CUSTOMARY LAWS OF LAKSHADWEEP ISLANDS

Thesis Submitted By

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DECLARATION

I do hereby declare that the thesis entitled **"CUSTOMARY LAWS OF LAKSHADWEEP ISLANDS"** is the record of original work carried out by me under the guidance and supervision of **Professor P. Leelakrishnan**. U.G.C. Emeritus Fellow, School of Legal Studies, Cochin University of Science and Technology. This has not been submitted either in part, or in whole, for any degree, diploma, associateship, fellowship or other similar titles or recognition at any University.

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17th August 1999

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CERTIFICATE OF THE RESEARCH GUIDE

This is to certify that this thesis entitled **"CUSTOMARY LAWS OF LAKSHADWEEP ISLANDS"** submitted by **Shri. V. Vijayakumar** for the Degree of Doctor of Philosophy under the Faculty of Law is the record of *bonafide* research carried out under my guidance and supervision in the School of Legal Studies, Cochin University of Science and Technology. This thesis, or any part thereof, has not been submitted elsewhere for any degree.

Professor P. Leelakrishnan

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Preface

The customary laws of Union Territory of Lakshadweep islands are a challenge for judicial institution as well as administrative machinery. With the peculiarities of socio-legal institutions, Lakshadweep system stands apart from the mainstream of legal systems in India. How far do the charismatic modernisation trends flowing into the Lakshadweep society affect the people already protected by the uncodified laws of the past? Many are the issues at this stage. This study analyses them. It examines the growth, evolution and development of the legal system in the islands vis-à-vis the administrative mechanism imposed by the mainland ethos and culture.

The first chapter is introductory. Chapter II examines the role of caste and religion in the growth of island customs and their influence on social relations. Chapter III analyses the impact of property concept based on trees on land tenure and socio-economic scenario. According to the nature of legal institutions and its working, the Lakshadweep legal system can be classified into four periods. (1) Period of Obscurity (2) Period of Rajas (3) British Period (4) Post Independence Period. Chapters IV to VI are the highlights of the socio-legal currents and crosscurrents of these periods. Chapter VII examines the working of various institutions and authorities under Marumakkathayam. Chapter VIII unravels the evolution of maintenance arrangement and partition. Chapter IX examines inalianability and impartability of Friday properties with special reference to judicial decisions. Chapter X is on the status of women. Chapter XI verifies

customary legal profession – Mukthyars. Chapter XII contains conclusions and suggestions.

In the study, the data have been collected through questionnaire and interviews from the old and the aged who had been the observers of the socio-legal transformation in the islands. The Mukthyars, politicians, social workers, civil servants, judicial officers and women were interviewed. Besides, the old records kept in Amin Kacheries - the old judicial institutions of the islands- and mainland Archives were verified.

Professor P. Leelakrishnan, presently UGC Emeritus fellow in the School of Legal Studies in the Cochin University of Science and Technology supervised my work. His assistance and guidance stood me in good stead in the course of my study and research. I had all the assistance from Professor G. Sadasivan Nair, Director, School of Legal Studies. I also acknowledge the advice and assistance rendered by other Professors of School of Legal Studies, Dr. N.S. Chandrasekaran, Dr. K.N. Chandrasekara Pillai, Dr. A.M. Varkey, Dr. D. Rajeev and Shri. V.S. Sebastian.

The helping hand of Lakshadweep Administration during my field study requires particular mention. I also acknowledge the courtesy and benevolent help from Messers B. Amanulla, the Districts and Sessions Judge Lakshadweep and K. Haripal, Munsiff, Amini.

Many in the judicial and administrative hierarchy of Kerala High Court were a source of inspiration to take up and complete my research work. The assistance of Kerala State Legal Aid and Advice Board is acknowledged.

The ready mind to help in many libraries is a memorable experience. I am grateful to those people in the libraries of Cochin University School of Legal Studies, Indian Law Institute, Lal Bahadur Shastri National Academy of Administration and National Law School. I have also got materials from libraries of Kerala and Madras High Courts and Supreme Court of India. People in Madras Archives and Central Library at Kavaratti and Amini Island Library also were kind to this research programme.

Messers Anu Engineer, Zakeer and Saiju were responsible for the data entry of this study, whose work is acknowledged.

CONTENTS

TABLE OF CASES

GLOSSARY

Baith .	Hymns sing in praise of saints during *Rathib* performance.
Cowle .	A system of granting government lands on improving leases.
Cowledar	Holder of government lands on improving leases.
Cutcherry/Katcheri	*Amin's* Court/Monegar's Court.
Darkhastdar .	Holder of government lands on lease in Amindivi group of islands.
Duff	A kind of tambourine used for *Rathib.*
Jenmi .	Landlord.
Jenmom lands	Lands under private ownership.
Kalayanappanam (Bir)	Contribution towards marriage expenses by bridgroom's family.
Kannadi Aranchan	Waist belt about one inch broad with a lock.
Karani	A village Revenue Officer in Amindivi group of islands.
Karayma	A type of escheat lands.
Karnavan	The oldest male member in a *Marumakathayam* family.
Karyakar	Agent.
Kathib	Assistant to *Khasi.*
Khalifa	Person who initiates the performance of *Rathib.*

Khasi	A functionary who solemnises Muslim marriages.
Koottam	Assembly.
Kutcheri Pandaram lands directly	Lands surrounding the *Kutcherry* (court) buildings managed by government.
Mappila	Malabar Muslim.
Marumakkathayam	Matriarchal system of inheritance.
Maulood	Muslim celebration of Saints.
Monegar	A post akin to that of a Revenue Inspector.
Moopan	Headman.
Mukri	A Muslim priest who calls for prayer and leads the prayer.
Mukthiars	Unqualified Lawyers.
Muthalal	Headman during the period prior to Rajas .
Nadappal	A last grade employee attached to the *Amin.*
Nazeranah	Arbitrary contribution paid by the people.
Neerah	Unfermented juice of the coconut palm used by islanders as a drink or boiled down into jaggery.
Niskarapura	Prayer house of women.
Odam .	Sailing vessel.
Pandaram land	Government land.
Pattom	Annual rent of coconut trees.
Peshkash	Money or equivalent paid periodically by one prince or state to another in acknowledgement of submission or as price of peace or protection or by virtue of treaty.

CHAPTER –I

INTRODUCTION

CHAPTER-I

INTRODUCTION

Many customs and institutions in the Union territory of Lakshadweep are perceivably distinct from those in the mainland India. So also is the Lakshadweep legal system- a mixture of statutory laws and uncodified customary laws. The personal law that governs the people of the Union Territory of Lakshadweep Islands is the customary law with inter-island differences and intra- island variations. The uncodified customary laws also give rise to different interpretations.

Study of customary laws in modern period inevitably takes one to the legal history. On interaction with the laws from main land, an existing customary law based society gets a shock. The number of reported judgements of higher courts – Supreme Court and High Court on the laws of this territory are very few. Some of the earlier decisions were over-ruled later and diametrically opposite views were taken.[1] The obscurity of customary law puts the law-abiding persons into a dilemma. What way have they to act to achieve conformity with law? The persons seeking justice is in a financial strain simply because of the effort required in proving 'the custom'.[2] Although uncertainty casts a shadow on the island from mainland perspective, the practices throw a challenge for judges, lawyers, academicians and administrators.[3]

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[1] For the decision of these cases, see infra Ch. IX.
[2] On the extension of Indian Evidence Act of 1872 to the islands in 1965 along with the introduction of modern courts in 1967 it made imperative that the custom is to be proved in accordance with S.13 of Indian Evidence Act.
[3] See infra Ch. IX.

Codification of law for a small territory should be simple and easy. But the past attempts to codify the customary laws of Lakshadweep during last 30 years did not succeed[4]. What does the failure reveal? The complex nature of the customary laws of the Lakshadweep or the complexes of the mainland reformers?

For the people of Lakshadweep, formal legal system is of recent origin. The first court with all the characteristics of present day mainland Indian legal system is established there in the year 1967. The mainland laws have been extended there only in 1965. The first police station of the islands came only in the year 1956. So it is wrong to approach this customary law in terms of central authority, codes courts and constables.[5] One of the effective methods in identifying the customs handed down in regular succession from time immemorial is by scanning the method of handling disputes by a society. This common approach of today focuses not on law, but on the institutions and techniques for resolving conflict, whether or not they are deserved to be called as legal.[6] This will give us a pathological picture of the society at a given period. The study of

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[4] In the year 1970 an expert Committee headed by Sri R. Sankarnarayanan Iyer, Sub Judge was appointed. The Committee submitted report in April 1972. Again in the year 1984 a Committee headed by Sri K. N. Radhakrishnan Nair, Sub-Judge was appointed. Both these committees were appointed by Lakshadweep Administration.

