

# COLONIALISM AND THE MAKING OF CRIMINAL CATEGORIES IN BRITISH INDIA

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## Introduction

The British imperial authority in the subcontinent always emphasized upon the goal of a 'modern productive' and 'moral and material progressive' India.<sup>1</sup> The project of 'modernization' that colonialism sought to carry forward in India has brought about institutional changes and fundamental epistemological conquest of the societies as well. This in Saidean sense was understood as 'Orientalism' where attempts were made to produce knowledge about the 'Orient' which in turn created a distinction between East and West or Orient and Occident.<sup>2</sup> The early colonial attempts of Orientalism created the fields for social scientific exercises and discourses in producing knowledge about the Orient. This was perhaps one of the major techniques of governance instituted by the British colonial masters in the non-western possessions. However, in doing so, the sustaining tendencies of Orientalism irretrievably altered the epistemological pre-colonial setting in the colony.

The technique of social scientific discourses of the colonial state was central to the maintenance of law and order in British India. This phenomenon is a derivative of Michel Foucault's concept of 'governmentality' which showed the shift in the basis of government from the notion of social contract to an 'order' and discipline based idea of governing and managing the population.<sup>3</sup> In his article entitled 'Governmentality', Foucault points out that the art of government underwent a transformation in the modern West from the eighteenth century onwards. Until then, the general principles of public law derived from the theory of social contract provided the basis for government. This changed when through a subtle process of interlinked developments in the economy, the idea of governing the population assumed centre stage, thus transforming the art of government into a science of government. Population thus emerged as a field of intervention and as an objective of governmental techniques. The juridical and institutional form given to the sovereignty

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1. Scholars like U.Kalpagam has worked on the colonial attempts of creating statistical knowledge of the Indians. See U.Kalpagam, 'The colonial state and statistical knowledge', *History of the Human Sciences* (Vol.13, No.2, 2000), p. 39.
2. Edward Said, *Orientalism* (New Delhi: Penguin, 2001), p.2.
3. Michel Foucault, 'Governmentality' in Graham Burchell, Colin Gordon & Peter Miller (Eds.), *The Foucault Effect*, (London, 1991), pp.87 -104.

that characterizes a modern state now changed, ushering in a new triadic link of sovereignty–governmentality–discipline replacing the older link of sovereignty–territoriality–discipline. The practices of governance keeping population as a target of interventions introduced by the modern colonial state in India, and elsewhere as well, ushered in a new sphere of engagement between colonizers and colonized.

This new field in colonial India promoted a scientific construction of criminality, where a section of colonized were identified and constructed as ‘criminals’ in the colony through the conflation of law, of crime and of new racial sciences. The attempts in India were similar to the technological environment in early modern England which sought to identify criminals with scientific accuracy.<sup>4</sup> The British colonial state in India, as part of establishing key sites of law and order constructed certain tribes, groups, castes and individuals as ‘criminals’. These criminal definitions came to play a prominent role in imperial criminal justice policies in India. This type of construction of criminality in the colonies also portrayed the stereotypical sense of the West who depicted the indigenous in the East among other things as ‘criminals’, ‘robbers’, ‘rebels’, ‘docile Hindus’, ‘fanatic Muslims’, ‘untrustworthy Arabs’, etc. Such nomenclatures were invented to describe those groups reacted against the colonial invasion and was an important tool in de-legitimising such local uprisings. It is as Edward Said has pointed out, ‘through this exercise, various colonial texts had made sweeping generalizations about the Orient, its culture, mentality and society’.<sup>5</sup> The discourses to label the non-Western population as inherently dangerous in the colony were also to alleviate its own fears and anxieties.

Studies on the typical colonial stereotypical portrayals of north India said to have emerged in the historiographical realm are the ‘effeminate Bengali’, martial races, and the ‘criminal tribes’. However, most studies on native criminality in colonial India have focused on the mid or late nineteenth century with special reference to the ways and reasons by which the native tribes, peasants and groups were labelled as ‘criminals’ by the colonial state. Native criminality is often regarded as the only means left for livelihood. As Ranajit Guha noted, ‘there were regions of chronic poverty, where for hundreds of years peasant youths have been slipping out of desolate villages and starvation and bonded labour in order to take to dacoity

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4. George Pavlich, ‘The subjects of criminal identification’, *Punishment & Society* (Vol.11, No.2, 2009), p. 171.

