

RULE OF LAW AND MUNRO SYSTEM IN BRITISH MALABAR

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Abstract

This paper makes an in-depth scrutiny of the Munro System and its working and further reforms which provides the emergence of a more equitable social and legal order in the Madras Presidency in general and Malabar in particular. Munro was an enlightened neo-imperialist and he followed a clear departure from the Cornwallis system and reorganized the necessity and importance of the principles of association of Indians in the administration of justice and *Indianization* of institutions. His views and arguments are highly rational and convincing and his suggestions were exhortative and persuasive. The major guiding principles that streamlined Munro system were the principles of *Rayathwari* settlement, toleration of customs and conventions, justice by *Panchayath* and religious neutrality.

Keywords

Judiciary, Colonialism, Legal system, Modernity, Customs, Regulations, Justice, *Adalath*, Court

Introduction

As part of the treaty of *Srerangapatanam* in 1792, Malabar was annexed as a separate province of the Bombay Presidency. Later Malabar was put under the Madras Presidency in 1802 for the better judicial and administrative purpose. Cornwallis realized the necessity of framing regulations for the efficient administration of the new acquisitions on the Malabar Coast. A close scrutiny of the Cornwallis system reveals that the system was an attempt to build an administrative structure from above. The long prevailing institutions that were organically related to the social set up of the region and the mental makeup of the people had been radically modified and in some instances, entirely wiped out as part of the implementation of Cornwallis system. It may be noted that for Cornwallis codification of rulers connected with administration was almost an obsession with the result that all minute aspects of law were painstaking, codified that created, as observed by *Malcom*, despotism of law having a binding effect upon the rulers and the ruled. But administrators who followed Cornwallis were more considerate and sympathetic towards

existing Indian institutions. Hence they were persuaded to provide a new orientation to the prevailing old system and they found that liberating themselves from the rigid codes was a Herculean task owing to the influence of the despotism of law. It was clear that Cornwallis stood for the political and administrative policy that attempted to strengthen the racial supremacy of the white and the superiority of the English institutions.

A conspicuous defect in the scheme of 1793 was the exclusion of the Indians from any effective share in public administration. Cornwallis started with a wrong premise that the Indians from their character and bearing were unworthy of holding any position of responsibility and trust and that they could be employed only in humble positions. But in future Indians gradually secured an increasingly larger share in the function of administration to justice. This patronizing attitude was insensitive and often callous with the result that the reforms failed to integrate with the native society. This highly orthodox and reactionary political stand was based on the unbalanced perception that the Indians were untrustworthy and hence they should not be appointed to any responsible post in the government.

Munro system

To overhaul the old system and to infuse new life into the administration of justice, *Col. Munro* was appointed the first Commissioner. As part of the effective implementation of his reformed and progressive system, Munro took pains and conducted a tour all over the land where he proposed to try his scheme of administration and did an impartial study of the prevailing conditions and changes in customs, conventions, manners and institutions with regard to the locality. He had to countenance formidable difficulties in matter of collecting information from the judicial officers who were firmly opposed to his views and the proposed reforms, as they believed that this was a veiled attempt to abolish the system to which they were attached and to throw them overboard. But finally Munro's opinion prevailed in the end and bore down all opposition, which ultimately paved the way for the transfer of the whole civil administration of the country into the hands of Indians, to their own great moral resuscitation and increased material benefits to the country. With these cautions and preparations, he prepared and perfected his policy to the extent to which it is practical and pragmatic so that the scheme would be in harmony with the dominant concepts of the majority of Indians. In addition to these, there were many other factors and reasons which prompted him to accept the policy of *Indianization* of administration. In the light of the mistakes committed by the early administrators of India, he stated as follows which reveals his stature as a genuine statesman, "We make laws for them [Indians] as though they were Englishmen and are surprised that they should have no operation. We forget that one great principle, the freedom of the people from which they derive their influence, does not exist here".

The following facts related to the background of Munro's system and the historical unique distinction of being the first official of the East India Company to negate the Cornwallis system by putting forth an alternative method of approach. Munro regarded law as the means to achieve equitable justice which made him a liberal in policy. Cornwallis regarded law as an end in itself which made him dogmatic in outlook and implementation of policies. As *Marshman* observed, "there was in fact, too much law for there to be much justice". With his progressive and liberal attitude towards Indians and their problems and his total dedication to the principle of justice, Munro secured a very high place in the heart of Indians. The major guiding principles that streamlined Munro system were such as principles of *Ryothwari* settlement, toleration of customs, justice by *Panchayat* and religious neutrality were comprehended and assimilated by him during his official tenure as assistant to Col. Alexander Read. Later on when he became a collector, he learned the practical application of three principles which he amplified in a more comprehensive manner as he become commissioner and Governor. In his evolution as an administrator of excellent caliber, Duke of Wellington and Col. Mark Wilkes exercised notable influence. But more than to anyone else, his integrated and alien compassing development of the ideas related to proper administration drew nourishment out of his own experience, attentive and conscientious historical research, sincere sympathy and the insightful intelligence that he devoted in that direction. It was self-evident that he was no lazy and negligent traveler in India in search of a job; he took to the field of administration with clan and dedication and with attention and patient examination, carved out viable and more perfect system of judicial reform that drew applause from the coming generation of people as well as administrators.

