Hastings Impeachmen'* in Emmanuel Kreike and William Chester Jordan (Eds.), Corrupt Histories (University of Rochester Press, 2004) 291-292.

[12] Ronald Inden, Imagining India (Oxford University Press, 1990).

[13] The region of Malabar - the territory between Cochin and Canara, the Arabian Sea and Western Ghats, comprised of the northern districts of present Kerala State – Kasargod, Kannur, Wayanad, Kozhikode, Malappuram and Palakkad. In the year 1792, after the *Srirangapatanam* Treaty between Tipú Sultán and EIC, Malabar became part of the British domains in India.

[14] For example, *see* Michel Foucault, Discipline and Punish: The Birth of the Prison (Allen Lane, 1977).

[15] For example, *see* Kartik Kalyan Raman, *Utilitarianism and the Criminal Law in Colonial India: A Study of the Practical Limits of Utilitarian Jurisprudence*, 28 (4) Modern Asian Studies 739, 740 (1994).

documentation in the courts. The present paper looks at these 'formalities' as standard precautionary warnings against 'corruptions' among the native officers of the British colonial bureaucracy.

The punitive character of colonial law enforcement and maintenance of discipline was evident in the 'harsh system of department punishments' administered to prevent corruption and laxity among the native officers of the mid-nineteenth century British bureaucracy in India.[16] This punitive disposition of the colonial state was arguably developed from the earlier mode of disciplinary control exercised by the East India Company to control the native bureaucracy in India. The background of this 'development' in India was the principles of colonial law and discipline which were attracted by a number of scholars who have provided studies on official legal institutions of the later colonial period and court cases or legal processes.[17] Though the historians have delved deeply on legal system and institutions, an analysis on the beginning of the colonial governance and measures to check corruption were rarely dealt with in the academic realm.[18]

III. Native Bureaucracy And A Collaborative Network In Colonial India

The last decade of the eighteenth century was a transitional period in the history of Malabar that the region had to go through major transformations from the pre-colonial to the colonial rule.[19] It was in

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[16] David Arnold, *Bureaucratic Recruitment and Subordination in Colonial India: The Madras Constabulary, 1859 – 1947* in Subaltern Studies IV, 1, 22 (Ranajit Guha ed., Oxford University Press, 1985).

[17] Ranajit Guha, *Chandra's Death*, in Subaltern Studies, 135-165 (Ranajit Guha ed., Oxford University Press, 1987). David Arnold, Police Power and Colonial Rule: Madras 1859 – 1947 (Oxford University Press, 1986); John J Paul, The Legal Profession in Colonial South India (Oxford University Press, 1991); David Washbrook, *Law, State and Agrarian Society in Colonial India*, 15 (3) Modern Asian Studies 649 – 721. 1981.

[18] Shiv Visvanathan and Harsh Sethi (eds.), Foul Play, Chronicles of Corruption (Banyon Books, 1998). *See also*, Document Raj: Scribes and Writing Under Early Colonial Rule in Madras, 1771- 1860 (The Unpublished Dissertation) (University of Michigan, 2007).

[19] During the pre-colonial period and at the end of eighteenth century, Malabar region was a land of several kingdoms among which the kingdoms like *Kolathunad, Kottayam, Kadathanad, Calicut, Walluvanad* and *Cochin* were powerful. For details, *see* P.K.S. Raja, Medieval Kerala (Annamalai University Historical Series, 1953) 219 – 293.

1792, with the *Srirangapatanam* treaty between Tipú Sultán of Mysore and the EIC that the region of Malabar was brought under the control of the British Indian colonial state.[20] The control of Malabar was equally the culmination of EIC's quest to control the western coastal (Malabar) spice trade for which the European powers had struggled for almost three centuries.[21] After the treaty of *Srirangapatanam*, a new rule of law with numerous courts was enacted in Malabar through the Civil and Criminal Regulations of 1793.[22] The 1793 Regulations were the first among the series of attempts to revise and regulate the judicial administration in Malabar.[23]