5. *Supra* n. 2, p.193.

as a profession'.<sup>6</sup> More pointedly David Arnold has argued that 'the colonial Criminal Acts were used against the marginals who did not conform to the colonial pattern of settled agricultural and wage labour'.<sup>7</sup> Sanjay Nigam too found that the category of 'criminals' was a colonial stereotype invented to justify the punitive 'disciplining and policing' interventions to sections of population that were unwilling to accept the new moral order that the British sought to impose on rural society.<sup>8</sup> The purpose of this article is to identify one of such constructions in south India, basically in the region of Malabar<sup>9</sup> where certain section of *Mappilas* were categorise as 'Jungle Mappila Bandits' epitomizing criminality by the British during the last decade of eighteenth century. It is argued that there were several attempts by the colonial state from the very beginning of their rule in Malabar to classify certain sections of the Malabar population as distinct from the rest. This characterization in Malabar was the first of its kind in south India, where the British attempted to construct criminal types to serve the imperial interests. The relegation of the recalcitrant native groups into criminality was preceded by conciliatory interventions to win them as 'useful' participants and collaborators of the colonial state. Paradoxically, these rebellions strengthened the hand of the colonial state and apart from repression allowed it to push the principles of the rule of law firmly into the public.

### **Colonial Construction of Indian Criminality: Caste, Race and Group**

Colonial construction of identity and criminological exercises in British India evolved around the ideas of race, caste and groups. This section of the article examines these themes through which the British constructed native criminality in India. Questions of public order and discipline had been a concern of British administrators since the establishment of East India Company's authority in India. The British quest to establish the notions of law and order and definable and reliable relationship between the colonizers

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6. Ranajit Guha, *The Elementary Aspects of Peasant Insurgency in Colonial India* (Delhi, Oxford University Press, 1983), p.84.

7. David Arnold, 'Crime and Crime Control in Madras, 1858 -1947', in Anand Yang (Ed), *Crime and Criminality in British India* (Tuscon, University of Arizona Press,1985), p. 85.

8. Sanjay Nigam, 'Disciplining and Policing the "Criminals by Birth": The Making of a Colonial Stereotype' *The Indian Economic and Social History Review* (Vol. 27, No. 1 1990), pp. 131-64; Sanjay Nigam, 'Disciplining and Policing the 'Criminals by Birth: the Development of a Disciplinary System, 1871-1900' *The Indian Economic and Social History Review* (Vol. 27, No.2, 1990), pp.257-87.

9. 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. During the pre-colonial period, especially between the late fifteenth and late eighteenth centuries, the region was a land of several kingdoms.

and the governed entailed the formulation of knowledge through various ethnological investigations into a wide range of questions on native society.<sup>10</sup> Initially, the quest to establish a definable and reliable relationship between the colonial government and the governed entailed the formulation of knowledge about the pre-colonial legal system of India. The central aspect to the control of the people of India at this time was thought to be establishing continuity with the ancient regime, which as Derret said ‘took the orthodox Brahminic learning as the standard of Hindu law’.<sup>11</sup> The Orientalist identification of the Code of *Manusmriti*<sup>12</sup> suggested the concept of hierarchical caste and the related notion of *dharma* as the legal keys to unlocking pre-colonial judicial India. High-castes, by virtue of their greater privilege, occupied key positions within the criminal justice system. Outside the four-fold hierarchy were the untouchables and the criminal castes and tribes. The pre-colonial Indian notions of policing and justice were in agreement with the caste hierarchy wherein offences were defined and penalised according to caste, respectability and social norms.

By internalizing the knowledge of the high-castes, the early colonial officials established key sites of ‘law and order’. Caste definitions assumed a more concrete form, not only in a social and political capacity, but also in the construction of caste-related criminality. Thus, Warren Hastings’ plan for the administration of justice in India assumed that indigenous norms could be incorporated into Western-based legal texts without significantly altering the laws of the *Quran*, with respect to the Mohammedans and the laws of the Brahmin *úâstras* with respect to the Hindus.<sup>13</sup> As 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’.<sup>14</sup>

10. See for example, Bernard Cohn, *Colonialism and its Forms of Knowledge: The British in India* (New Delhi: Oxford University Press, 1997).

11. J. D. Derret, *Histories of India, Pakistan and Ceylon* (London: Oxford University Press, 1961), p. 21.

12. The Code of *Manusmriti* were not only the ordinances relating to law, but a complete digest of the prevailing religion, philosophy, and customs practiced by the *Brahmin*, the *Vaishyas*, and the *Kshatriya*. For details, see S. Sengupta, *The Evolution of Ancient Indian Law* (Delhi: Deep and Deep Publications, 1950), p. 3. And also as quoted in S. Roy, ‘Customs and Customary Law in British India’, *Tagore Law Lectures* (Calcutta: Sacred Books, 1908), p. 16.

13. Walter Kelly Firminger (e.d), *Affairs of the East India Company, Being the Fifth Report from the Select Committee of the House of Commons, dated 28th July, 1812*, Vol. 1 (Delhi: B.R. Publishing Corporation, 2001, First Published in 1812), p.18.