As a central principle of administration, always a legislator should attempt to integrate the native people with the system of administration imposed on the soil. Hence Munro stated: "We can never be qualified to government against when we are prejudiced. If we entertain a prejudice at all, it ought rather to be in their favor than against them". Though Munro's policy had been inspired by an underlying current of imperialism, it had the highly distinguishing positive aspect of being infused with the spirit of enlightened approach which made it all the more constructive and progressive in solving Indian problems faced by the British. The primary object of Munro's system was "good government". Which would eventually enable the natives to have a, "self-Government". Robert Ricketts told a Select Committee of the House of Lords; "such indeed is my opinion of native Indians, that I think they might be trusted with greater judicial authority, and employed in higher offices, than are now conferred on them". In every sense, especially in those days, it was a radical and progressive outlook on the part of colonial administrators. Col. Munroe brought peace and prosperity and rule of law in Malabar and leading her in the right path on the road to radical progressive modernity and her present eminence. It is all the more notable that Munro made this radical and constructive shift in his outlook regarding the relationship between the rulers and the ruled when the colonial people could not even have a distant idea about this ideal. His statement in this context is to be especially examined: "We should look upon India not as a temporary possession but as one which is to be maintained permanently until

the natives in some future age have abandoned most of their superstitions and prejudices and become sufficiently enlightened to frame a regular government for themselves and to conduct and preserve it. We shall see no reason to doubt that if we pursue steadily the proper measure, we shall in time so far improve the character of our Indian subjects as to enable them to govern and protect themselves”.

Munro was the representative of a new category of British administrators who were led and inspired by the ideology of neo-imperialism that argued for the inclusion of Indians in the colonial administration. He was a man of imperious qualities who had the courage not only to arraign the prevailing system but also to stand forth single-handed as a champion of Indians and an initiator of a more generous and enlightened policy. He was disdainful of the criticism that sought to deter him from his purpose and had inaugurated the liberal school of neo-imperialism, characterized by the policy of association of Indians in the administration of the country. He wrote the following words to Lord Canning on June 30, 1821, “Our present system of Government, by excluding all natives from power, and trust and emolument, is much more efficacious in depressing, than all our laws and school-books can do in elevating their character. The improvement of the character of people, and the keeping of them, at the same time in the lowest state of dependence on foreign rulers to which they can be reduced by conquest, are matters quite incompatible with each other”.

With political insight gained from their experience of ruling India, they realized that exclusion of Indians from the government of their own country was a deplorable policy which should be avoided by a good imperialist government. A policy of administration devoid of the oneness and equality of all subjects belonging to the empire would create discontent in the mind of the ruled. British Empire looking proper integration between the rulers and the ruled would be a burden and constant source of political trouble to Britain. Hence by resorting to the administrative policy of appointing Indians in public service was an effective defense against the political unrest and a means that will later on integrate the system. It was perceived that ignoring the time old institutions of India in the system of administration was indicative of absence of wisdom on the part of the British.

In having this lenient attitude and showing flexibility of approach, his primary guiding principle was to perfect and not to destroy the already existing practices, to revise and not to radically restructure the Indian system. Whenever he decided to change the system, it was undertaken with a wish to strengthen or perfect the same and not to radically restructure it. Munro was not in favor of changing the form of administration. His major aim was to introduce a shift in character and orientation of Indian administration which he achieves in a striking manner. In the initial stage of the company administration in Madras it was toyed with idea of introducing permanent settlement of Bengal in this presidency also. In 1798 Richard Wellesley was in favor of the Bengal system would be established in Madras. But the Court of Directors held that no permanent revenue should be established without a better knowledge of existing system of tenure in these territories and rejects the idea. Later under the Governor generalship of William Bentick, Thomas

Munro was successful in able to convince him to the merits of the *Raythwari* system of revenue administration and it was adopted as general system in Madras Presidency in 1805.

