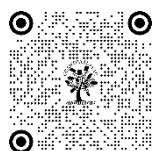


THE PRIVILEGED COMMUNITIES AND THEIR PARALLEL JUDICATURES IN THE PRE-BRITISH PERIOD IN COCHIN

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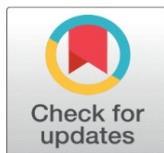
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ABSTRACT

Cochin was a princely state during the British period in India. Cochin became a subsidiary ally of the British in 1791. After this Britain began to control the native society of Cochin through their legal system. Even before the advent of the British, the Jews, Portuguese and the Dutch had different methods of dispute resolution mechanisms based on their own law in Cochin. Different kinds of judicial autonomy were exercised in the legal territory under the Cochin Raja's jurisdiction. When we consider the legal system of the pre-British period we have to understand the local judicial systems based on cast and religions. Not only is that, it is necessary to understand the early legal system of the Portuguese and the Dutch in Cochin. The pre-British legal system had some similarities in Travancore, Cochin and Malabar. Adjudication in these areas was based on prevailing customs and Maryadas. It was different from religion to religion and caste to caste. Cochin during the colonial period consisted of different communities based on their customs and usages there existed a wide variety of Practices. Immunity was given to Vaniyans and Kongani communities in certain cases. The Brahmin community in the state were also enjoyed some privileges in Cochin in the colonial period. To trace out the evolution of the judicial system of the region of Cochin, it is necessary to understand the early legal immunity enjoyed by these groups in the pre-British Cochin

Keywords:

1. INTRODUCTION

The legal system in the pre-British period was not uniform. Prior to the British rule, customs or *Maryadas* were the foundations of the administration of justice in Princely Cochin. These customs were believed to be more or less based on the *Dharmasastras*.¹ *Maryada* (custom) was the basis of administering judicial administration. The decision king was considered as the final law of the land. Caste assemblies had a dominant role in the administration of justice. If a case arises with other castes *Dharmasastra* was the common accepted law. The pre-British legal system of this privileged communities had some similarities in Travancore, Cochin and Malabar.

The Jews, Portuguese and the Dutch had different judicial systems based on their belief and customs. But it is interesting to note down that the different judicial system existed for these different communities were authorized by the Cochin Raja. Not only these groups immunity was given to the *Brahmins* in certain matters. In the case of *Brahmins*, they were exempted from death sentence. The *Vaniyans* and *Kongani* communities were also enjoyed some privileges in Cochin in the pre-British period. For the natives, customs and *Maryada* was the basis of law and *Dharmasastra* was considered as the supreme code of law. The punishment for the crimes was were very cruel and harsh. Sometimes the punishment was based on a moral sanction inflicted upon the culprit. But the privileged communities were exempted from the legality of the state. An entirely different legal system was working within the jurisdiction of the raja of Cochin with his permission. An act that was usually considered as a crime in the legal territory of the Cochin state was excused for the privileged groups as they were practicing a different legal system. For the same crime, the different system of punishments was also practiced. Disputes were aroused when there were conflicts between the natives and the privileged communities.

Various native groups, associated with the Portuguese and the Dutch took advantage of this system and claimed judicial immunity from the Raja of Cochin. During the time of Sakthan Thampuran more centralized mechanism of legal order came into existence and the British took privilege of the system by the agreement of 1791.

2. THE PARALLEL JUDICATURES OF COCHIN

Late medieval and early modern Cochin was highly complex with caste ridden society, unstable administration, external intervention and apolitical treaty. All these directly or indirectly affected legal practice. The groups that were capable of exercising control over the administration decided their own laws and jurisdiction. First, this was practiced by *Namputhiri* Brahmins who controlled administration with their knowledge and caste privilege. Secondly, due to the unstable administrators who ruled for a very short term, weakened the authoritative character of the ruling dynasty. Like elsewhere, Cochin witnessed massive external intervention which started with the Jews and passed on to the Portuguese and Dutch and concluded by the British. Such groups practiced their own legal system and unlike British, they gave exemptions to their allied groups that made judicial practice in Cochin with parallel territory possible. This was due to the apolitical treaty; native Cochin gave much more legal exemptions to the immigrant society for a reason that the king assumed them to be paying more tax than the locals. Here, the base of the judicial administration was determined keeping in mind the economic interests, so naturally superstructure was reformed by the capitalist in their own way. With the reign of British, modern legal system was implemented.