14. Kartik Kalyan Raman, “Utilitarianism and the Criminal Law in Colonial India: A Study of the Practical Limits of Utilitarian Jurisprudence”, *Modern Asian Studies* (Vol.28, No. 4, 1994), p. 740.

Thus, Hastings's plan established a hierarchy of civil and criminal courts, whose role was to apply Hindu and Islamic legal norms in all suits regarding inheritance, caste and religion. The impact of these ideas is clearly discernible in the subsequently transformed administration of the judiciary.

This eventual transformation of law and the development of the duality of legal system were a process in which the Company's officials were successful in maintaining effective control by focusing on the principle of the 'greatest good for the greatest number'.<sup>15</sup> Central to that philosophy was the notion of 'race', in which biological differences determined the natural capacities and destinies of racial groups. This scientific, essentialist ideology gained an increasing hold as many Indian judicial institutions were categorized as inferior and to be subjected to imperial reform. Benjamin Disraeli outlined these ideas in a speech before the House of Commons in February 1849. 'Race', he argued, 'implies difference, difference implies superiority, and superiority leads to predominance'.<sup>16</sup> This acquired its legitimacy from the evolutionary theories, especially the typologies from what was increasingly becoming known as criminal anthropology. Marc Brown has pointed out that, 'ideas about criminal types and the development of a scientific understanding of native criminality in India emerged directly from these exercises which were, themselves, grounded in the principles and measurement systems of race theory'.<sup>17</sup> The use of 'scientific' notions of 'criminality' culminated in the arrest, removal and forcible transportation of the natives. Therefore, it is right to say that, legal language and cultural and 'scientific' images also played a crucial role in framing the Indian criminality.

Thus in India, certain sections of the indigenous were identified as a race of outcastes addicted to crime, not simply as economic necessity, but as a way of life. As part of this discourse, as Fitzpatrick notes, 'Western identity was formed obliquely by excluding non-European peoples who were accorded characteristics ostensibly opposed to that identity' – the 'savages' and the 'barbaric races'.<sup>18</sup> An identical scientific policy was used as various

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15. For details, see Eric Stokes, *The English Utilitarians and India* (London: Routledge, 1959).

16. Cited in Waltraud Ernst, 'Introduction: Historical and Contemporary Perspectives on Race, Science and Medicine', in Bernard Harris and Waltraud Ernst (Eds) *Race, Science and Medicine, 1700–1960* (London: Routledge, 1999), p.3.

17. Marc Brown, 'Race, Science and the Construction of Native Criminality in Colonial India', *Theoretical Criminology* (Vol. 5, No. 3, 2001), p.349.

18. P. Fitzpatrick and E. Darian-Smith, 'The Laws of the Postcolonial: An Insistent Introduction', in E. Darian-Smith and P. Fitzpatrick, *Laws of the Postcolonial* (Ann Arbor, MI: University of Michigan Press, 1999), p.1.

castes and tribes were enumerated and brought under imperial gaze. It suffused a developing Western-in-India identity, which assumed Western racial superiority and an imperial mission. As a result, the non-western, with their ascribed status of race and caste were considered distinct. It is as Balbus argues, the imperial Law, as part of its hegemonic character coupled with the ideas of race and caste imposed repression through formal rationality.<sup>19</sup> This served to depoliticize collective violence and militate against the growth of consciousness and solidarity of the participants.

Since the late eighteenth century, several efforts were also made by the British colonial officials to classify 'criminals' into groups and types. To British minds, one of the distinguishing features of crime in India was its communal character. Not only was robbery attended by violence – referred to as dacoity – widespread but it was also undertaken almost wholly by men operating in bands whose pursuit of crime was tied both to kinship networks and to structures of patronage and authority. In a series of measures beginning with Governor General Warren Hastings's Article 35 of 1772, British government in India sought to repress crime through means that extended the arm of punishment beyond the immediate offender. By the 1860s there had emerged something of a consensus that Indian society indeed carried within it hereditary criminal communities. The ethnological connections drawn between community, caste, profession and individual were repeated and reiterated in many contexts.

It was the problems associated with governance that led colonialists to classify particular groups of communities as criminals. During the early colonial rule in India, crime was associated with groups rather than individuals. British officials in India were actively involved in tracking and recording the details of these groups, now referred to as criminal fraternities. The behaviour of such groups, their family and kinship associations, their language and their identifying social customs were measured and duly recorded. An array of colonial scholars have worked on the making of criminal communities and groups in north India through the discourse of race, caste and tribe, especially *Thuggees* and *Sansis*, who were known for their perceived criminal propensities.<sup>20</sup> Very recently, in an interesting

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19. I. Balbus, *The Dialectics of Legal Repression* (New York: Transaction Books, 1977).