The Reforms of 1816 were framed and implemented in the Madras Presidency by Sir Thomas Munro exclusively to extend, support and amplify this policy that primarily aimed at the creation of an enlightened attitude among the natives with a view to form negative government for themselves. The justice administered by the company was lax and costly and the cure of the entire malady lay in admitting Indians more freely to judicial administration. There were many obstacles and hindrances to be overcome for the fulfillment of the aim of the evolution of grad government. Initially, there was mutual ignorance about each other regarding their respective character and intention. Now that the Indians were in a subjugated position, they looted at the British with suspicion and fear because they deemed them to be their autocratic masters bent on political domination and economic exploitation. Their outlook and sensibility remained closed system embodying darkness of ignorance and irrational concepts for centuries so that it was not easy for the enlightened approach of the British to succeed. The British administrators had to take extra caution to strengthen the foundation of administration so that it would successfully resist the onslaught of these reactionary and negatively orthodox outlooks on the part of the ruled. At the same time it should be observed that the British people had no genuine love for the people whose destiny they had been shaping.

On account of the political, cultural religious and social differences that separated them from Indians, they could not live among the Indians on equal footing; also they could not live for the people as equals. In their heart of hearts, they had little respect for Indian ways, customs, conventions and institutions. Often they deemed Indian peculiarities of existence bad and deplorable because they were Indians. Hence there existed a considerable gulf between the natives and their masters. Another tangible defect of the system was that in the initial period of English rule, the administrative officers did not have sufficient experience and adequate knowledge of local conditions and conventions as a result of which they committed many serious mistakes so that the helpless natives had to approach one source of authority after another in search of justice. Yet another handicap experienced in those days was related to the inadequate means of communication so that the distance to be covered for the transmission of messages related to administration created a considerable barrier causing much delay which often amounted to denial of justice. A very important idea that emerged in the mind of the British was that adoption of separate rather than general and uniform principle of government should guide the British policy on account of the existence of tangible difference in the degrees of culture, economy, morality and religious prejudices that existed in diverse regions of India. When Lord Cornwallis started tackling these barriers and hindrances related to the implementation of the reformed system, initially he was at a loss as to how to face and overcome these multitude of obstacles. When he started the business of administration, he had the British hard stick to measure and evaluate the Indian customs and conventions. The cordial difference that distinguished Munro was that he accepted India as it appeared because he believed that "it is one of the primary obligation of a

government like ours to suit its rules and reforms of local administration to the conditions of the people, to provide every establishment which it may require and not to withhold anything which may be necessary to its efficiency for the sake of avoiding either labor or expense” .

In accordance with the direction contained in the dispatch, Col. Munro got instructions to go to Madras as the head of the commission to implement the orders and recommendations of the court of directors. While recommending his name as the Head of the commission, they stated as follows; “the extensive knowledge and experience of Col. Munro in the interior administration of affairs under your presidency have induced us to deviate in his particular instance from the rule which we have laid down of not employing military officers in civil situations” . The chief secretary instructed the government of Madras to direct Munro to conduct enquiry and report on the means suitable for effecting the modifications proposed by the court of directors in the judicial dispatch dated 29th April 1814 and to outline in detail as to what extent these modifications could be introduced. Also he was expected to answer the objective for the adoption of reforms and measures for the improvement of the existing system. For the proper functioning of his office and to know more about present legal system he was enjoined to correspond with the Board of Revenue, the court of *Sader Adalath* and also with magistrates and collectors and the subordinate courts of judicature

From the officers in the judicial department, there was a staunch and concerted opposition to the appointment of Col. Munro as the first Commissioner as a result of the proceedings of the court of directors, the judicial officers that the Court of Directors intended to eliminate the prevailing judicial system and to expel them from their profession. The directors who fore saw the opposition gave them assurance in repeated dispatches that their intention was reform and not abolition of officer. They categorically stated that the modifications would not involve,” the introduction of any novel or untried principles nor any essential departure from ancient and long established order of things but rather the revision and amendment of one of recent creation which has existed a few years only in the province” under the presidency of Fort St. George . In spite of these assurances, the judicial officers considered this new step as an unthinking attempt to eliminate a system which had been whole heartedly praised as a monument of human wisdom”, a plan which was solid, wise and has proved beneficial to the country” Hence the counter-move of the judicial department impeded the progress of the commission in its every stage of action.