3. JEWS AND THEIR JUDICIAL AUTONOMY

Like every other *Jewish* Diaspora, Jews of Cochin was a closed community to a certain extent. They were traders and it brought to them various privileges in the judicial process. They were very few in numbers and most of them concentrated on the western most part of Cochin. Firstly, their very basic need was to establish *Synagogues* which the native rulers supported along with other such basic needs. Gradually, this group began to hold so many exemptions in tax payment.ⁱⁱ The irony was that the judgement against a *Jewish* culprit was based on the Jewish law and its interpretation was only possible by a Jewish who may or may not be a judge. These laws were interpreted in the book 'The Talmud'.ⁱⁱⁱ Some laws are given in 'Torah' - the Jewish holy book and some were in 'Halakha'.^{iv} Biblical laws and commandments were mostly based on Halakha meaning the 'the Way to behave'.

The life of Jews in Cochin was conducted strictly according to an internal legal system which is called *Shulhanarukh*- An orthodox code.^v Even the Mother tongue was Malayalam, Jewish children of Cochin studied Hebrew by reading this code as a customary practice, and Jews were very exclusive practitioners of religion so they always practiced a unique legal code within their social life.^{vi} Even from the time of early migration, Jews had a separate governor having jurisdiction over their affairs except for collecting tax as it was retained by the King.^{vii} Native rulers of Malabar and Cochin had a custom to offer privileges to their favourites in the form of land and protection of their religious rights which the *Jews* also received from Basakara Ravi Varman.^{viii} The earliest records about the Jews were dated 1344 in *Angadi synagogue*.^{ix}

4. THE PORTUGUESE LEGAL SYSTEM IN COCHIN

The early colonial legal engagements of the Cochin were by the Portuguese and the Dutch. The Portuguese had a short time in Cochin even though they had established their own legal system. They didn't acknowledge the authority of Cochin Raja in legal matters^x. The openly proclaims that they were under the Portuguese law and the authority of the Pope. They insisted that all the Christians in Cochin had to be under the control of the Portuguese legal machinery. But the legal ambitions of the Portuguese were short lived as they were conquered by the Dutch.

Due to frequent confrontations with Zamorins of Calicut, the kingdom of erstwhile Cochin under the leadership of Kerala Unniraman Koyikkal Thirumulpad of 1500s had a better alliance with the Portuguese. Zamorins of Calicut was relatively in a better position. But in the confrontation of 679 ME, Cochin Kingdom acquired an upper hand with the help of Portuguese. But in 680 ME, some disputes regarding the position of *Peumpadappu Moopil* erupted in the state. With the support of Almeida, the then Portuguese Governor in India acquired the position of the *Perumpadapp Moopil*. Portuguese of Cochin acquired special privileges this time onwards.^{xi} The fundamental need of Almeida and later Viceroys was a separate jurisdiction for Portuguese and also for Christians who were converted from native religion.^{xii}

The basic reason for the privileges of judicial system that were given to the Portuguese was a result of personal interest by Unniraman Koyikkal. But later it was presented in the form of privileges given to the trading community. Portuguese had intervention policy in every region which brought an upper hand for them in social affairs and their primary need was considerable relaxation in the adjudication process. It is interesting that to safeguard the the interest of a native or

foreign ruler, a parallel power structure was emerged within the state. Very interesting thing is even Zamorins of Calicut offered special privileges and separate judicial territory to the Portuguese for getting the support of Portuguese armed forces. This offer was denied due to the fact that Cochin had more geographical advantage as a port than Calicut.