20. For more details of the images of native criminality found in the phenomenon of *thuggee* and in the ethnological classification of criminal tribes in north India, see Anand Yang, *Crime and Criminality in British India* (Tucson, AZ: University of Arizona Press, 1985); Radhika Singha, *A Despotism of Law: Crime and Justice in Early Colonial India* (Delhi: Oxford University Press, 1998). Sandria Freitag, 'Crime in the Social Order of Colonial North India' *Modern Asian Studies*, 25 (1991), pp. 227–61;

comparative analysis on colonial India and Victorian England, Preeti Nijhar has stated that, 'in colonial India, identities were constituted through the use of similar authoritative techniques of legal (criminal and civil law) and scientific methods, as in Victorian England.<sup>21</sup> Her analysis further suggested that, crimes of survival by the *Sansi* were redefined by imported imperial definitions of criminality.<sup>22</sup> The 'criminal' tribes and castes of imperial India were legally and socially reified in ways similar to the 'dangerous' classes in Victorian England. In the following discussion, the article examines a similar case in south India much before the proclamation of Criminal Tribes Act of 1871. This section will focus on the *Jungle Mappilas* of Malabar who were categorized as 'criminals' and 'Bandits' by the colonial state.

### The Construction of *Mappilas* as 'Criminals' and 'Bandits'

Muslims of Kerala were known by the generic appellation of *Mappilas*.<sup>23</sup> The *Mappilas* are geographically located in Malabar and their origin is often traced back to Arab traders and converts to Islam from among the natives of Malabar.<sup>24</sup> Throughout the colonial rule, the attitude of the British towards *Mappilas* was a mixture of positive and negative remarks and policies. The *Mappilas* in return also showed their dissatisfaction and resistances to the alien rule. The colonial approach towards the *Mappilas* had different stages since the beginning of the British rule in Malabar. At the beginning of the Malabar settlement, the attitude of the British was favourable towards the Hindu establishment, mainly due to the British perception that during the Mysorean interlude in Malabar,<sup>25</sup> the *Mappilas* had given their support to Tipú while the Hindus had opposed him.<sup>26</sup> The colonial tendency to classify the population into groups and

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21. Preeti Nijhar, *Law and Imperialism: Criminality and Constitution in Colonial India and Victorian England* (London: Pickering & Chatto, 2009), p.115.

22. *Ibid*, p.134.

23. The name *Mappila* is a transliteration of the Malayalam word *Mappila*. The transliteration has taken several different forms, the most common being *Mâppila*, *Mâppilla* and *Moplah*. The origin of the term is not settled, but it appears to have been basically a title of respect. For more details of the significance of the name *Mappila*, see Roland Miller, *Mappila Muslims of Kerala: A Study in Islamic Trends* (Hyderabad: Orient Longman, 1976), pp. 30-36. 24. For more details of the origin of *Mappilas*, see A.P.Ibrahim Kunju, *Mappila Musims of Kerala: Their History and Culture* (Trivandrum: Sandhya Publications, 1989), pp. 14-28; Asghar Ali Engineer, *Kerala Muslims: A Historical Perspective* (New Delhi: Ajanta Books, 1995), pp. 17-34.

25. The rulers of Mysore, Hyder Ali (1725-82) and Tipú Sultán (1750-99) had made repeated attempts to gain control over Malabar between the years 1766-92 (Logan, 1887: 399-473). By the treaties of *Sriran gapatanam* 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'.

26. The reforms introduced by the Mysorean rulers affected the ruling elites in Malabar and favourable to the Muslim community. When the Company took over the Malabar region,

sections as exercised against the tribes in north Indian regions was visible in Malabar in the categorization of *Mappilas*. In 1792, for instance, the joint commissioners of Malabar conducted a survey of the region of Malabar and reported that,

[A]long with the great and respectable body of *Mappilas* there are also very several numerous bands of public robbers by profession in Malabar country who from their haunts and general residence are called *Jungle Mappilas*. They are banded together under the chiefdom of *Unni Moosa Muppan*, who is an open avowed robber. He has several places of residences in the jungles. He kept with him four head *Moopas* (heads of the gangs) and two hundred armed men, besides many other inferiors, who infest the jungles and pay him tribute and acknowledging him as their chief, join him when required. They frequently assemble at night and to commit depredations as usual after which it was their customs to divide immediately and disperse. They were concerned with kidnapping children and to be sold to commanders of European vessels for exportation.<sup>27</sup>