[5] Malinowski who studied Trobriand islands of New Guinea come to the conclusion that it was wrong to define the forces of law in terms of "central authority, codes, courts and constables". The 'Trobrianders' society was orderly even though they were lacking these. He found the basis of that in "reciprocity, systematic incidence, publicity and ambition". See. Malinowski, Crime and Custom in Savage Society (1926), pp. 14, 67-68.

[6] Hoebel E.A., Anthropology – The Study of Man (4th edn., 1972), p. 500. One of the advises given by Justice Holmes is "if your subject is law, the roads are plain to anthropology" and it was "perfectly proper to regard and study the law as agreed anthropological document".

simple societies such that of Lakshadweep island helps to learn more about law and organization in a developed society.[7]

Location, Geography and People

Lakshadweep islands is located on the southwestern frontiers of India between 8^0 and 12^0 13" North latitude and 71^0 and 74^0 East longitude. These islands lie about 220 to 440 km away from the mainland, India. These are a collection of 27 islands. Of these 11 only are inhabited. The total area of this Union Territory is 32 Sq. km.[8] The inhabited island are Kavaratti, Agatti, Amini, Bangaram, Kadamat, Kitan, Chetlat, Bitra, Androth, Kalpeni and Minicoy.[9]

The natives are classified as Scheduled Tribes. They are 100% Muslims. More than 93% of the total population are indigenous people. Though they are Muslims they are following some sort of caste system.[10] According to the Scheduled Caste and Scheduled Tribe[11] Lists (Modification Order, 1956) "the inhabitants of Lakshadweep who and both of whose parents were born in those islands are treated as Scheduled

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[7] M.D.A. Freeman, Lloyd's Introduction to Jurisprudence (1994), p. 795.

[8] Lakshadweep and Its People 1994-95, Planning and Statistics Department Kavaratti(1997).

[9] Island-wise population and land area is shown in Appendix B, Table 1.

[10] See infra Ch. II for Religion and Caste in the Islands.

[11] The Scheduled Tribes account for 7.76 percent of India's population. They are grouped into 426 tribal communities numbering 51,628,633 individuals. 98.3 percent of them still lives in villages. The tribe–non-tribe dichotomy is not so sharply focussed in India as in the western conceptual framework. In India, generally, tribal populations live in a continuum with the non-tribal groups. It is on the basis of different modes of economy that Indian tribal groups may be differentiated from non-tribal groups. The economies of the tribes are relatively primitive vis-à-vis the now tribal groups. Dependency on natural resources are important character of that economy. Food gathering, fishing and animal husbandry are successive stages of primitive economy. See B.R. Rizvi – "Tribal Land and Changing Economies of Indian Tribes: An overview". XXXVIII/No.2 The Administrator 1 (April-June 1993).

Tribes." There is no specific name for this tribe. No caste has been scheduled in relation to Lakshadweep.

According to the 1991 census, the total population was 51,707 with males 26,618 and females 25,089. Comparing to the 1981 population 40, 249[12] the decadal population growth rate for 1981-91 was 28.47 percent, indicating an annual growth rate of 2.84 percent against the all India growth rate of 2.2 percent.[13] The density of population was1,616 per Sq. Km. It is third highest for the whole of India.[14]

Language

Malayalam is the language in all the islands except in Minicoy. In Minicoy people speak Mahl which is written in Divehi script.[15] Literacy, which is increasingly, acknowledged as a key mechanism for development as well as reliable indicator of it. As per 1991 census data 81.78 percent were literate with male literacy rate 90.18 and female literacy rate 72.89. When Lakshadweep became U.T in 1956 the percentage of literacy was 15.23.

History

The lack of old written documents kept the history of the Laccadive, Aminidive and Minicoy islands in obscurity. The earliest reference about Lakshadweep was by an

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[12] Males 20377 and Females 19872.
[13] United Nations Development Programme, Human Development Report 1997, Oxford Press, New York, p. 195.
[14] District Census Handbook : Lakshadweep 1991, Director of Census Operations Lakshadweep (1994), pp. xi, 1,14.
[15] This is the language in nearby Maldives Islands.

Anonymous author of the first century A.D. These islands which lie in the trade routes from Arab and African parts to Malabar must have been a resting-place for the Arab trading vessels. Interesting legend on the discovery and settlement of the islands is linked with Cheraman Perumal.[16] It is to be presumed that after initial settlement and inhabitation, the islands had been to a great extent, autonomous. A clear picture emerged later, is about the Kolathiri's controlling the entire north Malabar and the Laccadives at the beginning of the tenth century from their headquarters at Ezhimala near Cannannore. About, later part of eleventh century A.D. or early twelvth century, the administration of the Laccadive islands was under a principality known as the Ali Rajahs of Cannanore till their sequestration by the English Company in 1908.[17]

In 1509 the Portuguese commander declared the islands to be Dominions of the King of Portugal by conquest and ordered the Mammalis to stop their trade with the islands. The Portuguese regime was one of extreme oppression. Around 1543 the Portuguese rule in the islands ended.

It was to be presumed that Kolathiri transferred the islands to the full control of the Arakkal House after the Portuguese period on a tribute. The Arakkal Administration of the islands was effected through Kariyakkars appointed in each island. In those days there were monopolies on several articles such as coconut, cowries, tortoise shell, jaggery

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[16] Local traditions assign the first settlement of Lakshadweep to a shipwreck members of Keralites who were on the way to bring King Cheraman Perumal from Mecca in ninth century. Therefore originally inhabitants were all Hindus, later converted into Islam. See N.S. Mannadiar (Ed.), Gazetteer of India: Lakshadweep, Administration of the Union Territory of Lakshadweep, Kavaratti (1977), pp. 35-37; R.H. Ellis, A Short Account of Laccadive Islands and Minicoy, Madras (1924), p. 9. A. Sreedhara Menon, A Survey of Kerala History, Kottayam (1970), pp. 135-136.

[17] A. Sreedhara Menon, Id., pp 135-136, 156-157.

etc. An enormous profit, even about 200%, were used to be realised by the Arakkal Kings from the monopoly.

The coir monopoly ultimately led the people of Amindivi group to revolt and to approach Tippu Sultan of Mysore. In 1787 these five northern islands, Amini, Kadamat, Kiltan, Chetlat and Bitra came under Tippu, while the rest continued to be under the Arakkal Rule. These northern groups of islands are known as Amindivi group of Islands. Tippu put an end to the traumatic Kariyakkar administration. He appointed a Manegar at Amini to look after the five Amindivi Island's affairs. The post of Manegar continued during British period also. Under Tippu, the islanders got a more benevolent administration.

In 1799 with the fall of Tippu Sultan, these five islands known as Amindivi Islands were annexed by the East India Company and they formed part of the South Kanara District. Meanwhile, in 1791, the southern islands also went into the hands of East India Company by the conquest of Cannanore along with other possessions of the Beebi of Cannanore. The British control was nominal, and the Beebi retained the administration for an annual tribute. When the British sequestrated the islands for arrears of revenue and took over the administration on 1875, it was attached to the Malabar District. This division of islands into two groups: northern or Amindivi group of islands or South Canara islands and southern or Laccadive and Minicoy islands or Malabar islands continued till the grouping of the islands into a union territory on 1st November 1956. On 1st November 1956, states of the Indian Union were re-organised on linguistic basis. Then two groups of islands were separated from the south Kanara and Malabar Districts of the erstwhile Madras State to form a separate Union Territory of Laccadive,

Minicoy, and Amindivi islands. On 1st November 1973 the names of the territories were officially changed into Lakshadweep.

Administration

In the olden days nearly for six months in a year this territory was totally inaccessible.[18] This is due to the risk in crossing rough sea by using unmechanised boats. The peculiar customs and the life of the inhabitants of Lakshadweep are recognized throughout centuries. By a notification dated 19.2.1889 the British India Govt. declared this territory as a Scheduled District under the Scheduled Districts Act of 1874. The peculiar customs and life of the inhabitants also gave them a separate status. Thus the territory had been declared as a scheduled District under the Scheduled Districts Act. In the Government of India Act of 1919, this protection was preserved and the territory was declared as a "backward tract" under section 52A of the Act. Under that section, only Acts specifically declared as such were to be applicable to the territory. Under the Government of India Act of 1935, again the islands were declared as "excluded areas" and were subject to the same immunities until the framing of the Constitution of India in 1950. When the constitution of independent India is framed, the islands are treated separately by including this into Scheduled Area. The spatial and cultural isolation and the resultant disabilities and lack of opportunity compelled our constitution framers also to give a special status to the islands. The Laccadive, Minicoy and Aminidavi islands, as per original constitution 1949, was part of the state of Madras. In 1956 when states were

[18] Now the situation is changed. The islanders are having daily flights connecting with main land and they are having all weather ships. They are having internet connections in all the islands. Lakshadweep is having highest number of telephone per 1000 of population in India. Almost all the houses are having TV.

reorganised, it was constituted as a separate Union Territory.[19] In 1973 the name has been changed into Lakshadweep. Though this is a Union Territory there are differences in the actual system of Administration. Article 239 (1) provides that save as provided by Parliament by law, every Union Territory shall be administered by the President acting, to such extent he thinks fit, through an Administrator to be appointed by him with such designation as he may specify.[20] Thus Lakshadweep is administered by an Administrator as the agent of the President of India and not by a Governor acting as the head of a State. In the case of Lakshadweep Islands, being a Union Territory, Parliament has exclusive legislative power including matters, which are enumerated in the State List.[21]

Constitution has made special provision for the Administration of Lakshadweep on the basis that it is a Scheduled Area.[22] President has got a legislative power, namely, to make regulations for the peace, progress and good governance of this territory. This power of the President overrides the legislative power of the Parliament. As regards Lakshadweep he may repeal or amend any Act of Parliament, which is for the time being applicable to the Union Territory.[23]

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[19] See State Reorganisation Act, 1956 and the Constitution (7th Amendment Act), 1956.