The new Regulations were in fact the immediate result of the Permanent Settlement of 1793 in Bengal by Lord Cornwallis. Faced with the problem of creating efficient machinery for imposing peace, dispensing justice and restoring the Company's finances ruined by corruption and mismanagement, Lord Cornwallis' solution was 'to break radically away from the attempts of Lord Clive and Hastings and to work through the native system of administration'.[24] However, it cannot be considered as the 'native friendly' drive as the main motive of the new system was to subordinate the Indians. In the same way as that of Bengal, the new setting in Malabar comprised of different branches of tribunals like Provincial courts, Faujdari courts, local and subordinate courts and native courts. Through the new Regulations, the colonial rulers endeavoured to formulate

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[20] The rulers of Mysore, Hyder Ali (1725–1782) and Tipú Sultán (1750–1799) had made repeated attempts to gain control over Malabar between the years 1766–1792. By the treaties of *Srirangapatanam* with British, Tipú was forced to yield 'one half of the dominions including Malabar which were in his position at the commencement of the war'. For details, See WILLIAM LOGAN, MALABAR MANUAL, (Government Press, 1951, First Published in 1887) 399 - 473.

[21] Since the arrival of *Vasco da Gama* in Calicut in 1498, the coast of Malabar was a centre of attraction for trade among the European powers like Portuguese, Dutch and the British. By 1664, EIC began its effective trading operations in Malabar. By the middle of the eighteenth century, the Company had almost cornered the lucrative spice trade of Malabar.

[22] MALABAR JOINT COMMISSION MANUSCRIPTS (Hereinafter: MJCM). 1792 – 93 / Civil Regulations for the Administration of Justice in the Provincial Courts of Adalat and in the Courts of Appeals / 12 June 1793 / Voucher No. 92 / §s 1 to 76 and MJCM / Criminal (*Faujdari*) Regulations / 12 June 1793 / Voucher No. 97 / §s LXVIII to XCI.

[23] T.K. RAVINDRAN, MALABAR UNDER BOMBAY PRESIDENCY (Mascot Press, 1969) 32.

[24] T.H. BEAGLEHOLE, THOMAS MUNRO AND THE DEVELOPMENT OF ADMINISTRATIVE POLICY IN MADRAS, 1792 – 1818 (Cambridge University Press, 1966) 2.

a state and an accompanying legal system modelled on western governance with an impersonal bureaucracy in the region.[25]

IV. Making Of A Collaborative Network In Malabar

The establishment of native courts or the *Daroghaships* (*Cutchery* in native tounge) was one of the important innovations of 1793 Regulations.[26] It was set up to serve the interests of the Company with more indigenous involvement and thus to control the natives from within. Thus, seven local *Daroghaships* were established in Malabar namely *Canannore*, *Quilandy*, *Tanur*, *Tirurangadi*, *Ponnani*, *Chettuvai*, and *Palghat*.[27] The Regulations provided the appointment of the native officers as,

> '...[t]he Judges of the Provincial Courts may appoint the *Daroghas* in the local courts, native officers, *pundits* and *maulavis*, peons and other servants, and may from time to time remove such officers and when any vacancy happen, appoint any other persons duly qualified to the office'.[28]

The selection and nomination of the native judges for these courts were left to the Chief Magistrate of the locality. He had to make his choice 'from men of the most approved characters of integrity and the fittest and most qualified in all other respects'.[29] In other words, the native officers were chosen from among the respectable natives belonging to certain classes like land owners, traders, *Kazis*, etc. The

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[25] For details, *See* Santhosh Abraham, *From Negotiation to the Making of Dominance: Colonial Law in Early British Malabar (1792-93)* in New Themes in Indian History: Art, Politics, Gender, Environment and Culture 160 – 174, (Rattanlal Hangloo and A. Murali, eds. Black & White, 2007).

[26] The court of *Darogha* was the new form of the earlier *Board of Police* and the *Court of Cutcherry* in Madras. For details, See Niels Brimnes, *Beyond Colonial Law: Indigenous Litigation and the Contestation of Property in the Mayor's Court in Late Eighteenth-Century Madras*, 37 (3) Modern Asian Studies (2003) 520.