Within a short span of time, Portuguese gained an upper hand in every administrative process of Cochin. From the reign of Unniraman Koyikkal II and up to the period of Ramavarma II Portuguese had a considerable role in the civil and judicial process of Cochin. Within a short duration after the coming of Portuguese, the administration of erstwhile Cochin became passively under the control of Portuguese king Manuel I.^{xiii} Barbosa mentions that the kingdom of Cochin was a vassalage of *Zamorin*^{xiv} and this Vassalage was again fragmented into five, they were *Nair* land lords. In early days Portuguese were in a close alliance with the Nair nobles that later led to the association with the king which made native Cochin more of an independent region than just a vassalage.^{xv} The Portuguese intervention also gifted it the territories like Vadakamkore and Purakkad of South Cochin. In the first half of 16th century, the Portuguese possessed a considerable power and their first cultural intervention was the conversion to Christianity. The natives were impressed with Christianity only because of the legal privileges given to them as Christians. The power relations were propagated by the Portuguese as a separate territory within the country due to a unique jurisdiction. Their prime objective was to control the judiciary in their own way. It was a compromise that judicial division of Cochin made in a semi-pluralistic way. A parallel system of judiciary had been practised for almost 300 years.

Some of the technical terms of judiciary with Portuguese terms still used in India reflects the prominent position the Portuguese once held in India during late medieval period. But in the case of Cochin, it was different. Portuguese were neither prominent nor influential in the judicial process^{xvi} even though the earlier forms of court was their contribution. It was only because they needed to give a structure to the system that existed in their favour. The serious intervention of Christianity also happened during this period.^{xvii} So they got special privileges in Criminal civil jurisdiction claiming the supremacy of Pope more than the Raja of Cochin and they were protected even from the taxation of Cochin. Portuguese got special privileges from the land but their influence was much lesser in the legal system of Cochin compared with other regions of India. Later Portuguese were driven out by the Dutch in 7th January 1663.^{xviii}

5. THE DUTCH JUDICATURE IN COCHIN

The Dutch had a clear-cut legal system in Cochin. The system of appointing government pleaders was started by the Dutch. The government pleaders were known as *Advocate-Fiscal*, by this he had to contest on behalf of both the parties^{xix}. The peculiar thing is the procedure was in Dutch language. There were interpreters helped the parties to understand the language. The *Christians* comes under the Dutch domination by the treaty of 1663^{xx}. The judicial authority of the raja of Cochin was encroached by the *Kongani* community of Cochin. They were given special concession in the Dutch rule.

As per the treaty between Dutch East India Company, Portuguese and the Raja of Cochin, the administration of the native kingdom was handed over to the Dutch. Governor General Rykloff-Van Gones became the administrative head. By this treaty company got some rights and privileges as the Portuguese got in Fort Cochin and her dependents.^{xxi} In exchange for military protection Dutch received special privileges. It was just like an enforcement of power in two forms by which Rajah of Cochin believed that Dutch would protect his territory and power from outside intervention. On the other hand, Dutch took privileges to control freely their property within the territory. These two forms of power acted like a center and periphery and the basic relation between this center and periphery was decided by the forms of power.^{xxii}