[20] Hetrogeneous designation have been specified by the President in the case of different Union Territories:
(a) Administrator – Chandigarh, Dadra & Nagar Haveli, Daman &Diu, Lakshadweep.
(b) Lieutenant Governor – Andaman and Nicobar Islands.

[21] See Constitution of India, Art. 246(4).

[22] The power to declare any area as a 'Scheduled Area' is given to the President by Schedule V of the Constitution of India and the President thus issued the Scheduled Areas Order, 1950 in pursuance of this power.

[23] Constitution of India, Art. 240(2).

Present Administrative Set up

The headquarters of Lakshadweep Union Territory is at Kavaratti Island. Administrator is controlling functions of all the administrative and executive machinaries in the district. The district administration, law and order and development programmes are under the purview of the Collector – cum – Development Commissioner who functions under the direct control of the Administrator. He is also the District Magistrate and under him functions an Additional District Magistrate and nine Executive Magistrates. The Settlement Officer is the Additional District Magistrate and the Deputy Collector and Sub-Divisional/Additional Sub-Divisional Officers are the Executive Magistrates. The Superintendent of Police controls the police force, while Administrator is the Inspector General of Police.

To bring the administration closer to the people, the islands are divided into 4 major sub-divisions and 5 minor sub-divisions. For the administrative purpose the islands are classified into major and minor islands. The Major circle includes Kavaratti, Androth, Amini and Minicoy. All other inhabited islands are minor islands. The island Bitra comes under the jurisdiction of Chetlat minor sub-division and Bangaram under Agatti minor sub-division. The uninhabited islands attached to each of the islands also include in the respective major/minor sub-division. The major sub-divisions/minor sub-divisions are under the charge of Sub-Divisional Officers/Additional Sub-Divisional Officers respectively.

For the first time, the islands were linked with a democratic set up on 6th April 1990 when the island councils under the Lakshadweep Island Councils Registration, 1988 were constituted and came into force. A Pradesh Council is also constituted for the Union

Territory with 21 members elected from the island councils. The representation is limited to three from the major islands of Minicoy, Androth, Kavaratti, and Amini, two from Kalpeni, Agatti and Kadmat and one from Kiltan, Chetlat and Bitra. In addition to this 21 members, Members of Parliament from Lakshadweep, Administrator and Collector – cum – Development Commissioner of the Union Territory are also the members of the Pradesh Council.

Abolishing these Island Councils and Pradesh Councils, the Panchayat Raj system was introduced and elections were conducted to Dweep Panchayat and District Panchayat in December 1997. Now devolution of powers to Panchayat Raj institutions are being put into practice.[24]

Restriction on Entry

Though Lakshadweep is a part of India any non-native of Lakshadweep islands can enter there only with the prior permission of Lakshadweep Administration. For that visitor should obtain sanction by submitting written application in a prescribed perform.

Similarly only the persons whose both parents are the islanders alone can hold property there in the Lakshadweep islands. This is to preserve the culture and identity of the islanders.[25] The study comes with similarities and dissimilarities between

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[24] Lakshadweep India 50, pp 70 and 76.

[25] In the 1912 Regulation, the Collector was authorised to enforce resonable restriction on entry of outsiders of into the territory. After independence 'The Amindivi Islands (Restriction on Entry and Residence) Regulation (Madras Regulation 4 of 1949)' came into force. It was only in 1967 that the rules applicable to the entire territory [Lakshadweep, Minicoy & Amindivi Islands (Restrictions on Entry and Residence Rules)] were framed and issued under Section 9 of the L.M. & A. Islands (Laws) Regulation 1965.

Lakshadweep and mainland in many fields-religious practice and personal law property, land tenure and land reform, women's status, legal profession and social control. However, with the difference in language, ethnic stock and culture Minicoy is not having any similarity with other Lakshadweep islanders. They are not having the joint family system of Lakshadweep. They are following customary shariat. This study does not that system, which require more thorough investigation as a separate study.

CHAPTER –II

RELIGION AND CASTE IN THE ISLANDS

CHAPTER-II

RELIGION AND CASTE IN THE ISLANDS

In pre-modern societies, law and social stratification were identified with religion. At times maverick societies do not base itself on the accepted norms of a religion instead, they synthesize new legal domains based upon their environment and religion. It is often found this synthesis happens when the religion is foreign.

Law is inseparably rooted in society. It is an aspect of the total civilization. It is characterized by the psychological and ideational features, structural and functional features of the fostering people. To comprehend the culture, it is imperative to study the philosophies and religious beliefs of the people. In modern times the major problem is the universalisation of the western model jurisprudence. The analysis of customary law in every society confronts with the struggle between the indigenous law and super imposed foreign system. The study of influences and changes within the society is possible only if the social stratification and social institutions are fully assimilated. It necessitates a deep insight into religion and religious practices of the people, especially when a particular religious group is following practices quite contrary to their religious fundamental tenet. The concept of justice in every society is submerged in the substratum of the culture, which has religious, ethical, spiritual and religious dimensions. Legal positivism in its attempt to make it a science isolates law from all other disciplines and values such as history and ethics. The empirical focus of sociological pragmatism eliminates the ethical and ideological elements. Fed up with this, Scandinavians negate the very notion of justice, the authority of law and its binding force. But the early Indian

laws never identified law in isolation to social life. For them law, religion and ethics are part and parcel of the same system. In all ages, law has travelled towards justice. The route of justice is through conflict resolution within the society. This will be revealed through the study of people, religion and their stratification. All the natives of the islands are Muslims. The majority of the islanders belong to the Shafi School of the Sunnis.[1] A peculiarity of Lakshadweep islands is the caste among Muslims.

CASTE SYSTEM IN THE ISLANDS

Caste system is alien to Islamic religion. Koyas, Malmis and Melacheris are the castes in the Laccadive group of islands. This is the system prevalent in all the islands except Minicoy[2]. In Minicoy Island their caste-like classification is Manikfans, Thakrufans, Thakrus and Raveries. All these caste-like ethnic groups are placed in a hierarchical order with Koya, at top and Melacheri at the bottom and the Malmi in between. In Minicoy Manikfan corresponds to Koyas of Lakshadweep islands. Thakrufans considered being higher social status than Thakru. The lowest class, the Raveri, which corresponds to the Melacheri in the Lakshadweep islands. They maintain endogamy at the caste level and exogamy at the tharawad level. Intercaste marriage is still not common.

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[1] N.S. Mannadiar (Ed.),Gazetteer of India: Lakshadweep (1997), p. 89.

[2] Mannadiar has mentioned the classification or castes in Amini is Tharawadi Tankampranaver, Kudiatis and Melacheris. But the researcher has found these separate names are not in use now. Now a days Amini islanders are also using the caste name Koya, Malmi and Melacheris as other islanders. These tharawadi and ThankamPranavar is the other name which they used to refer the Koyas and Kudiatis is for referring Malmis. See Mannadiar, id. at p. 90.

Koyas

They were the aristocratic lands owing class of this society. Formerly they were known as tharawadis or the Karanavar class. They are claiming that their predecessors were either Nambodhiris or Nairs of the mainland or they are the successors of Nambodhiris or Nairs who first migrated to these islands. Traditionally, they were the proprietors of the unmechanised sailing vessels known as Odam. Till recently entire trade and commerce were their monopoly. The other two lower classes were the tenants in the feudal setup that existed in the islands for centuries.[3] They belong to the original principal families or Tharawads of these islands. In olden days heads of these principal families who were known as Karanavans sat as groups in the community Panchayat known as kootom.[4] The entire islands were treating this group as a superior class. In those days this landowning and boatowning class was the real masters of the island with voice even in day to day administration of islands.