These extracts from the colonial records clearly identifies *Unni Musa* as ‘chief of public robbers’ and the category of *Jungle Mappilas* as ‘public robbers’. The report also identified the ‘members of lower caste communities of South Malabar, who either voluntarily espoused Islam or resorted to banditry’.<sup>28</sup> This representation in the Joint Commissioners’ report was the primary resource from which the later administrators drew upon and constituted in many ways to illustrate the inhabitants of Malabar. However, the categorization of a section of the *Mappila* community as ‘robbers’ and ‘bandits’ - together as ‘criminals’ - was the continuation of the initiatives of the Bengal Governor General Warren Hastings in 1772.<sup>29</sup> All the reports, diaries and political and judicial documents that followed the Joint Commission reports in Malabar continued with this classification till the

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the British helped the privileged classes in the region to regain what they had lost during the Mysorean rule. The justification to the British rule also came from the colonial creation of the tradition of violence and the pre-existing animosity between Hindus and Muslims. It is with and against this traditional background description of *Mappilas* that the British defined and justified all their actions against them in the following years.

27. *Bombay Castle Records* (Henceforth *BCR*) *Secret and Political Department Diary* (Henceforth *SPDD*), 1793, No.32, *Letter from Malabar Commissioners to Bombay*, pp.116-117.

28. *Ibid*, p.120.

29. In 1772, Governor General Warren Hastings in Bengal enacted laws (article 35) to punish dacoity and robbery from the individual offender to his family and village. For more details see John William Kaye, *The Administration of East India Company* (London: Richard Bentley, 1853), pp.380-416. Also see Radhika Singha, *Despotism of Law*, Chapter 1, pp.27-32 & Chapter 6.



first decade of nineteenth century. John Wye's report identified the *Mappilas* as 'very turbulent, prone to robbery and the revenue always more difficult to uncover where the *Mappilas* prevail'.<sup>30</sup> Spencer's report on the administration of Malabar also continued with the same categorisation *Jungle Mappilas* and with the very same propensities.<sup>31</sup> Another description of a *Mappila* as a 'robber' and 'bandit' is found in the Board of Revenue Consultations of 1802.<sup>32</sup> Interestingly, in these initial instances, the term 'fanatic' was nowhere mentioned.

Another fact which should be noted here is that John Wye's report identified the *Nairs* of Malabar along with the *Jungle Mappilas* as 'criminals'. The report said, 'the *Nairs* of Malabar are the hereditary military.....always proceeded whether on business or for pleasure with arms in their hands and the *Mappilas*, since the *Muhammadan* invasion, being more independent have done the same'.<sup>33</sup> The primary objective of such categorizations, as described by Homi Bhaba, 'is to construe the colonized as a population of degenerate type on the basis of social origin in order to justify conquest and to establish a system of administration'.<sup>34</sup> This view is similar to the views of early colonial officials of 1773 where Warren Hastings instructed to regard all persons travelling with arms through the country as enemies of the government. Possession of arms was a matter of grave concern for the state. In another example, the attitude of the British was seen as they were taking advantage of the breach between the *Nairs* and the *Mappilas*. Wye's report projected 'the spirit of jealousy between the *Mappilas* and *Nairs* as the circumstance favourable to the Company government'.<sup>35</sup> Richards' administrative paper also confirmed this as, 'a judicial management of the enmities and rival ships of the adverse tribes of *Nairs* and *Mappilas* may materially conduce to the firm and permanent establishment of our own power'.<sup>36</sup>

The colonial classification of *Jungle Mappilas* as 'bandits' takes our attention to the notion of 'social banditry' coined by E.J.Hobsbawm.

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30. John W. Wye, *Report on the Southern Division of Malabar*, 4th February 1801 (Calicut: Calicut Collectorate Press, 1907), p.13.

31. J. Spencer, Smee and Walker, *A Report on the Administration of Malabar*, July 28, 1801, (Calicut: Calicut University Press, 1809).

32. *Board of Revenue Consultations*, Letter from the Collector of Malabar to the President and Members of the Board of Revenue, June 28, 1802, (Madras: Fort St.George, 1806), Section XII.

33. *Supra* n. 30, p. 16.

34. Homi K Baba, *Location of Culture* (New York: Routledge, 1994), p.77.

35. *Supra* n. 30, p.17.

36. Robert Richards, *Papers on the Administration of Malabar District*, February 20, 1804, p.8.37.Eric Hobsbawm, *Bandits* (London: Weidenfeld and Nicholson, 1969), p.13.

