



PRISON ADMINISTRATION IN COLONIAL MALABAR

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Abstract

This paper formulates and presents the findings on prison system of colonial rulers in Malabar. Munro directed the attention of the government to the deplorable state of the goals, the government of Madras paid scant attention to the problem of prison administration. Prisons were confined in several scatted places. Prison life was veritable hell. Severity of treatment was the order of the day. Death in prison was a usual occurrence. Hygienic conditions were extremely bad. By the regulation of 1802, the magistrate was put in charge of the prisons in the district. The colonial rulers introduced many radical reforms to improve the conditions of the prisoners in Malabar.

Keywords

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

There were no specific rules to govern the prisons in ancient and medieval India. In , fact the colonial state in India not only introduced imprisonment as the main form

of punishment but it had to establish the institution of prisons based on the western idea of prison administration. The modern Indian prison system is a legacy of British rule. The British parliament granted the East India Company the power to rule India in 1784. As a result, the Company made various attempts to reform the existing indigenous systems of law and justice. The colonial prison system in India during the 1800's was riddled with corruption and inefficiencies. Lord Macaulay is regarded as the founder of prison reforms and it was his insistence that in 1836 a committee was appointed to look after the conditions of jails in India.

Prior to the establishment of the administrative machinery by the British in India, the political organization of India was that it comprised either tributary or independent kingdoms. The duties of the State Government were maintaining law and order, providing security for the people from within and without and the collection of revenue. So far as its relationship with the villages and villagers is concerned, the state did not interfere in the villages as long as it paid its revenue and obeyed the authorities. With regard to all other matters, the village had complete freedom. Hence, precisely on account of this reason, India was perceived and highlighted as the land of village republics.

There was no measure or standard of punishment nor was there any principle behind its mode and quality. Often the punishment awarded bore no relation to the offence committed and depended on the personal whim, idiosyncrasies and prejudices of the judges. Usually the punishments were barbarous and inhuman, and were awarded with the idea of making them deterrent and preventive. In this state of administration, the people had to suffer a lot. On account of the absence of proper and dependable means of defense, they become prey to the company officials in their

attempt at conquest and colonization. The company officials exhibited all the yearning and craving for plunder. In this case, sudden and easy acquisition of wealth without undertaking any duty of organizing a government for the conquered inspired the British officials in their attempt to amass wealth for their personal benefit. Hence, it can be seen that this period was the age of misgovernment. The level of misgovernment was carried to a point that seems hardly compatible with the very existence of society .

As for the structure and functioning of the prisons, it left much to be desired for changes and perfection. With regard to the Regulations that demanded separate accommodation for debtors, criminals waiting for trial convicts, the rule was conspicuous on account of its absence of implementation in actual practice. Though there was the possibility to reduce the congestion in the prisons by constructing new and spacious facilities for imprisonment, the authorities rejected it in order to avoid the heavy expenditure that would accompany such prison reforms. In the early years of the British rule the magnitude of the worst type of abuses that disgraced the administration of goals. But later it were lessened, and substantial measures of prison reform were initiated which materially improved the lot of the prisoners. Shakespeare, the second Judge residing at *Tellicherry*, testified that the convicts under confinement in the *Tellicherry* jail appeared healthy and to have been well attended to. “ I had every reason to be satisfied” he observed, “ with the general and individual appearance of the prisoners who made no complaints whatever, deserving of notice, all appearing well treated and in every respect worked agreeably to their sentences” .

In his letter dated 22nd December 1803, the Governor-General specified that the calendars prepared and provided by the principal collector in Malabar pointing out the crimes charged against the prisoners who were to be sent to Bengal revealed that a

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

In the case of an uneducated native when involved in such crimes, it was not possible that such a person would come up with facts and details related to the circumstances with precision and accuracy. Hence it was expected that the criminal judge should ascertain those precise points after conducting a detailed examination of the witnesses related to the case under consideration. In that manner, the crime of the

persons thus accused can be proved with precision and accuracy. In that manner, the crime of the accused person could be correctly proved and also those people who were unjustly accused of crimes on account of mistaken or malevolent reasons would get the due chance to defend their innocence so that justice could be realized. There might be reason to doubt that the offence had been willful and complete, the *Foujdary Adalath* held that prosecution for perjury offences should not be instituted in cases. The evils of forgery and perjury were not so conspicuous during the regime of the native government, as was recognized even by the British administrators. They were essentially an off-shoot of the system promulgated by the British government in India. These evils at one time became so predominant that to administer justice became “a positive nuisance”.