[27] Logan, *supra*, *note* 20, 495.

[28] MJCM / Civil Regulations / Voucher No. 92 / §: III.

[29] MJCM / Supplementary Articles to the Adalat Regulations being for the Administration of Justice in Civil Cases within the Province of Malabar / 2 July 1793 / Voucher No.93 / §: X.

Daroghas were declared to be the 'guardians or protectors and their total usefulness to the British or to the country as police officers' in the different townships in the region.[30]

The appointment of *Darogha* as the head of the police and native judge created two sets of rulers within the region – the British and the native – working in cooperation, but for a single government in which the *Daroghas* had well-defined duties. The *Darogha* was supposed to conduct the inquest on a murder or other heinous crime, in the presence of three or more creditable persons. The native officers were to be functioned as the referees in suits for money or other personal property, referred to them by the *Zillah* judge. They were also to be acted as the *Munsifs* and arbitrators in any suit referred to them by the parties without the intervention of the court under a written arbitration bond.[31] These native officers relieved much of the burden of the *Zillah* judges in the trial of petty suits. Further; it provided the parties with an opportunity for speedy adjustment of their disputes without incurring unnecessary expenses and miseries caused by long absence from their home in distant *Zillah* courts. They tried suits by hearing the pleadings of the parties, examining the documents and taking the deposition of witnesses. The procedure was not different from that followed by the *Zillah* judges. A monthly report was to be submitted by them to the *Zillah* judge and they were authorised to receive a fee for every suit preferred by them. It was also ensured that once appointed, the Commissioners could not be removed without sufficient cause.[32]

Apart from the institution of *Darogha,* the new system asserted the necessity for the appointment of the Hindu and Muhammadan law officers of civil and criminal courts of judicature. The *pundits* were to explain the laws and usages according to the Hindu [illegible] and *Maulavis* were to explain it according to the *Quran*. The collaboration and incorporation of the native agents into the administrative network was more visible in the lower layers of the colonial machinery. Colonial

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[30] John Shore, A Report on Judicial System of Malabar (Madras Government Press, 1865), §: 69.

[31] MJCM / Civil Regulations / Voucher No. 92 / V.

[32] *Id*, § VI.

bureaucracy at the village level continued functioning with the village *Mukhyastans* who acted under the jurisdiction of the native *Daroghas*.[33] Thus, apart from the *Darogha*, the *Daroghaship* constituted of a hierarchy of officials, consisted of officials recruited from among the local population like *Maulavi, Pundit, Karyasthan* (attender to *Pundit*), *Mukhyastan*, *Serishtadar, Kanakkapilla* (native clerks), *Nazir* (Courts' envoy) and the *Kolkars* (armed *Mappilas* and *Nairs*).[34] They were also to be appointed and removed, subject to the approbation and confirmation of the chief Magistrate. The establishment of the native jurisdictions thus, created a collaborative network in India through which the British began to control and take root among the native population of the country. I argue that, though the colonial state was incorporating and working in cooperation with the indigenous at this moment, the ultimate control was with the colonial state, where it penetrated into the traditional society in segments.

V. Disciplining The Native Officials: The '*Formalities Of Practices*'

> You, be careful to cause the Regulations, Rules of practices and Oaths required to be taken by the native judges and officers, to be duly administered as the Judge of the Court of Appeals, to maintain strictest watch on corruption among them, and if be found guilty of corruption, may be brought to conduct punishment, in the manner in which Regulations prescribe.[35]

The above note reveals one of the earliest actions of the British administrators in India to maintain discipline among the newly created colonial native bureaucracy. The principle here was the eighteenth century European enlightened thinking of British supervision of Indian subordinates and to protect the Indian public against misuse of official power. Moreover, the issue of torture by the influenced on the indigenous in the pre-colonial

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[33] BCR / Judicial Department Diary No.5 / 1799.

[34] MJCM / Civil Regulations / Voucher No. 92 / §: XII & XIII.

[35] MJCM, Letter from the Malabar Joint Commission to the Supervisor and Chief Magistrate of the Province of Malabar regarding a set of Regulations for the administration of justice, 12 June 1793.