Malmis

They are sailors or pilots of vessels. Malmis were the teants of Koyas. They were the sailors of Koya classes' boats. The word Malmi is having Arab origin, which means who in connected with signs of ways. In the olden days only the Malmi class were supposed to pilot a vessel.[5]

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[3] See for details, infra Ch. III.

[4] See for details, infra Ch. IV.

[5] Copra (Coconut), Coir and other island produce were exported to the mainland and rice and other provisions imported to the islands. See also R.H. Ellis A Short Account Of The Laccadive Islands And Minicoy (1924), p. 70.

Melacheris

They are the labour class of Amini and Laccadive group of islands. They were also tenants of Koyas. Traditionally, their occupation was climbing coconut trees for plucking nuts, tapping neera/meera, and processing coir and rope making.

RELIGION

Though the social stratification based on above castism is still working in the islands, it is not as strong as olden days.[6] The islanders send their children, irrespective of their sex, for religious education to madrassa at the age of five or six. This study will extend till they are able to read Koran and know their religious doctrines. The girls stop going to madrassa once they complete reading the Koran six times.[7] The study of Arabic is linked in Lakshadweep to religious association rather than to cultural contacts with the Arabs.[8]

Sunnis

The Sunnis are the traditionalists of the Muslim world. As popularly known today, Sunnis is the term generally applied to the large sect of Muslims who follow the traditional mode of faith[9]. They are considered as orthodox Muslims. The word Sunni is derived from the term Sunnah which means, a tradition, path, custom or status. It usually signifies, those who follow prophets' Sunnah, his path or standards set by him [10]. The word Sunni is usually understood in contrast to the term 'Shia' which is the principal

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[6] See infra Ch. III.

[7] K.S. Singh (Ed.), People of India; Lakshadweep Vol XXVIII, Anthropological Survey of India, (1993) Affiliated East – West Press Pvt. Ltd.; Madras – p. 25.

[8] Theodore P.C. Gabriel, Lakshadweep: History Religion and Society, Books and Books, New Delhi (1989), p. 122.

[9] T.P. Hughes, Dictionary of Islam, London, 1913, p.623.

[10] Encyclopaedia of Islam, London, 1913, p.555 see also Mannadiar supra n. 1 at p.89.

heterodoxy in the Muslim world, though the Shias claim to base their claims on traditional evidence to a greater degree than even the Sunnis[11].

All Sunnis belong to one of the four Madhabs (Schools) of Islamic Jurisprudence founded by Imam Abu Hanifah, Imam Ash Shafi, and Imam Malik and Imam Ahmad Ibn Hambal[12]. The majority of the inhabitants of the islands belong to the Shafi Madhab of the Sunnites. This is similar to the situations in mainland of Kerala where the Shafi Sunnis form a two-thirds of the Mapila Community followed by the Wahabism[13]. This is an indicator that Islam come to islands from the Malabar Coast, not from Arabia directly[14].

Wahabism

Though the number of Wahabis are small their impact on Lakshadweep society is important. The Wahabis have separate mosques in Agatti and Kavaratti.[15] Wahabis are Muslim purists. They reject all traditional teaching except that of the prophet. They prohibit pilgrimage to the shrines or tombs and try to restore Islam to the condition of its primitive purity. Theodore P.C. Gabriel identifies Wahabism as a growing force in the islands and the number of adherents of these puritans of Islam is increasing in all islands and especially in Minicoy island. Many intellectuals including Arabic teachers who had their study in Arabic Colleges of Kerala and Tamilnadu are behind this movement.[16] The founder of Wahabism , Mohammed-Ibn-al Wahab born in AD 1791 at the town of

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[11] T.P.Hughes, Dictionary of Islam, London,1913, p.623.
[12] Rolland E. Miller, Mapilla Muslims of Kerala, Orient Longmans, Madras, 1976, p.252.
[13] Rolland E. Miller, id , p. 232.
[14] Theodore P.C.Gabriel, supra n. 8 pp.116-119.
[15] N.S. Mannadiar, supra n. 1 at p.89.
[16] Theodore, P.C.Gabriel supra .n. 8 p.199.

Ayinah in Nejd[17]. Wahab was alarmed by the lactates and non-conformist cults, which had crept into Islam. So he initiated a movement to take back Islam to the purity of its original faith. Wahabism is a return to the "Arab Idea" in the Islamic world. Some of the present religious oriented trends in the social change of this island society is very much related to or have deep roots in Wahabism. Thus inorder to assess the direction of the social movement which stubbornly imposes marks on islands' cultural identity is highly relevant in this multi-dimensional legal thesis, especially in a caste-ridden Muslim social structure.

The fundamental of the Wahabi ideology can be summarized that the Allah is the only object of worship and those who worship any other are deserving of death. They consider the worshipers of saints and those who visit their graves are like the Mushrikin (idolaters). Referring the name of any prophet, saint or angel in a prayer or seeking intercession from them or making vows to them is tantamount to polytheism. Illumination of the shrines of saints, prostrating before their tombs, perambulating round them or making offerings there are unlawful. The prophet's tomb at Medina also is not exempted from these prohibitions. The mosques of Wahabis are too simple in design and without minarets or ornamentation. Taking food in public places is not allowed in Wahabism. To profess knowledge not based on Quaran, the Hadith or the interference of the intellect from these scriptures is unbelief. Women should not be allowed to attend funerals and visit the graves of the dead on account of their immoderate weeping. Only

[17] Hughes, supra. n. 7, p.659.

four festivals, namely, Id-ul-Fiter, Id-ul-Adha Ashura and Al-Lailatu L-Mubarakah should be observed[17a].

This society is having a different religious and cultural heritage, totally different from the later embraced religion. The vestiges of past faith and tradition are preserved there willfully or unknowingly so as to cause lesser transition in the social set up. The geographical and cultural isolation formed a strong reason for these islanders to preserve the philosophies and customs of the olden traditions[18].

This movement has to be contra distincted with the peculiarities of Islamic practices in Amindivi and Laccadive Islands. Veneration and propitiation of Saints is very common. Prayers are made to them to cure diseases, for example, and for other benefits. Vows of offerings to saints are undertaken for obtaining favours. Almost every mosque is associated with a saint and vows are fulfilled on the day of annual ceremony held in the mosque in honor of the saint[19]. A number of Maulud and Andu ceremonies (birth and death anniversaries) for the Saints and Martyrs are held. This is done in a lavish way with much pomp. Arabic verses in praise of the Saint are chanted on these occasions. These anniversaries are celebrated in individual houses also. The elements of ancestral worship is also seen in elaborate celebrations held in Tharawad in honor of Local Saints who happen to be its ancestors. Large number of people are attending this ceremonies. Sufi elements are also observed in the performance of Ratib or Tikkar by followers of the Quadiri order founded by the great Sufi leader, Abdul-Quadir Jilani and

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[17a] Supra n.8, p.199.

[18] See Chs. II, III, VII, VIII, X and XI.

[19] A.R.Kutty, Marriage and Kinship in an Island Society (1972), National Publishing House Delhi, P.72.

the Rifai order of Ahmad-ar-Rifai. The practice of reciting Quran over the graves of the recently dead also is against the Wahabi ideologies[20]. The Wahabism reached in the islands from Kerala. This movement taking the religion "back to the book" to the days of the prophet.

Achievement of Reformists from the Mainland

Orthodox Sunni leaders opposed the Wahabi movement. The Wahabis were even ex-communicated from the Islamic society of the Laccadives. The Sunni leaders brought scholars of the orthodox school from the main land to attack the Wahabis publicly. After obtaining highest degree in Arabic of that time, the Afzal-ul-Ulama, in 1956, K.P. Shamsuddeen reached Agatti and found the conflict between Wahabis and Sunnis is very dangerous. The majority Sunnis was persecuting the Wahabis in all ways possible, mainly by social discrimination. Most of the conflict took the form of civil suits ostensibly for land and property disputes but actually provoked by the ideological rift.[21] In Agatti Island, Thalekkade Mohammed Moulavi (a Melacheri) the originator of the Wahabi movement there, had to face difficulties from orthodox Sunnis. In 1948 the Sunnis brought a learned Ulama from Calicut, Abdullakutty, to conduct the counter propaganda at Agatti. In the public discourses he declared that all Wahabis were (Kafirs) (Unbelievers) and advised the islanders to ostracize them from the Muslim community. He exhorted them to Isolate them socially and also to prevent their participation in prayers at the local mosques. That culminated in great difficulties to Wahabis, which made them objects of all sorts of calumny. The Koyas owned the mosques at Agatti and

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[20] Theodore P.C. Gabriel, supra n. 8 at pp. 123,130-131.