While acknowledging the receipt of the instructions, Col. Munro mentioned that the recommendations specified to be incorporated in the police and magisterial departments were the most important aspect of the proposed reform. But before the actual implementation of the reforms, Munro pointed out that he should develop close familiarity with the present state of these respective departments. To develop the close familiarity with the existing system, he mentioned that he should be provided with the proceedings of the committee of general police that were prepared in 1805 and 1806. Further, he required the reports and statements and other relevant documents based on which the reports of 1805 and 1806 were

prepared. Since the instructions of the court of directors were in favor of changing many regulations, Munro believed that another commissioner also should be appointed. In accordance with the desire of Munro, on 3rd January 1815, Mr. George Stratton was appointed second member of the Commission and third judge of the *Sader and Foujdary Adalath* by the Governor-in-council. After scrutinizing the report submitted by Col. Munro to the Government of Fort. St. George on 24th December 1814, the Governor-in-Council divided it into three different sections, that is, the established system of judicature, the present police arrangements and the administration of criminal justice. The supervision of these three sections was handed over to the *Sader Adalath*, the Board of Revenue and the commission. The measures of administrative reforms and regulations required on their part were clearly formulated as part of eighteen separate resolutions. In addition the commission was instructed to supervise the specific details of the proposed plan.

It is to the credit of Sir. Thomas Munro, to note that, the whole project of reforms had its origin with his original vision regarding administration and enthusiasm for initiating progressive changes in the system. Being the originator of this reform, he was quite eager to translate it into administrative practice. He was of the conviction that after the implementation of the reforms its defects can be closely observed and positively rectified .

Conclusion

After two centuries since the reforms were implemented by Munro, with hindsight, we examine and evaluate the changes effected by Munro and come to the conclusion that the original vision and the official position that inspired Munro to frame and implement the reforms had a far reaching and quite impressive consequence with respect to the self-governing ability of the natives and the evolution of self-governing institutions in India. The concept of enlightened despotism coupled with paternal consideration acted as the background for his set of reforms which were eagerly accepted and followed by the successors belonging to the imperial Government, making them able administrators and effective reformers and his arrival marked a new spirit which was infused into the dead-wood of British Indian administration. He symbolized in himself the new liberal ideals of liberalism and ideals of political philosophy and he set out to be their exemplar during his stewardship of the company's extensive dominions.

In the articulation of suggestions and administrative reforms, many successors of Munro appear to be echoing the ideas and principles originally expressed by their great predecessor. As Macaulay observes, in his speech on the Charter Bill of 1833 "The destinies of our Indian Empire are covered with thick darkness. It may be that the public mind of India may expand under our system till it has outgrown that system; that by good government we may educate our subjects into a capacity for better government. To have found a great people sunk in the lowest depths of slavery and superstition, to have so ruled them as to have made them desirous and capable of all the privileges of citizens, would indeed be a title to glory all our own. The scepter may pass away from us. Victory may be inconstant to our arms. But there are triumphs which are followed

by no reverses. There is no Empire exempt from all natural causes of decay. Those triumphs are the pacific triumphs of reason over barbarism; that Empire is the imperishable empire of our arts and our morals, our literature and our laws. ” The attempt on the part of Munro and his successors belonging to the government to codify the practices and proceedings connected with administration of justice in Madras in general and Malabar in particular secured for him a title having glory and grandeur which in turn granted the people the talent for self-rule and genius of self-awareness. Thus, it became clear that the evolution and collective heritage of Indian legal system owe much in terms of the contribution of solid and sterling value from Munro during the history of colonial period.

BIBLIOGRAPHY

1. Acarya. B.K, *Codification in British India*, Calcutta, 1914
2. Arbuthnot, *Minutes and other Writings of Munro*, Vol.I&II,London,1881
3. Aspinall, A, *Cornwallis in Bengal*, Manchester, 1931
4. Baliga B.S, *Studies in Madras Administration*, Madras record office
5. Banarjee.A.C, *Indian Constitutional Documents*,Delhi,1945
6. Burton Stein, *Thomas Munro, The Origin of the Colonial State*,Delhi,1989
7. Dodwell, *The Cambridge History of India*,London,1928
8. Gleig, G.R, *Life of Sir Thomas Munro*, Vol. II, London, 1930
9. Jain. M.P, *Outlines of Indian Legal & Constitutional History*, Nagaur,1952
10. Kautilya, *The Legal History of India*, Bombay, 1997
11. Keith, A.B, *Constitutional History of India*, London, 1937
12. Macaulay, *Essay on Warren Hastings*, London, 1911
13. Malabari. P.B. *Bombay in the Making*, London, 1910
14. Marshman. J.C, *The History of India*, Delhi
15. Shastri.K.M, *The Munro System of the British statesmanship in India*, University of Mysore
16. Stokes. W, *Anglo-Indian Codes*, Vol. II
17. Sinha, *Significance of Cornwallis Judicial Reforms in Bengal*, Calcutta, 1969
18. Wigram, *Malabar Law and Customs*