Hobsbawm explains the social bandits as ‘peasant outlaws whom the lord and state regard as criminals, but who remain within the peasant society and are considered by their people as heroes, as champions, as avengers, fighters for justice, perhaps even leaders of liberation’.<sup>37</sup> Hobsbawm also examined banditry as a form of ‘primitive rebellion’ occurring in pre-capitalist societies and bandits, robbers of a special kind, perceived as outlaws and delinquents by the state, were supported and revered by the peasant community as heroes and avengers.<sup>38</sup> Specific to India he has pointed out India that, ‘ a possible or partial exception might have to be made for the peculiar caste divided societies of Hindu Southern Asia, where social banditry is inhibited by the tendency of caste robbers, like all other sections of society, to form self – contained caste and communities’.<sup>39</sup> Indian scholars have further confirmed that there is little firm evidence for social banditry in South Asia.<sup>40</sup> Therefore, the colonial categorisation of *Jungle Mappilas* as ‘bandits’ exhibit incongruity with the concept ‘social bandit’.

### Colonial Law and *Mappila* ‘Criminals’

The colonial vision of the British categorized the existing Indian judicial institutions as inferior and to be subjected to imperial reform. As a result, the scientific notions of the colonialists enumerated various castes and tribes in India and brought them under imperial gaze. This in turn was an attempt to show Western racial superiority and imperial mission in the colonies. The colonial construction of criminality among the *Mappilas* in Malabar got further strengthened as the British began to implement the western legal codes. At this juncture, it is as Aninidta Mukhopadhyay has noted, the law was geared to seize the most unlikely candidate in a robbery and the members of the criminal tribe generally received a jail sentence on the grounds of suspected livelihood’.<sup>41</sup> Colonial law began to distinguish between crime committed by individuals (ordinary crime) and that committed by collectivities (extraordinary crime).It was on this ‘constructed’ idea of crime and criminality, colonial law began to treat the *Jungle Mappilas* of Malabar. As part of this general understanding, the Malabar Joint Commissioners proclaimed punishments and penalties for the region of Malabar. The commission suggested that:

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38. Eric Hobsbawm, *Primitive Rebels: Studies in Archaic Forms of Social Movements in the Nineteenth and Twentieth Centuries*(Manchester:Manchester University Press,1959), p.3.

39. Hobsbawm, *Supra n.* 37, pp.15-16.

40. *Supra n.* 20, ‘Introduction’, pp.1-47.

41. Anindita Mukhopadhyay, *Behind the Mask: The Cultural Definition of Legal Subject* (New Delhi:Oxford University Press, 2006), p. 223.

[W]e fear that the avidity of gain in individuals and the unprincipled habits of the Jungle and the other *Mappilas*, who long have been in the practice of driving emolument from thus preying on their fellow creatures, have on the experiment proved too powerful for these inhabitants which were however all the commissioners had been in their power to promulgate against such inveterate mischief, in the carrying on of which the law less part of the *Mappilas* found themselves as much interested.<sup>42</sup>

This ethnological observation of the Joint Commissioners on the ‘criminals’ in Malabar informed the British administrative consciousness to enact separate *Faujdari* laws to bring this ‘dangerous band’ under the command of law. Hence, the 1793 criminal regulations clearly framed notes on punishments by penalties, fines and scourging against child stealing or sale of children for exportation.<sup>43</sup>

It was the British decision to take over the administration of Malabar that brought the *Mappilas* of Malabar into collision with the British administrators, particularly due to the British decision to restore the Hindu Rajas and chieftains in Malabar.<sup>44</sup> This issue can also be discussed in the background of the Mysorean interlude in Malabar, which saw the upper sections of the Malabar Hindu society taking refuge in Travancore to save themselves from the ‘oppression’ of Tipú Sultán. The Joint Commission noted that, ‘during the time of Tipú’s rule, many of the *Janmies* were reduced to the necessity of relinquishing everything and of taking refuge in Travancore where a Hindu prince maintained his independence of Mysore’.<sup>45</sup> Scholars have different views regarding the habituation of independent tenures by the *Mappila Kanamdars* during the period of ‘*Janmi* depression’ in

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42. BCR, *Judicial Department Diary* (Henceforth *JDD*) No.52,1793, *Letter from Malabar Commissioners to Bombay*, p. 23.

43. *Malabar Joint Commission Manuscripts* (Henceforth *MJCM*), Voucher No.97, *Criminal Faujdari Regulations*, Sections: LXIX to XCI.

44. With respect to the land revenue, the British adopted the principle of state authority that had been initiated by the Mysoreans. The British decided to utilize the *Rajas* as the land revenue agents in their old territories and at the same time affirm the *janmies*, sharing revenues with them on an equitable basis. In this way they could both assure the collection of revenue and bind to themselves the traditional leaders of the Malabar society. Involved in this policy was the decision to restore ownership of their properties to those who had fled during the Mysorean wars, a determination that meant inevitable conflict with those who had taken possession of the land. For details see Thomas Munro, *Report on the Revision of Revenue and Judicial System in the Province of Malabar*, July 4, 1817 (Calicut: Government Press, 1912).