The Dutch had a prominent role in the administration of certain territories of Cochin. In Mattanchery, Chellayi and Amaravathi the Dutch exercised civil and criminal judicial powers over the *Christians*, *Vaniyans*, *Thattans* and *Konganies*.^{xxiii} Even though the *Namputhiris* were the privileged community regarding the legal practice, they were law abiding citizens with certain exemptions. But the case of Latin Christians was different. They were within a parallel judicial system while practicing the law but living in a common political territory. So, they exploited these privileges granted by the Portuguese and the Dutch to lead a parallel life with more crimes and less punishments. A nominal tax was levied on them that later led to various conflicts. Sometimes low caste Hindus practiced conversion as a chance to avoid punishments for the crimes they committed. Later Rajah of Cochin, worked particularly on imposing a comparable rate of tax in 1776 with the permission of the Dutch. Their disenfranchisement started from there. Ramavarma purposefully made an intervention on all privileges of Latin Christians and his major argument regarding the payment of tax and the practice of judiciary was that 'if the Syrian Christians were always a loyal community, then why the Latins were not?' This confrontation in the land later gave a better position for Syrian Christians during the reign of Ramavarma to settle as traders even in the bustling urban centers like Thrissur and Thripunithura.^{xxiv} The interesting thing is *Namputhiris* of Cochin always enjoyed certain privileges more or less in every administration up to the establishment of

the democratic government. The fundamental notion of how knowledge frames norms and how norms normalized the strongest tool of power.^{xxv}

The case of Dutch was different. They got special privileges in the administration of justice and was placed the chief administrator. Apart from a provision to establish a parallel court named 'small court', They also got decision making power and the power of execution in matters of civil and criminal procedure. These provisions were granted on account of their defeat of the Portuguese. It is to be noted that their entry was not only in terms of trade but in terms of power also. They also received special privileges similar to what was granted to the Portuguese earlier. For instance, the Christians, who were a privileged people under the Portuguese, directly transferred their jurisdiction to Dutch. This meant that the adjudication process against the crime of a Christian was restricted to a judge of the Dutch East India Company. It is evident in the case of quarrel between *Malabar* and Christians, the company appointed a Dutch judge for adjudication of the Christians and Rajah led the adjudication process of the *Malabar*.^{xxvi} These special privileges encouraged the conversion process among the native people. The system made two parallel privileged communities, in the case of *Rajah* special privilege was given to *Namputhiris* and in the case of Dutch it was Christians.

6. THE DUTCH RELATION WITH THE KONGANIES AND THE VANIAS

After a long period, the interests of the Dutch were redefined. To promote their pan Indian Trade, especially that which concentrated on the western coast, they supported many trading communities. The migration of *Konganies* from Goa to Cochin was also for the trade. Dutch East India Company was highly impressed by the fact this development. So the *Konganies* got such legal privileges during the quasi administrative reign of Dutch East India Company in Cochin as coining Their legal jurisdiction was also transferred to the Dutch East India Company. ^{xxvii}

Konganies were the modern migrant community but the earlier trading community named *Vania* also got privileges from the Dutch East India Company. *Vanias* of Cochin were a trading community who migrated through the Konkan coast mostly and slightly through the coromandel coast. Dutch East India Company had a better trade relation with this community especially in cotton trade. This trade relation led them to receive a favorable position under the Dutch. The legal practice of this caste was also transferred from Rajah to Dutch East India Company.^{xxviii}

During the transfer of power, the British affirmed legal privileges enjoyed by the *Konganies*, *Vanias*, and Christians. But the articles regarding the jurisdiction and adjudication in the treaty was little different. The treaty allowed the Dutch inhabitants to remain in Cochin after being subjected to the British laws.^{xxix}

In a case of 1813, regarding the imprisonment of Anatha Chetty Babu Raman, Baniya (Vaniya) Merchant and Chemary Avara, a notable religious leader's role was decisive in making the final conclusion of the reinterpretation of judicial territory which was the primary point of confrontation between the three agencies of power. According to the Raja, all of them belonged to the erstwhile Cochin. But the Dutch argued that they were in Cochin but living in their own judicial territory. British interpreted the kings as the final word. The case proclaimed how a body became an agency of a nation but what piqued the special interest of these three groups was that these persons belonged to two of the high tax payers of the territory. The body of a common man/layman is not a nationalist body but the body of upper crest denoted the entity of power.^{xxx} Only for these two persons, Dutch Magistrate of Cochin, J.H. Person, wrote several letters to John Munro, the then resident/Diwan of Cochin for the acquittal.