[21] Id. at pp.126-127.

they being the section to lose most by Wahabi egalitarian and fraternal ideals, prohibited the reformers from attending their mosques. The very existence of the Wahabis at Agatti was threatened. Later the Wahabi movement gained momentum and attracted many more adherents, especially among the younger generation. Later the Sunni brought another leader, Porkoya Moulavi, for their cause, this time from Androth Island, the Mecca of Laccadives. By that time, the Wahabis had gained quite a sizeable number of followers and Pokoya Moulavi took a compromising approach rather than a direct assault on the Wahabis. He invited the Wahabi leader and requested him not to aggravate the situation further by propagation of Wahabi doctrines in the island. Mohammed Koya agreed to this proposition provided the Sunni withdrew the social and religious boycott of the Wahabis. But Pookoya's attempt at reconciliation of the two parties failed. The belligerence of Sunnis towards the Wahabis has continued unabated. They decided to establish their own mosque. The construction of the Mosque, which commenced in 1950, was completed in 1951.[22]

Sunnis Vs Wahabis

The establishment of this Mosque augmented Sunni animosity towards the Wahabis, and they could not prevent them from attending public Salat. The fury of the Sunnis found expression in an attach on the Mosque in which it was destroyed. The Wahabis filed a criminal suit at the Amin's Court. (No executive-judiciary separation was there at that time and Amins were not having any legal qualification) Due to the gravity of the case, it was referred by the Amin to the Deputy Collector (Additional District Magistrate) of Malabar District. While the case was pending at the Collector's

[22] K.P. Ittaman, Amini Islanders, Abhinav Publications New Delhi (1976), p.222.

Court, the Wahabis repaired their Mosque. But this was again demolished by the Sunnis. Consequently Wahabis filed another criminal case against the Sunnis. The District Collector heard the cases in 1953, during his visit to the Island. The Collector tried for an amicable settlement. Collector pointed out to the Sunnis that since they had disallowed access by the Wahabis to their mosque it was only just to allow them to construct their own mosques in their own land. The Sunnis could not ignore the Collectors request in view of his administrative and judicial authority and they had to accept that proposition[23]. On his return from Calicut, the leadership of the Wahabis was entrusted upon Mr. Shamsuddeen. On 1st November 1956, the Lakshadweep islands became a Union Territory. To end the controversy between the two sects, the first Administrator of islands, Shri S. Mony, convened a meeting of prominent leaders of both factions and was able to effect reconciliation. According to this, a separate Quazi was appointed for Wahabis, Mr. Shamsuddeen was the first incumbent. Naturally, the Wahabis had refused to recognise to Sunni Quazi who is the judge in religious matters and most social affairs such as divorce. So by the efforts of civil administrators the Wahabis got religious liberty and freedom of worship as enshrined in our Constitution[24]. Now Wahabis are having their own Mosques and Madrassa as (religious schools). Their first Mosques "Issattul Islam Juma Masjid" and the first Madrassa Mifttanul – Ulum were started at Agatti island.

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[23] Id. at p.128.

[24] Id. at p.130.

Ahamadiyyas

The Ahamadiyyas movement refutes the claim that prophet Muhammed was the last prophet. It sets up as a prophet Hazrat Mirza Ghulam Ahamad, who was born in a family of Mughal chiefs in Qyuadian, a village in the Gurdasput District of Punjab, in 1835[25]. The followers of this sect islands are confined to Kalpeni islands. It is true that they had characteristic missionary zeal and attempted constantly to gain coverts to their sect from all islands. But the movement could not take off any remarkable achievement in the

Quadiriyya and Rifai Sects

Another sect is the followers of the great Sufi sanit Abdul Qyudir al-Gila and his disciple. Ahmad-ar-Rifai, known popularly as Mohindeen Sheik and Rifai Sheik in the islands[26]. The adherents of these Sufi orders are noted for the ceremony of Tikkar the Dikr of the howling Rifai dervishes. Shri Sathikumaran Nair opines that the ceremony of Ratib was introduced in the islands by one Sheik Mohammed Kasim Tangal, whose Makbara (tomb) is to be seen in Kavaratti island near the famous Ujjra mosques.[27] P.I. Pookoya also in his article on Kalpeni mentions this.[28] Shiek belongs to the lineage of Kavaratti Tangals who are held in high esteem throughout the island. They are well known for their magical powers, especially in connection with healing the self-mortifying

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[25] N.S. Mannadiar, supra n. 1 p.89.
[26] A.R. Kutty, supra n. 19 p.80.
[27] Sathikumaran Nair, "Arabikkatayile Pavizha Dweepukal" (Malayalam), National Book Stall, Kottayam(1972), p.224.

[28] P.I.Pookoya "Art and the Kalpeni Islanders", Lakshadweep Annual 1963, p.108. Pookoya calls the Sheik "Saiyid Mohammed Kasmi Oilyyuula".

ecstatic dancers of Tikkar ceremony. The Ujjra mosque in Chetlat Island was constructed in honor of the Riphai Saint and commemorates the death anniversaries of many of his descendents[29]. The Quadiri order is a very tolerant and progressive one, though not differing very much from orthodoxy[30]. Its important characteristics are philanthropy, piety, humility and aversion to fanaticism – religious or political.

Sheik Mohammad Khasim the founder of the Quadiri orders in the islands was an Arab Sufi Sayyid[31]. He was responsible for constructing the 300-year-old Ujjra mosque at Kavaratti. It is famous for its fine woodcarving[32]. The Saint also established mosques at Agatti and Amini, where he introduced Ratib ceremony. The Khalifa of the Amini mosques has jurisdiction over all the Quadin mosques of the Amindivi groups[33]. Shiek Mohammad Khasim died at Kavaratti in A.H.1140. His tomb near the Ujjra a holy place for islanders. The celebration of the Anniversary of the Sheik's death is important for them. The Sheik's cap, walking stick and flag are still preserved at the Ujjra mosques. The prayers to the Sheik are believed to be highly fruitful in healing diseases and redressing calamities. The Kavaratti Tangals is considered as owner and patronage of all the Mohindeen and Ujjra Mosques in the whole of Lakshadweep. Their representatives in each island are called Khalifas and are the heads of the Sufi orders in the particular island[34]. The Kavaratti Sheik visit the islands once or twice every year. Then the Khalifa of the respective order receives him ceremoniously on the seashore and escorts him to the

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[29] Id., supra n. 27 at p.215.
[30] Caesar D. Farah, Islam, Barron's Educational Series Inc. New York, 1968 , p.217.
[31] K.P. Ittaman, supra n. 22 p.93.
[32] This is based on a manuscript written by the Late Mohammed Moula of Kavaratti, an ardent devotee of Sheik. This record is now in possession of his son. see also Theordore P.C.Gabriel, supra n. 8 p.139.
[33] K.P. Ittaman, supra n. 22 p.94.
[34] Kutty, supra n. 19, pp.80-82.

mosques accompanied by resetting of thicker and the beating of tambourines by the members of the order. During the stay of the Sheik in the island Ratib is performed regularly every Sunday and Thursday night[35]. Formerly even without the presence of Sheik the ceremony used to be held invariably every Friday and Monday night, but now it is performed only when Sheik present.

There is very small distinction the Quadiri and Rifai orders in the islands. The main difference is in the songs of praise recited during ceremonies in honor of the respective grand masters of the order. Rifai order is known for thaumaturgical exercises like piercing of face and body with awls. During this ceremony in which the participants reach a frenzied state, which is known as Tikkar and is practiced by Rifais. The Quadiris on the other hand are content with beating Tambourine. In that rhythm slowly rising to a present crescendo and a very fast climax. The two orders are distinguished by the terms Tikkar – Kar and Daff–kar[36]. Theodore P.C. Gabriel had mentioned that there were no Quadiris and Rifais in Minicoy[37].

In 1950 some Melacheri youths learnt Baith (The Ratiba songs surreptitiously) and went in an occasion of Ratiba being performed at the mohiddin mosque of Amini in the company of some able bodied men and forcibly participated in the Baith. The Koyas, the upper class-were highly incensed at this intrusion into their prerogatives, but they did not indulge in any violent reaction. When they lodged a protest with the Tangal, who was the Khalifa of the Quadiri order in the island, took the stand that caste distinctions

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[35] That is Monday and Friday night for Muslims, since they consider night to precede the day. see Theodore P.C. Gabriel, supra n. 8 p.130.
[36] Daff (Malayalam - a tambourine). see also Theodore P.C. Gabriel, id. at p.142.
[37] Theodore P.C. Gabriel, id. at p.143.

were not relevant to the Islamic faith and would not admonish the Melacheri devotees. Humiliated by this unexpected reply the Koyas subsequently established their own mosques for conducting Ratib ceremonies. The approach of the Kavaratti Tangals in this controversy is interesting. Traditionally the Tangals have more affinity with the higher class Koyas than with the lower class Melacharies owning to the Tangals elevated social position. But, in religious matters they adopted strict neutrality and almost Wahabi like charm[38]. The Kavaratti Tangals attitude to the caste system is on the whole rather more democratic than that of the Tangals of Androth Island. The former is more popular with all sections of the island society inspite of their higher social status[39]. The separation of Ratib ceremonies for the Koyas and the Melacharies led to so many law and order problems. On festive occasions, such as Id-ul-Adha, Id-ul-Fitr and Bakr-id, the devotees of Quadiri and Rifai orders used to go round from house to house soliciting gifts for the mosques and performing Ratib. The question that who should lead the Ratib procession led to clashes. The Deputy Tahsildar, who was the then administrative head of the Amindivi Islands, issued a prohibitory order prevailing the procession being taken out, to prevent a disturbance of peace in the island. The traditional heads of the Sufi orders continued to officiate at ceremonies in the Melacharies owned Ratib mosques, in conformity with their stand an equality of all devotees. K.P. Ittaman mentions of two Ratib mosques each for Tangals and Koyas at Amini[40]. Earlier in a similar incident in 1940 the Melacharies forcibly participated in recitation of Baith. This took place in Agatti, but that was amicably settled by the intervention of Aranikkat Tangal of Kavaratti.