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

The extremely deplorable conditions that prevailed in the jails and the pitiable sufferings of the prisoners as a result of over-crowding, malnutrition and lack of medical facilities were known to the servants of the east India Company. Shakespeare, the second Judge residing at Tellicherry, reported that a complaint was preferred to

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

As part of the procedure adopted in the administration of criminal justice there was the system that in each Zillah all convicts sentenced to be transported should be sent to *Chingleput* so that the execution of the sentence could be undertaken when the occasion becomes appropriate for the same. Proper official instruction was given to the criminal judge at *Chingleput* that after receiving them from other districts as part of the legal procedure, the convicts should be kept in readiness in the goal so that they could be sent to Prince of Wales Island at the first opportunity itself. For delivering the prisoners from the Zillah jail to *Chingaleput*, the legal procedure that should be adopted was complex and very specific in minute details . Hence this caused much suffering and problems to the convicts who were transported in that manner. Often convicts had to undergo long drawn out physical suffering and they lost some organs like limbs. Strictly

according to the law, there was only the sentence of transportation, but sometimes it led to the death of the convicts during this legal action. The magistrate of south Malabar came up with the suggestion that the robbers and other antisocial elements, who were sentenced to temporary imprisonment might be shifted from that particular Zillah and be put in the jail or other public buildings belong to remand region so that possibility of disrupting law and order in the civil society could be avoided. This proposition was made on the belief and supposition that the peace and well being of the natives of Malabar could be protected by selecting a suitable place of confinement located on the coast of *Corommandal* Province. In the light of consideration of humanity, the *Foujdary Adalath* opposed this suggestion because the climate of the coastal region was assessed to be no less fatal in comparison with that of the interior region.' The proposed aim could be attained without taking the risk of the fatal consequences which were to be apprehended from exposing the prisoners of Malabar to another region so that there is a change of climate, according to the court, by transporting them to the jail in the Zillah of *Canara*.

Owing to the existence of a lot of discrepancies, anomalies and errors in the practice of law, the administration of criminal justice in Malabar was in a deplorable condition. In actual practice and mode of application, the laws were deprived of their honorable and beneficial terrors that would contribute to the maintenance of peace in the society. Often the implementation of law caused abhorrence and fear in the minds of people. It was observed with a fair measure of precision that extortion of confession using forcible means was the main spring of the existing system of judiciary. Since the *Foujdary Adalat* was clearly informed about the reprehensible practice, it made an attempt to convey the following proclamation to all magistrates and acting magistrates with the intention of creating a barrier against the existing evil practice. The

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

Some officials working in the East India Company took note of certain incidents involving the ill-treatment of the persons taken into custody and the brutal methods used to make them confess certain crimes with which they were charged merely on account of suspicion. For example, Grant, the Lieut. Col. from *Tellichery* noted the following aspects in the Lascar case; “While the Lascars were actually on duty, one going to the commissary’s warehouse, and the other orderly at the Fort Adjutant’s door, they were suddenly seized, bound with ropes and ignominiously dragged, a public spectacle, like the worst of felons through the streets of the town to Baber’s people. One of them to extort a confession from him was threatened, browbeaten and struck by the magistrate, Baber, himself and afterwards put in irons” .

There were considerable irregularities in the trials undertaken in the lower courts. The first and the most important irregularity was related to the way in which the

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

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Prison administration in Malabar is coping up with number of problems since many years i.e. the problems of overcrowding, congestion, increasing proportion of under trail prisoners, inadequacy of prison staff, lack of proper care and treatment of prisoners, lack of health and hygienic facilities, insufficient food and many other problems. The magnitude of the worst type of abuses that disgraced the administration of goals in the early years of the British rule were lessened, and substantial measures of prison reforms were initiated which materially improved the lot of the prisoners. Considerable improvement was effected in the jail administration after 1816 when the new system came into being. Many of the magistrates also imbibed the humanitarian liberalism of Munro and reacted favorably to the eradication of the evils to which the prisoners were for years subjected.



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