A letter dated March 11, 1813 was the first one which claimed the two imprisoned persons were under the jurisdiction of Dutch so was to be released. Without waiting for a reply from Munro, Pearson again sent a reminder arguing that they were privileged citizen in terms of judiciary in the letter dated 24th February. A magistrate always staked claim to the prisoners as their own citizens. These persons can be interpreted as 'Judicialised Body', which created a sense of political consciousness for their economic benefit.^{xxxi} The establishment of Dutch court-A European court was the basic establishment to be done for the practice of law for Dutch as they also came from the west. Once this group deconstructed the power structure, they reconstructed it in their own way. *Banias*, Migrant from Gujarath and *Konganies*, Migrants from Goa, being the high tax payers and highly influential, received privileges from the Dutch but in the case of Christians, privileges were linked to an offer in a treaty between the Dutch and the Portuguese. All these testify to the fact that power defines social body.

British resident John Munro, in his reply to Pearson, claimed that Dutch had judicial power only in subordinate matters and only for 30 years – the duration of the treaty. The *Konganies*, *Banias* and Christians were as same as any other citizens living in native state of Cochin. taxes and fine were also not given to the king. The two parties interpreted the treaty in their own way and claimed their rights but what happened was that the material presence of the body that was imprisoned by the third party, i.e., the native ruler of Cochin, could be released by any of this party. The body was the

focal point to interpret judicial territory. Pearson sent a reply to Munro, in which he interpreted the treaty in his own way or the Dutch way by citing articles 1 to 5 and reminded of the paying 3,000 Rupees to the native rulers during the attack of Tippu. All these interpretations actually focused on the monetary benefits and the same formed the base for the claims raised by three parties. This was an example of Authoritative Legal pluralism which placed law in different hands allowing different interpretation but the very interesting thing is 'there was a law'.

The year 1814 witnessed a major change in the legal History of the colonial Cochin. The judicial privileges given to the native sections like Christians, *Kongani* and Baniya were taken away. It was the result of a power tussle between Dutch, Raja of Cochin and the British. Three of them interpreted the textual references on the treaty regarding territorial demarcation and judicial practice in their own way. This reflects the Roussovan point of view on how a legal treaty or text could be defined.^{xxxii} All these interpretations led to a final conclusion that the interpretation of the most powerful agency would be placed as the system. Finally, the British decided to stop the judicial privileges and proclaimed all the persons who was living in the geographical territory of Cochin was the citizens of Cochin and under the legal jurisdiction of the Rajah of Cochin.

7. CONCLUSION

The legal system currently in India bears very close resemblance to what the British left to us. The legal History of Cochin would be incomplete without recognizing the Portuguese and the Dutch contributions in the legal realm of colonial Cochin. The compromise in the process of judicialization was in fact an economic deal through which the Cochin Raja and the colonial powers ensured their portion of revenue. The Agamben's concept of body defines territorial body as 'Homo Sacer', which defines a citizen as nothing but a body which influences every social measure like class, religion and castes.^{xxxiii} Trading communities like *Baniya* and *Kongani* denoted class and castes and the Christians denoted the religion, so it was due to the culmination of all these factors, a group of people became judicially privileged.

ⁱC. Achyuta Menon, *The Cochin State Manual*, Ernakulam: Cochin Government Press, 1911, p. 437

ⁱⁱ Ruby Daniel and Barbara C. Johnson, *Ruby of Cochin: An Indian Jewish Woman Remembers*, Varda Books, Illinois, 2001, p. 74

ⁱⁱⁱ William Kremer, 'The Talmud; Why has a Jewish Law Book Becomes so Popular', *BBC Magazine* 8th November 2013, pp. 17-19

^{iv} J.B. Segal, *A History of Jews of Cochin*, Vallentine Mitchel, London, 1993, p. 10