Indian local scenario provided the ideological base for the colonial claims to protect the indigenous against the 'despotic native functionaries'.[36] The hallmark of this period was the colonial directives of 'formalities of practices' to be observed by the native officers in the newly established courts. In its drive for supervision and control, the Company established certain measures for security and official oaths for the native officers in the courts.

This 'formalities of practices' was not a new colonial innovation into the indigenous system. Certain practices of security and oath taking were prevalent in the religious based indigenous judicature of the pre-colonial period. As the Company's principle at this moment was not to interfere in the indigenous affairs much, some practices of Indians were brought into the scenario. 'Formalities of practices' was the term coined by Michel de Certeau, who pointed out that 'the formality of practices from religious system to the ethics of the enlightenment in the western societies where a social ethic substituted the beliefs, formulating an order of social practices and relativising the religious beliefs as an object to be put to use'.[37] In the same way, with the initiation of new rules of practices, the Company was in fact formalising the indigenous structure. This section of the present paper argues that it was under the term 'formalities of practices' that the British colonial state was moving on with the theory of 'good governance' and to ensure good behavior among the native bureaucracy.

VI. Against Corruption: Extracting Security And Oaths For Good Behaviour

The early measures of disciplining the native bureaucracy were clearly seen in the practice of taking security from the native officers. Taking security from the native officials of the British courts in the form of bail bonds was an important aspect and device of colonial system. This was recognized for keeping the peace and security for good behavior.

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[36] *Torturing of peasants and witnesses was listed as crimes peculiar to India*. See Singha, *supra* 6, f.n.79, at 303.

[37] Michel de Certeau, The Writing of History, Translated by Tom Conley (Columbia University Press, 1988), 148.

The same kind of practice was reported from the Benaras *Zamindari* of Bengal where this was 'the colonial policy of keeping the peace and security for good behaviour'.[38] The demand of *Mochulkas* (penal obligations) from all the officers in the various *Daroghaships* in Malabar also confirmed that the colonial penal procedures were exercised through a common platform for all the regions. The regulation proposed,

> 'The judge of the Provincial Court is required to extract penal obligations from all his officers and servants for their good behaviour and integrity in the discharge of their respective functions, in a sum equal to one year's amount of their respective allowances.'[39]

The colonial administrative order of extracting penal obligations was directed towards the native officers to show their truthfulness and honesty in discharging their duties. Another important disciplinary measure for the native bureaucracy was the demand for 'oath' in the court. The regulation proclaimed that 'the registrars, native officers or *pundits* had to take separate oaths before the judge of the Provincial Court of Adalat'. It said,

> 'I will truly and faithfully perform the office of this court, according to the best of my knowledge and ability, and I will not receive, directly or indirectly, any present either in money or in effect of any kind from any party in any cause'. [40]

The Pundits of the courts had to take the following oath,

> 'I will faithfully execute the office and trust of a *Pundit* in the court, on questions put to me in writing,……What is in the *śāstra* or what are the established customs of Malabar – I will declare or give in writing. I will declare nothing not warranted by the *śāstra* or by such established

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[38] SINGHA, *supra note* 6, at 48.

[39] MJCR / Civil Regulations / Voucher No.92 / §: XIII.

[40] *Ibid*., §: XIV.

> customs. If I declare anything not warranted by the *Sastra* or by such established customs or shall omit any points, I shall deserve the punishment from God and I swear not to be accepting any consideration in money or otherwise, for any opinion or declaration of the law, I may deliver as the pundit of the court."[41]

This demand for public avowal of honesty was the colonial move towards a standard precautionary warning against corruptions. It also revealed the colonial insistence on 'quality' and 'merit' towards the formation and construction of a disciplined colonial bureaucratic structure. This was directed particularly at the Indians along the same lines of European experience, as Indians were considered 'endemically corrupt'. By the imposition of oath of office, the British created a situation where the 'men of credit and reputation', especially the *Pundits* and the *Maulavis* had to publicly place themselves in subordination to the authority of the Company. Radhika Singha explains that the imposition of oath of office in the Benaras *Zamindari* raised controversies over rank. She states that 'the Indian officials felt that an obligation to make a public avowal of honesty indicated an erosion of their standing with government'.[42] I argue that the disciplinary measures in the form of taking security from the native officials and imposition of oath of office were the earliest actions of the Company to maintain discipline and formality where all kinds of local governance were under the European direction and surveillance. In another sense, this can be understood as the colonial measure to prevent the native bureaucrats from exercising illegal acts and corruption in dispensing their duties and thus to ensure 'good colonial governance' in the colonized territories.