45. *Report of a Joint Commission from Bengal and Bombay Appointed to Inspect into the State and Condition of the Province of Malabar in the Years 1792-93* (Hereafter *RJCM*), Foreign Miscellaneous Series, (Madras: Fort St.George Press, 1862), Section: 114.

Malabar. Conrad Wood is of the view that Mysore hegemony had provided the Mappilas with unique opportunities to advance their interests at the expense of the high-caste Janmi hierarchy.<sup>46</sup> K.N. Panikkar on the other hand has pointed out that only the *Mappila* chieftains like *Unni Musa*, *Chemban Poker* and *Attan Gurikkal*, took advantage of the situation and enhanced wealth, power and influence, through their association with Tipú Sultán.<sup>47</sup>

The Joint Commissioners of Malabar observed that ‘when the *Janmies* returned to Malabar from exile to reclaim their ancient estates with the support of the British, this entailed not only resistance but disaffection and open rebellion from the *Mappila* tenants who during the period of *Janmi* depression and exile had habituated themselves to the ideas of independent tenure’.<sup>48</sup> From the moment Tipú’s forces were in retreat, members of the *Zamorin*’s family, thought of attacking and subduing the *Mappilas*. The Joint Commissioners substantiated this:

The ill-will that subsisted between the *Mappilas* and those of the *Nairs* and other Hindu castes together with the ill-judged and unsuccessful measures of violence that were resorted to by the latter of the *Zamorin*’s family to reduce them; an object which might much more easily have been attained by the opposite means of conciliation and mild treatment.<sup>49</sup>

It was reported that in 1792, the *Mappilas* of *Kondotti* (south Malabar) complained of ‘oppression by the *Nairs*, in so much they were obliged to take up arms in their own defence’; and therefore the Commissioners of Malabar issued a warning to all persons especially the *Nairs* ‘not to oppress the *Mappilas* and the *Mappilas* were required to apply themselves to their former occupations’.<sup>50</sup> The British apparently tried to halt this persecution and save the *Mappila* tenants from the extortionate demands of the *Janmies*. Admitting the discrimination, the Joint Commission issued a public notice, giving consideration to the *Mappila* tenants over the Hindu *Janmies* and anything different from such an approach was thought to be ‘unjust and

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46. Conrad Wood, ‘The First Moplah Rebellion against British Rule in Malabar’, *Modern Asian Studies*, (Vol.10, No.4, 1976), pp. 543-44.

47. K.N.Panikkar, *Against Lord and State* (Delhi: Oxford University Press, 1992), p.55.

48. *RJCM*, Section: 179.

49. *Ibid*, Section: 187.

50. *From the Diary of the Bombay Commissioners*, 26 June 1792, Proclamation warning the *Nairs* not to oppress the *Mappilas* of *Kondotti*, in William Logan (Ed), *A Collection of Treaties, Engagements and Other Papers of Importance Relating to British Affairs in Malabar, Malabar Manual*, Vo.III, Thiruvananthapuram: Kerala Gazetteers, Government of Kerala, 1998, First Published in 1879. Part II, Section X, p.152.

contrary to the intention of the honourable Company'.<sup>51</sup> However, the oppression continued in the form of arbitrary tax collection, particularly from the *Mappila* peasants.

The admiration found in the Joint Commission report as 'the great and respectable body of the *Mappilas*', proclaimed the need to reconcile and attach as far as possible body of the *Mappilas* to the Company's government. Therefore in order to reconcile the people to the new order, the British proclaimed a general amnesty for all crimes committed by the *Mappilas* and *Nairs* against each other up to the 1<sup>st</sup> of February 1793. It proclaimed, ...the Commissioners appointed for settling the ceded countries, considering the pernicious state of things in the region to make all the inhabitants unite and live together on terms of concord .....have therefore determined that it would be neither politic nor just for the present Government to make a strict scrutiny into the manifold enormities committed during the last twenty years in this country. It is merely declared that no acts of homicide, maiming, robbery or theft committed before the first of the present month of February shall be cognizable in any court of justice and as Government have in the present instance evinced its merciful disposition towards those unfortunate persons.....and the Government will take necessary actions on such persons who offence against the public peace and private security of any persons from the date aforementioned, wherefore let this proclamation be a warning to all men in time to come to observe a just and circumspect conduct towards each other and to deport themselves in all respects as become good and peaceful subjects'.<sup>52</sup>

This offer of general pardon was directed especially to the section of *Mappilas* branded as *Jungle Mappilas* and their chief *Unni Musa Muppan* who apparently maintained connection with Tipú and continued his resistance. *Unni Musa Muppan* reportedly participated in the war against the Company with Tipú Sultán of Mysore.<sup>53</sup> *Unni Musa* is also reported to have become effective proprietor in *Jannies'* landholdings in their absence during the period of Tipú.<sup>54</sup> By this colonial act of proclaiming pardon to the native 'criminals' of Malabar, colonialism is projected itself as representing the 'impartial rule' of the enlightened over the primitive people. However, the objective was to gain the allegiance of the southern *Mappilas* and to

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51. *Ibid.*, From the Diary of Malabar Joint Commissioners, June 5, 1793, Publication against the inequalities in assessing Hindus and Muslims, Section. XLIII, pp.189-90.