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[38] Id. at pp.147-150.
[39] Id. at p.142.

Tangals

Tangals, though belonging to the Sunni sect, is being treated as a special category among them. The Tangals are the direct descendants of the Prophet (through his daughter Fatima) and are highly revered in the islands as elsewhere throughout the Islamic world. The Prophets descendants in Mappila community of Kerala are also known as Tangals. In other Muslim communities they are known a Sayyid (also spelt Syed or Saiyis), Sharif, Wali, Pir and Mirza. Tanglas of the islands are mostly concentrated in the Androth Island. They are considered to be the descendants of Ubaid – Allah the Hijazi Sayyid who is believed to have converted the islanders to Islam. The Tangals of Androth Island exhibit different physical characteristics like fairer complexion a better build, which perhaps indicate their Arab lineage. The Tangals from Lakshadweep have a high reputation in the mainland and many of them, especially those from Androth island, earn a very good living by visiting Kerala and even foreign states like Sri Lanka and Singapore where they are held in much esteem for their practice of healing and other magical rites. [41] These periodic journeys are known as Saphar (from the Urdu word for travel). Though witchcraft and sorcery are not acceptable to orthodox Islam, many Tangals practice magical rites, with the help of amulets and charms. These charms are usually verses from the Koran written in Arabic or codified into numbers on pieces of

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[40] K.P.Ittaman, supra n. 22 p.217.

[41] Similar practices are by Dunkns (local Shamans) borrowed from pre-Islamic, native Abangan Pagan cults are wide spread. In the Maldives there are numerous Fanditamen (sorcerers) whose main tool for working their spells is the amulet called Tavidu. For detailed discussion on Indonesian magical practice, see Clifford Geertz, Religion of Java, Free Press of Glencoe, Illincis, (1960), pp. 86-111.

paper or engraved on metal and enclosed in containers, Urukku and tied on the person of the individual expecting benefit from the against.

The island society is a predominantly matritilineal, but the Tangal Community is an exception of this. Here inheritance passes from father to son through the head of the line[42]. Matriliny in the Islands is a vestige of the Hindu ancestry of the islanders, the fact that they are descended from Nairs and Tiyyers who originally emigrated from the South Malabar, where a matrilineal and matrilocal forward system existed. They follow patriliny a predominant inheritance mode[43]. This is in tune with the predominant Islamic ideology.

The reformist movements in the religion could help in removing social and religious disabilities. But they could not totally divorce the islanders from the Hindu bases of the society namely matriliny, joint family, caste consciousness and ancestral worship. The number of mosques in proportion to population and land area is much higher than any other part of India. But there are so many long pending civil suits and criminal cases before judicial courts on the issue of control over mosques. There are repeated law and order problems to be handled in some areas. One can attribute their roots in the social statrification the islanders followed earlier.

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[42] Leela Dube, Matriliny and Islam, National Publishing House, Delhi (1969), p.105.
[43] Andrew D.W. Forbes, "Caste and Matriliny in the Laccadive Islands", 8 Religion 15 at p.18 (Routledge and Kegan Paul, Boston, 1978).

CHAPTER –III

CONCEPT OF PROPERTY, LAND TENURES AND LAND REFORMS

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CONCEPT OF PROPERTY, LAND TENURES AND LAND REFORMS

Historically, land, ownership on land and land based relationships are the decisive part of social power structure. The form and content of the economy and the socio-political setup of the society, all are revolving around this.[1] The importance of land as the shaping factor of the life in a society increases when we are dipping more and more deep in time. So for understanding the very nature of entities and interacting process and the various changes that crept into the society, a study of land and land based relationship is inevitable.

Land – the concept in general

The meanings of both land and tenure are different from society to society and period to period. For Europeans, land is an area whose referent is an immutable grid written up on paper as per rules, which correlate the written grid with astral observations. Tenure is some right or rights, partial or whole, to exclude others from land represented on the grid.[2] Earlier for the west Africans, land is continuous topography over which the clan roams.

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[1] R.S. Bhalla aptly said : "In different societies conceptions of property have varied according to the political and economical structure of the society. One cannot expect the same conception of property to be held in different societies". R.S. Bhalla, The Institution of Property: Legally, Historically and Philosophically Regarded, Eastern Book Company, Lucknow (1984), p. 75. The word property have been used in many ways to mean many things. See Morris R Cohen and Fleix S Cohen, Readings in Jurispudence and Legal Philosphy, Little Brown and Company, Boston (1951), p. 6.

[2] Daniel Biebyak (Ed.), African Agrarian System (1963), pp 101-115.

The social meanings of land also are different from society to society and even discipline to discipline. In Europe once land was considered as an area to be farmed or owned. For some land is an area over which a political sovereign wields. For Europeans, it is fatherland and for Indians, it is motherland. For Indians, land is Goddess.

In India innumerable Rajas ruled the country at different periods through various systems. Due to the isolations emerging out of topography and recurrent changes in the land system introduced by rulers, there was no unanimity in the land and land tenure concepts.[3] The nomenclatures were different; the units of measurement were different. Even in one state we can see lot of criteria for measurement. There was difference in the same unit of measurement from place to place[4]. With varied degree of control of the king or other rulers over the territory, land and land tenure concepts were undergone various changes. This depends upon the approach and the attitude of the rulers towards that territory.

Land in Lakshadweep

Lakshadweep islands are away, far away in deep sea. On those days of non-mechanized vessels, they were safe in the deep sea. This land belonged to no one. Later on, the Cannanore Rajas, Arakkal Beevis, Mammalies,Tippu, Portuguese and English were attracted to the islands. All of them were extracting these islands. The only difference was there in the degree of squeezing the land and the people. All of them wanted a steady increasing income from islands.

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[3] Anjali Kaul, Administration of Law and Justicein Ancient India, Sarup and Sons, New Delhi (1993), p. 119.

[4] In some place of Kerala one Kole means six feet in some other areas it was shorter than that .

In so far as land and land tenure systems in Lakshadweep is concerned, there was differentiation between land-to-own and land-to rule both in its natural legal ideas. It can be seen that land-to-rule is an idea anterior to and more all pervasive than land-to-own. In Lakshadweep this land-to-own has emerged or crystallized out of land-to-rule so slowly. This evolution is very much reflected on their concept of property also. The growth of political state and its supremacy over the families residing there are also inter-linked in this change.

The land control in any society linked directly with the perceptions of real, social institutions. In land management English idea is based on estate as a unit. In Indian situation this unit is village. In the peculiar Lakshadweep set up earlier it was linked with caste, matriliny based joint family, common brotherhood and community oriented preferences of the society and the limited need of the people. In those days the leadership of the society was in landed aristocracy.

It is peculiar to note that in olden days they have assessed income not in terms of money. Their needs were limited. They could run the transactions through barter. Because of all these factors, the Lakshadweep owner of land or tree was not interested in improvement of land. The imposition of coir monopoly[5] by the Arakkal Rajas, and later Britisher's also followed that. This worked as a deterrent factor in their land developing interest. The calcareous nature of soil also prevents the expansion of agriculture beyond the level of coconut. In the deep seas even without money, they could maintain their

[5] For a discussion of Coir monopoly,See infra, Ch. IV.

purity and serenity of life with content. This was due to their peculiar life style. But, whether it is Arrakkal Rajas, or Britishers, their idea was to extract maximum income from these islands. Though the Arakkal Rajas have not made any scientific attempt to improve land, they have brought the entire wasteland under Rajas as Pandaram land[6].

The land to own was introduced by Arakkal Rajas. Britishers made some specific scientific approaches to improve the productivity of the land. For Lakshadweep even now the term productivity of the land is attached only with the increase in the coconut yield. This has very particular implication in olden days because the only commodity, which is salable in the market, is the Lakshadweep coir. That was world famous. In their attempts to maximize their profit, they have used monopoly over coir trade. Through monopoly, which the Government maintained, the coercive process is used to maintain the actual price given to the islanders at lower level and to extract maximum profit.