VII. British And Native Bureaucracy: Collaboration, Conflict And Corruption In Malabar

The colonial creation of legal rationale and legal weight to certain categories of indigenous subjects registered a strong position to native subject with the British government. This coupled with the principle

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[41] *Ibid*., §: XV.

[42] Singha, *supra note* 6, at 48.

of transparency and collaboration created two set of rulers in the region. This also created a situation where some of the native officers became enamored with the new governance and law enforcement machinery. Scholars have elaborated this tendency of the educated middle classes of later colonial India in different examples.[43] The 1793 Regulations had allowed the use of personal laws of the natives in the colonial courts, subject to the recommendations of the law officers of the courts. The positions of the law officers like the *pundit* and the *mufti* were acknowledged by the company regulations to execute personal law in the courts. Bombay Castle Manuscripts records some of the cases where *Daroghas* sentenced the culprit's death sentences against the wishes of the law officers of the courts. In the case between *Chelanoor Imbichy* and *Moideen Kutty*, *Darogha* recommended sentences of death to a Muslim even when the *Muftee* of the court was against it.[44] I argue that these cases can be read as the attempt of the native officers to bring their punitive prescriptions in tune with the western legal concepts of the Company.

Though on several occasions, the native judges cooperated with the British in extending colonial rule in the country side, there were also several examples of non-cooperation from the native officers. This happened in many ways, as the *Daroghas* or the native judges of various courts in Malabar suggested the age old punishments like 'cutting off the hands' and 'banishment from the country for petty thefts and robberies'. Also these were not decided without consulting the *Pundit* or the *Muftee* of the court. In the two cases of robbery in the southern *Faujdari* courts in Malabar, the *Daroghas* sentenced both for banishment from the country. Interestingly, one case of robbery was against the Hindu institution and the other one was against a Muslim institution.[45] In both cases, the *Pundit* and the *Muftee* suggested the 'custom of the country' that the person to be banished from the country. In both the cases, the British Magistrates

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[43] For example, *see* Mukhopadhyay, *supra note 7,* Chapter 2, 73 -128.

[44] BCR, Judicial Department Diary, No.10/1798, *Secretary to Malabar Commissioners to Secretary to Bombay Commissioners*, 12 January 1798, at 5 – 20.

[45] BCR, Judicial Department Diary, No.12 / 1799, *Proceedings of the Southern Faujdari Courts in Malabar*, 9 April 1798, 341 – 351. And BCR, Judicial Department Diary, No.12 / 1799, *Proceedings of the Southern Faujdari Courts in Malabar*, 25 July, 1798, 309 – 316.

did not hesitate to approve the sentences given by the *Daroghas*. These examples show that the Company could not maintain the collaborative network and the practice of English legal systems in the court.

Even though the Company forbade certain acts of punishment, the *Daroghas* used to pass sentences of mutilation and impalement. In the case of *Dairoo Chathoo* and *Chindan,* charged with murder of a *Mappila Tirikoot Mamy*, the pundit declared the law of the *śāstra* which was that the murderer should be punished with impalement on a *Sula* and that such a criminal must also receive a punishment of three dozen lashes. The *Nambuthiri* agreed that the murder should be punished by death, but proposed that it should be by hanging instead of impalement–an opinion with which the *Darogha* concurred. The chief judge of the division confirmed *Darogha*'s sentence: however, in accordance with the *Faujdari* regulations, he decided that the criminal should be beheaded.[46] In this way, there were several instances of continuities and discontinuities of the ancient customs in deciding the cases in Malabar.