^v Joseph Davis, 'The Reception of the Shulhanarukh and the Formation of the Ashkenazic Jewish Identity', *Association for Jewish Studies*, Nov 2002, Vol 26, No.2, 2002, p. 281

^{vi} David. G. Mandelbaum, 'The Jewish Way of Life in Cochin', *Jewish Social Studies*, Vol 1, No.4, Indiana University Press, 1939, p. 425

^{vii} Ibn Batuta, *Travels in Asia and Africa*, (Tr.) HAR Gibee, 1929, p. 238

^{viii} David. G. Mandelbaum, *Op.cit.*, p. 427

^{ix} Achutha Menon, *Op.cit.*, p. 577

^xA.Madhavan, 'The Evolution of Judicial System in Kerala', *The Kerala Law Journal* Ernakulam, 1963, p. 32

^{xi} Unknown Author, *Kochirajya Charihra Kathakal* (Mal.), Sahitya Academy Library, p. 52

^{xii} A. Madhavan, *Op.cit.*, p. 5

^{xiii} *Kochi Rajyacharithra Kathakal Op.cit.*, p. 53

^{xiv} Mansel Long worth Dames, *The Book of Durate Barbosa Vol I*, Hakluyt Society, London, 1918, p. 288

^{xv} T.I. Poonen, *A Survey of the Rise of the Dutch Power in Malabar 1603-78*, St.Joseph's Industrial School Press, Thrisinapally, 1948, pp. 255 -256

^{xvi} Frederic Charles Danvers, *The Portuguese in India Being a History of the Rise and Decline of the Eastern Empire*, Vol I, W.H Allan & Company Ltd, London, 1894, p. 464

^{xvii} A. Madhavan, *Op.cit.*

- xviii Papers relating to Cochin with Special References to the *Dutch possession and Claims and to the British Rights Arising the Reform*, Selections from the Records of Fort St George, Government Press Madras, 1915, p. i
- xix *Ibid*
- xx *Ibid*, 33
- xxi Enclosure to Letter from the Resident at Travancore-Record of Judicial Consultation, *Treaty between the Rajah of Cochin and the Dutch East India Company*, Selections from the Records of Fort St. George, Govt. Press, Madras, 1915, p. 1A
- xxii Paul Kurgman, *Geography and Trade*, MIT Press, Massachuset, 1991, p. 119
- xxiii Papers Relating to Cochin with Special References to the *Dutch Possession and Claims and to the British Rights Arising the Reform*, *op.cit.*
- xxiv C. Achyuta Menon, *Op.cit.*, pp. 160-161
- xxv Tony Bennat, *Op.cit.*
- xxvi Enclosure to Letter from the Resident at Travancore dated 3rd October 1812, Recorded in Judicial Consultation 13th November 1812, *Treaty between the Dutch East India Company and the Rajah of Cochin*, 1663 p. 1A
- xxvii Article IV, *Enclosure to Letter from the Rresident at Travancore* dated 3rd October 1812, Recorded in Judicial Consultation, 13th November 1812, *Treaty between the Dutch East India Company and the Rajah of Cochin*, 1770
- xxviii *Ibid.*, Article II
- xxix Article 18, *From Logans Collection of Treaties Relating to British affairs in Malabar, The Dutch Capitulation of Cochin*, 1795, p. 115
- xxx Talcott Parsons, 'Max Webber, The Sociological Analysis of Power and Authority Structure', *The Review of Politics*, January 1942, Vol. IV, No.1, pp. 61-62
- xxxi Paul Vinogradoff, 'Judicial Persons', *Columbia Law Review*, June 1924, Vol. 24, No 6, p. 595
- xxxii Roger D. Masters, 'On Reading Rousseu', *Studies in Romanticism*, John Hopkins University Press, 1971, Vol. 10, No 4, p. 249
- xxxiii Giorgio Akamben, *Homosacer: Sovereign Power and Bare Life* (Tr. By Daniel Heller Roazen), Stanford University Press, California, 1998, p. 71