The proposition that the institution of property is a natural right and at the same a product of civil government and its laws become significant. To whom the right of possession and enjoyment should rest, and to whom it is not transferred etc are all resting on. This will be clearer when one look of the partibility of joint family and inalienability of land known to islanders in Lakshadweep society. This also goes against the unfettered right of transfer of land elsewhere.

When the private ownership of land emerged in the society, the collective interest of the society has been transplanted with individual interest, which is in direct proportion to the disputes in the society. As the population increased, the tendency of

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[6] N.S. Mannadiar (Ed.), Gazetteer of India: Lakshadweep, (1977) p.233.

individualization got deep roots in the society and the disputes based on the land were became prominent.

In the later years when modernization engulfed the society in the form of new laws and legal institutions, coupled with the changes introduced by the land reforms, the authority of the community over the individual was undetermined. The peculiarity of this isolated community was their sharing of issues of islander's conjointly. That started eroding away.

The Cannanore Rajahs had at first no private property on the islands. He has not put forward any claim on lands or trees upon them. Those were treated as the absolute property of islanders. At that time the idea of private property was quite unknown to the islanders. But about hundred years later Cannanore Rajahs began to assume the entire area of unoccupied lands on inhabited islands. These lands were treated as the private property of the Cannanore Pandaram[7] or Government known as pandaram lands[8]. There was little opposition to this acquisition. Where there was opposition the chief inhabitants (Karanavans) were put in charge of management as a way of compromise.

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[7] Pandaram is coming out of the word "Bhandaram" means treasury.

[8] R.H. Ellis, A Short Account of the Laccadive Islands and Minicoy (1924), p.55.

The Rajas were taken a conciliatory approach with Karanavans who wielded power and influence. During the period of Rajas a strip of 40 kols (100 feet) wide all along the shore had been summarily confiscated. This strip round the shore thus confiscated since then known as the Chuttu Karaima lands[9]. This Pandaram claims on Chuttu Karaima lands were relinquished on 1870[10].

Later Rajas utilized all opportunity to secure lands. Many lands were wrongfully declared escheat. The Raja settled disputes as to property by appropriating it for himself. Ellis mentions that the small blocks of Pandaram land scattered among the private lands in Kavaratti, known as Nattagathu Karaima, were acquired in this way. The Idiyakkal Pandaram lands in Kavarathy were confiscated for debts due to Pandaram. In Kavarathy no islanders were allowed to plant trees on the southern side beyond a wall which is known as Padhi[11].

There are two types of peculiar minor Pandarams seen in Androth known as the Karaima and Pervili lands. The Karaima lands were the lands confiscated by the Rajas, but given back to the original owners on condition of paying fixed revenue[12]. Pervilli lands were having its origin a particular system of the island. These lands were originally

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[9] This Chuttu Karaima system is more or less appeared in a different shape about 150 years later when the Central Government has promulgated Coastal Zone Regulation Act in 1994 by which the Government has banned construction of any building within hundred meters from shore line. Though later this hundred meter has been reduced to 50 in general and even to 20 meters in smaller islands Chetlat and Bitra considering the peculiar situation in islands.

[10] Id., p. 56.

[11] Ibid.

[12] Mannadiar supra n. 6 at p. 234.

the plots granted by the Raja to the holders of title or Sthanams[13]. On the death of the titleholder, his heirs have to pay a fixed amount for the retention of title and land.

Around the kacheri[14] in the islands of Androth, Kalpeni, Kavaratti and Agatti mall plots of land known as kacheri pandaram, is there. The trees in these lands were granted to the officer in charge of the kacheri for the maintenance of kacheri buildings. Due to the failure of the system later Government had directly maintained this property. Britisher's converted these pandaram lands into government lands, after the islands directly came under them. Most of these lands were then given on long term leases known as cowles.

The Cowle System

The Laccadive group of islands were attached by the British on 3rd April, 1875 for arrears of Peskash (annual rent) from the Arakkal Rajas. This attachment remains valid till 1908 Beebi surrendering here phantom sovereignty[15]. During the period of Rajas the pandaram lands were the private property of Rajas. That was managed by Karyakars.

Mr. Logan, the then Collector, of Malabar was of the opinion that the wastelands could not be the private property of the Raja. Since the concept of property in land was quite unknown in the islands, he thought that it would be impossible to leave them ownerless for any one who pleased to grab. He decided to view them as the crown property of the Arakkal family and to lease them out. In the year, 1878, in consultation

[13] The Sthanams were purchasable thing from Rajas on paying fixed amount. For details see infra Ch. 4. See also supra. n. 6 at p.234.
[14] kacheri means court.
[15] Ellis,supra.n. 8 p. 21: See also G.O.416.pol.2nd July, 1877.

with Mr. Winterbotham who visited the islands that year, a scheme for granting the lands on improving leases or 'popularly known as cowles was drawn up[16].

The concept of Cowle and the revenue administration based upon this, had a tremendous impact on the native concept of the property. Earlier their concept of property was based purely on the number of coconut trees.

For the first time in the history of these islands, the introduction Cowles made it imperative to survey all the Pandaram lands on the islands and to divide them into suitable plots. Then each plot was inspected to take account and to classify the trees. The trees were classified according to its stage of growth into five groups.

1. Phalam (bearing).
2. Aphalam(out of bearing)
3. Maram (young tree not yet in full bearing)
4. Kill (plant)
5. Thei(seedling)

The census of trees known as paimash later became a periodic feature and the tree tax was fixed up on that.

The form of lease was to immediate payment of assessment up to all bearing trees and for necessary changes in assessment each year as young trees, as ascertained at the inspection, came into bearing. An important feature was that no assessment was to be paid until after a fixed term of years upon trees planted by the lessee himself subsequent to the grant and, it was provided that under the order of the Collector future paimashes

[16] G.O.No.72 Pol 23rd Feb.1880. Ellis,supra. n. 8 at p.57.

might be at interval. After the destruction of trees by any serious calamity, and the assessment enhanced or lowered accordingly.

The Cowles were granted for a period of 40 years subject to regular payment of tree tax. But a Cowledar could claim no compensation. Except this tree tax, no other tax was realised from the Chowle lands[17].

The surveying and paimashing the Pandaram property preliminary to leasing it out to the islanders was a laborious task. It was impossible for the inspecting officers to do more than a portion at each visit. So, though this was started by Mr. Winterbotham in 1878, it could complete in 1884 by Mr. Tate. All most all the inspecting officers made minor variations. The final form was published in 1885. The conditions remained almost the same but the power to surrender at one-year notice also was added[18].

The Cowles issued after 1885 were having modified terms. But that has not been mentioned in the subsequent printed inspection reports. So we have to assume that they have ever been formally sanctioned[19].

Occasion to reduce the assessment was the loss of trees by storm, lightning or other calamity. This system is followed even now. This system was much more simpler than for looking of the bearing of trees and was accepted by the people as more fair one. The latest paimash was in the year 1976 here after, there will not be any paimash. When the landforms is fully implemented, this question of tree tax will not exit[20].

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[17] Ellis supra n. 8 at pp.57-58.
[18] G.O. No. 748,pol 28th October 1885.
[19] Ellis supra n. 8 at p.58.
[20] Id., p. 59.

In Agatti and Kavaratti islands the Cowledars were not that much enthusiastic. The major reason for this set back was that, the persons who got Cowle were having even otherwise have large number of private coconut trees with enough income. To make the system more effective in 1908 a penalty was imposed on those who fail to plant minimum number of trees per year. In Agathi and Kavarathi the Cowle lands have been inspected and the number of trees to be planted by each Cowledar every year was fixed.[21]. This coercive measure also failed in those islands. In 1920, Mr. Ellis, then collector of south Kanara identified that in some of the plots the trees were lower than it was in 1908. He changed the policy by giving Cowles to more industrious people. Definitely they are from poor sector of the society. Cowles to lessees who had not planted even half of the stipulated number of trees were resumed by the Government. And redistributed to the people from the poor. In 1913, the system of prize distribution to the Cowledars who perform at higher level also was introduced[22].

Since then the trees were auctioned for five years on condition that a stipulated number of trees be planted during the period of lease. This proved effective.

Cowle in uninhabited islands

The success of cowle system in the inhabited islands paved the way to introduce this in the uninhabited islands also[23]

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[21] Ibid Failure to achieve this target was fined at the rate of Rs. 1/- per every 50 seedings not planted

[22] Mannadiar supra n. 6 at p.237.

[23] Cheriyam was the first uninhabited islands where cowles were granted. It was in 1922. The people of Kalpeni Island considered this islet as charitable gift and they used to plant trees there in fulfilment of vows made when they were detained by winds or caught in storms. So the people

(f.n. contd.)