VIII. The Corrupt *Daroghaships*

By the last years of the eighteenth century, the *Daroghas* had extensive powers for the preservation of peace and the general police duties placed in their hands, unchecked and unsupervised. In another sense, *Daroghas* were moved from the status of an obedient officer of the Company to the status of a 'decentralized despots'.[47] They used the position of the *Darogha* to promote their own interests. They, 'instead of being the paid servants for the public, exerted no duty; guarded neither towns from riot nor highways from robbery and apprehended no thieves or other public offenders'.[48] They were nominally responsible to the Superintendents for their acts and conducts, but the township of the *Darogha*, being far away from the Superintendent, acted in reality as an independent exercise of authority away from the sphere of influence

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[46] Malabar Collectorate Records, (Hereinafter MCR), Minute, 15 July 1796, Vol.1738, at 7016.

[47] In describing the case of African regions Mamdani has pointed out the creation of 'decentralized despots' during the colonial rule. M. Mamdani, Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism (Princeton University Press, 1996) 2I-3 & 37-6I.

exercised by the British Magistrate. In a typical instance, *Kurumbranādu Raja* reported to the Superintendent to call back the *Darogha* and install an English man in his place.[49] There were also several instances of corruption and bribery among the *Daroghas* of northern Malabar regions recorded in the *Thalasserry Rekhakal*.[50] I argue that, it was the new logic of colonial governance and technological rationale of 'writing' that encouraged the colonial public and the other partners of the collaborative network to point out the corrupt practices of the native officers. Moreover, the new logic of writing was crucial in the making of 'good governance' in the conquered region.

The corrupt *Daroghas*, if found guilty, were treated impartially according to the rules of the regulations. In a case found in the *Bombay Castle Records*, when the *Darogha* was found guilty of cruelty, oppression and false imprisonment in his capacity as *Darogha,* the British Superintendents of Malabar sentenced him to five months imprisonment and also fined with eight hundred rupees to be paid to the Company.[51] This reveals the strictest form of legal governance to ensure the good behavior among the native officers of British Indian bureaucracy.

In another instance, two *Mappila Daroghaships* in south Malabar were also found to be corrupt. The *Daroghaships* of Ernd and Cheranad in Malabar district were headed by Mappila Chieftains *Attan Gurikkal* and *Chemban Pokker* respectively. The appointment of Mappila *Daroghas* in the *Mappila* dominated areas was the colonial ideology that the 'collections of revenue should be entrusted to men of their own sect'.[52] Later the Company reports explained that the *Daroghaship* was exploited by these chieftains.[53] The issue of native

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[48] MCR, Minute, 21 September 1797, Vol.2150, 1797, at 7252 – 81.

[49] Zacharia, Scaria and Joseph Skariah (Eds.), Thallasseri Rekhakal (Tuebingen University Library Malayalam Manuscript Series (TULMMS), DC Books, 1996), 978 I, No. 1128, at 444.

[50] *Id,* see the letters § 966 I, at.436-38; 1151 J, at 532; 1152 J, at 532-533; 1175 J, at 549-50.

[51] BCR, Judicial Department Dairy, No: 4/1796, *Proceedings of the Foujdari Court of the Province of Malabar*, at 1321 – 1338.

[52] BCR, Secret and Political Department Diary No.70, *Spencer's Minutes*, 6 October 1798, at 6381.

[53] Madras Revenue Proceedings, Letter - J.W. Wye to Board of Revenue, 4 February 1801, at 178-185. It is reported that *Attan Gurikkal* had amassed landed property not only under Mysore rule by exploiting his position as *Darogha* under the Company in *Ernad*. *Darogha* in *Shernad Chemban Poker* had also acquired a good deal of land.

corruption was not limited to the *Daroghas* alone; various reports of the colonial period threw evidences to the mismanagement in revenue collection by the Hindu chieftains and local *Rajas* too. As Buchanan writes, 'their (*Rajas* and Chiefs) greed and misrule were without comparison and nothing could exceed the despotic rapaciousness of these men'.[54] I argue that though the colonial system in India advocated certain measures to prevent corruption among its native officers, the issues of corruption were seen everywhere in the bureaucracy.