52. *Ibid.*, From the Malabar Joint Commissioners' Diary, A Proclamation of General Amnesty, dated 8th February, 1793, Section: XXIX, pp.176-77.

53. *BCR, SPDD*, 1793, No.34, p. 56.

54. *Ibid.*

show off the colonial notion of ‘humanitarian concerns’ towards the colonized.

In an attempt of remoulding the recalcitrant colonial public into ‘useful’ participants and collaborators in the operations of the colonial state in Malabar, the earlier Mysorean plan was adopted in the region. As in the Mysorean plan of administration, the British continued with the appointment of *Moopas* (headman) to various districts with a proportion of armed *Mappilas* to assist them. These *Moopas* who were entrusted with the collection of revenue and the preservation of peace were to be subordinated to the British superintendent of each division. The objective of the British at this juncture was to gain the allegiance of the southern *Mappilas* ‘even by scarifying to them, if necessary, some part of what might be the justifiable claims of government’.<sup>55</sup> Roland Miller has pointed out that, these conciliatory gestures towards the *Mappilas*, whether genuine or politically motivated, fell afoul of the major direction of the British policy.<sup>56</sup>

The early colonial discourse on *Mappilas* and indigenous criminality is problematic and significant for multiple reasons. Certain observations need to be emphasized. Firstly, the Malabar Joint Commission had observed that, only a small population of the ‘great and respectable body of the *Mappilas*’ were reported to be the ‘criminals. Secondly, the criminal bandits, especially the *Jungle Mappilas* were not comprised of *Mappilas* alone; it was recognized as voluntary converted *Mappilas* and the members of the lower caste communities. Thirdly, the evidence of crime in the reports was assumed rather than established. The early reports which followed Joint Commission reports, did not change or go further from this initial colonial construction of *Mappila* criminality till the term ‘fanatic’ was enforced and administered into existence during the later decades of nineteenth century.

The occupation of Malabar by the English East India Company in 1792 generated popular discontent. The spontaneous and activated revolts in the region and they disturbed the peace and tranquillity of the region for more than a decade and was mainly restricted among the agrarian classes. Although the peasantry as a whole, both Hindus and *Mappilas*, were subjects to exploitative conditions, collective action was confined to the *Mappilas*, which was made possible owing to the mediation of religion. It was during and after those various movements of the *Mappilas* that the

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55. *Supra n.*, 31, p.28.

56. Roland Miller, *Mappila Muslims of Kerala, A Study in Islamic Trends* (Madras: Orient Longman, 1976), p.105.

British produced a caricature of the *Mappilas*, first as ‘criminals’ and ‘robbers’ and later as ‘brutish and hopeless fanatic’. Once the conciliatory measures failed to generate desired results the war was taken to the domain of representations too. The history colonial representations of Mappilas stated with that of *Jungle Mappilas* as embodiments of criminality and banditry, which became definitive in the making of subsequent colonial representations of the Mappilas. In suppressing the discontents among the local population, the British imposed their system of administration and justice on India reiterated their claim of superior administration and legitimacy to rule the natives than the natives themselves.

### **Conclusion**

By categorizing and labeling certain sections of the indigenous population in India as criminals and bandits, the colonial state attempted to sustain Western identity and racial superiority. The non-Western, the savage heathen, was viewed as opposite to the Western subject. In India, this designation did not only affect the colonial masters, but also allowed the higher castes to identify themselves with their colonial masters, thus placing the ‘criminal’ tribes and castes outside the notion of modernity and progress. The present paper identified one of such constructions in south India, in the region of Malabar where certain section of *Mappilas* were categorize as ‘Jungle Mappila bandits’ epitomizing criminality by the British during the last decade of eighteenth century. It is argued that there were several attempts by the colonial state from the very beginning of their rule in Malabar to classify certain sections of the Malabar population as distinct from the rest. This characterization in Malabar was the first of its kind in south India, where the British attempted to construct criminal types to serve the imperial interests. Disciplinary procedures and actions were used to remould the recalcitrant native groups into ‘useful’ participants and collaborators of the colonial state.