IX. THE ABOLITION OF *DAROGHASHIPS*

The Company officials in 1797, proposed the abolition of *Daroghaships* as they became the centers of oppression, instead of organizing the courts and improving the administration.[55] British official report of the later period observed that 'a major cause of the impediment to the peace of the country was the appointment of native *Daroghas* with the power of hearing and deciding civil suits and possessing the power of inflicting corporal punishment'.[56] 'The *Daroghas*, on the one hand, had done their duty. But the manner in which they acted was the very reverse of what they should have done; the powers they possessed were made wholly subservient to their own interest and obtaining undue influence in their respective districts'.[57] This colonial note was referring to 'two of the worst and most troublesome subjects in the southern division of Malabar who formerly held the offices of *Darogha – Chemban Poker* in *Shernad* and *Majeri Attan Gurikkal* in *Ernad*'.[58] The British officers admitted that 'the local *adalats* have not been of that public advantage, as was originally expected from their institution, but have been found some what the reverse by placing too much power in the hands of an individual'.[59] Therefore, the officials strongly recommended that all the local courts of *adalat* should have to be abolished.

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[54] Francis Buchanan, A Journey From Madras Through the Countries of Mysore, Canara and Malabar, Vol.II, (W.Bulner and Co., 107), 551.

[55] MCR, Minute, 21 September 1797, Vol.2150, 1797, at 7252 – 81.

[56] John Wye, Report on the Southern Division of Malabar, February 4, 1801 (Calicut Collectorate Press, 1907) 24.

[57] *Id,* at 25.

[58] *Id,* at 25.

[59] MCR, Smee's Minute by Acting Superintendent, Southern Division, 28 September 1797, Vol.2153, at 9047 – 50.

By 1798, the Governor of Bombay proclaimed that the judicial and police departments in their respective districts should have to be placed in the hands of Superintendents instead of the *Daroghas*.[60] These recommendations of the colonial officials can also be seen as the result of the growing 'Imperial Angicist' sentiments in India which was marking out the Indians as fit only to be colonial subjects. But, to some officials, the institution of the *Darogha* courts was 'unexceptionable' because some attempts were made to reconcile the inhabitants to the new civil and criminal laws and the continuation of the *Daroghaship* was recommended.[61] Evidences show that, later in the year 1799, the *Tellicherry* Superintendent wrote a letter to a *Cutchery Darogha Subbaian* regarding some affairs to be carried out in his *Daroghaship*.[62] Therefore, one can see that the *Daroghaships* were an important part of the colonial bureaucracy during the first decade of the colonial rule in Malabar. Though the *Daroghaships* were often found moving away from the Company ideologies, it was through the *Daroghas* that the colonial state was subordinating and controlling the subjects.

X. Conclusion

Under the regulations of 1793, the British assumed that, by incorporating the indigenous in to the colonial bureaucracy, the 'happiness' and the 'security' of the regions would be secured. This focus got strengthened when the British initiated clear cut moral codes for the native officers in the colonial bureaucracy. This article attempted to argue that these codes were the colonial measures to ensure 'good governance' and precautions against native corruptions. However during the course of time, this colonial utilitarian agenda led to a situation during the course of time where the native officers became corrupt. The influenced and powerful native officers became corrupted when the duties placed in their hands, unchecked and unsupervised. However, the 'formalities of practices' in the making of 'good governance' in the region was crucial as it displayed 'Englishness' in the official matters. Though the native officers

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[60] MCR, Jonathan Duncan's Minute, 1797, Vol.2153, 9071.

[61] MCR, Letter - 20 October 1797, Vol.2153, 9063 – 68.

[62] Scaria, *Supra,* note 49, 1370 K, No.1626, 651.

were often found moving away from the Company ideologies, it was through them that the colonial state was subordinating and controlling the subjects. However, the native officers were looked upon merely as the agents of colonial law enforcement, and their training and discipline as well as their duties were designed to this end.