Originally the cowles were granted for 40 years. One of the conditions of the cowl system was that in case the Government is ejecting the lessee, compensation had to be paid for all the trees planted by him. Since the redemption was a costly affair government never attempted redemption. So after some years all the government trees starting at the time of the original grant died out and plantations would be full of new trees planted by the cowldars. In effect there was security of tenure and the tenants were virtually owners of the land.

Though the cowle system has not permitted the sub tenancy, later the lessess began to give the land entrusted to them to tenants with the same conditions of rent and customary services attached to private Jenmam lands. This is a particular instance which indicates that whatever may be the law prescribed by the rulers depending upon the cultural specificities and the needs of circumstances those laws will be modified or some practice which is going against those law will emerge. This emergence of modified system is coming out of people's difficulty to adjust with the law prescribed by the rulers. Later at some turning points of the society generally the government has to validate the rights and liabilities emerged out of such practice, which were divergent from the law in the books. So, whenever there is divergence between law in the book and the law in action, it will lead to a compromise from part of rulers by recognizing and legalizing the divergent law in action. Many such tenants planted new trees of their own, partitioned the

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of Kalpeni long resisted the introduction of cowle in Cheriam. In 1880 Valiakara and Cheriakara in the Kavaratti group were leased. In the same year Bangaram, Tinnakara and Parli were leased out in blocks to Agatti islanders for 3 years. During this period itself Suheli islets were also leased pending the establishment of colony from. In 1891 Bangaram group was leased to Agatti Amin. Kalpitti also was rented out for 20 years. In 1904 the Agatti Amin surrendered his lease of Bangaram. All this has effected only after cowle system was introduced in the inhabited islands.

property and allowed inheritance of their tenancy rights. Ultimately this led to disputes between tenants and landlords on cowl lands also. The Laccadive Minicoy and Amindivi Islands land revenue and tenancy Regulation 1965 empowered the Administrator to confer tenancy rights on these cowldars and other occupants of pandaram lands. That is, this 1965 regulation made them virtually the landlords with heritable and transferable rights.

While leasing out the pandaram lands on Cowle. The cowldars were duty bound to pay annual tree tax. There was inter island and intra island variations in rate of tax. The tree tax were originally fixed in terms of coir at the rate of 5 phalams to 25 phalams of coir (10 phalams = 1Kg) per tree per annum. As the coir prices increased the cowldars started paying tree tax in cash. Paimish conducted in 1976 refixes the commutation rate of tree at a uniform price of 50p per trees in all islands.

Lands

The types of land in island can be classified into Jenmom lands (private lands) and pandaram lands

Jenmom Lands

As stated earlier all cultivable lands were in the hands of principal families. These lands were known as jenmom (absolute ownership owned by jenmies or landlords). Among the Koyas, Malmis and Melacheires the aristocratic Koyas happened to be the jenmies. There were two types of jenmies. jenmy who have tenants and jenmy who was not having tenants. The jenmy who is having kudiyans was getting his work done, of his property by a service tenant. Gradually the kudiyans inherited a kind of legal right over

the property they held, which they maintained, replanted and extended. Virtually they were the owners of the land.

As the concept of property of this society was in terms of coconut trees alone and not on land area there emerged a custom of planting trees by anybody at a distance from the existing tree. This extra ordinary custom led to an intermixing of so many people's coconut trees belongs to in the very same area. This practice of random planting without regards to the land led to numerous disputes and encouraged litigation. The ownership of land was in a state of confusion during the 19th century.

Tenancy system

The land tenure of Lakshadweep was intertwined with caste system. The high caste among the early settlers have appropriated for themselves all land that could be brought under immediate cultivation. In tune with the then existing Malabar feudal practice, from where they migrated, they asserted over lordship of these lands. Thus they became Jenmis (Land lords). The lower caste people whom they had brought from mainland became Kudiyans (tenants) under jenmis.

In the early period of colonization the idea of private ownership of land was not there in the islands. In that period ownership of property was reckoned in terms of coconut trees owned. At that period there was no concept as regards the area of land.[24]

[24] See for a detailed discussion on the peculiarity of land, ~~See~~ infra Ch. 8, In 1929, in Suheli also cowle was introduced. This was for a period of 12 years. The cowles were granted in Bangaram, Tinnakara and Parli in the year 1931. It was introduced in Kalpitti which attached to Agatti in 1933.

The system of land revenue or land tax was not there. A land survey and settlement was started for the first time in 1959. Because of the complexities of the concept of property like a single person's coconut trees in another's land, the settlement could not finish even in year 1999.

Under Jenmom lands there were three types of tenancy. NadapuTenancy, Pattom tenancy and House-site tenancy.

NadapuTenancy

NadapuTenancy was a peculiar system granted generally by the owners of boats. In this the landlord is entrusting a Nadapu normally consisting 30 to 40 coconut trees to the tenant. The tenant has to pay to the landlord an annual rent for Nadapu. In olden days the rent was paid in kind in the form of copra. Later its value had been commuted in terms of cash. There was no unanimity in this valuation among different islands. The settlement was more or less permanent. There is no question of enhancement for improvement made subsequently. Since if a Nadapu of 30 trees the tenant has planted more trees and the number of trees in the area had become 150 the landlord had no right to claim the rent for the excess trees planted over and above the original Nadapu. In Amini the custom is slightly different. There the rent was paid in copra and in accordance with the actual number of trees the rent also was fluctuating. The reason may be their ignorance regarding the land as a criterion property. In practice land was becoming the absolute property of tenants subject to conditions regarding rent and certain services attached to this. Generally a kudiyan has only one Nadapu. But there are cases in which

the kudiyan got more than 2 Nadapus under the same jenmi or who was holding more Nadapus under two jenmis. There was no unanimity as regards the rent collected also[25].

NadapuTenancy was prevalent in Agatti, Amini, Androth and Kavaratti islands. This system had a feudal character involving customary services by the tenants who were socially and economically subjected to the land owing jenmis. Though the tenancy rights of the kudiyans were not uniform in all the islands, the obligatory services to be rendered by them were a common feature everywhere.

The practice of exacting customary services, which prevailed in Kerala, were suitably modified to meet the changed circumstances of the islands was as follows. It involves customary obligatory services with or without payment of rent the rendering of certain customary services like sailing as a Kalasi in the landlords boat for one trip to mainland and back, thatching of boat shed, repairing and oiling the boat along with some other services[26] such as:

(a) working as a member of crew on the jenmi's or cowledar's boats;

(b) thatching the boat-shed of the jenmi or the cowledar;

(c) repairing and oiling and maintaining jenmi's or cowledar's boats;

(d) carrying out seasonal repairs on the jenmi's or cowledar's house or;

(e) Rendering service on occasion of birth, marriage or death in the jenmi's cowledar's house.

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[25] In some cases four thulams (cwt.) of copra were paid for every 240 trees while in other one thulam was paid for 100 trees. In Androth the rent was paid in cash at Rs. 18/- per Nadapu, and additional rent was collected for more trees, taking multiples of 40 trees as the number of Nadapus in possession. See Mannadiar, supra n. 6 at p.230.

[26] G.O. No. 1453, 22nd April 1955, at p.14.

The need to follow the custom

This custom was based on division of labor and feudalism. Was it a necessity in the then island socio-economic circumstance? The boats then used were non-mechanized. The return, after this long journey through Arabian Sea was uncertain. Sometimes it used to take months and months or even years. They had no compass, or direction finding or speed detecting instruments. The sun, moon and stars and the reflection of the lagoons on the sky, and the customary voyage practice were their pathfinders. At that time except coconut every thing for the existence of the life of the island should come from mainland. According to the custom of island only the Jenmis could own a sailing boat in the past[27]. In this situation the Jenmis had to depend completely upon their Kudiyans to carry out the work. In the case of tenants they had to depend on the Jenmis absolutely for the goods required for the daily consumption from mainland. They had to market their produce also in the mainland. Under this customary practice the tenant had the obligation to serve as a sailor on the Jenmis boat without any payment. Another obligation is that the tenants can take their things to mainland and also from mainland only in landlord's boat. For this the landlord will extract freight charge. This freight charge was arbitrary and generally doubled the ordinary charge fixed even at 10% of the cargo. Over and above the profit getting to Jenmi, the prime motive of the society for following such a custom was to compel a group of a society to undertake this maritime adventure regularly which was inevitable to bring provisions to the island. In that sense the feudal obligations preserved even by enforcing double exploitation on Kudiyan. So this NadapuTenancy was an extension of the feudal set up of Kerala at the period of their migration. Definitely that is

adapted to suit the peculiar situations of the islands to tie them with an obligation of interdependency.

There were two types of Kudiyans under the Nadapu system in Amindivi, viz., PazhayaKudiyans and PuthiyaKudiyans[28]. PazhayaKudiyans or old tenants held perpetual tenancy right over the property under their possession and they could not be evicted from such land and they were registered in the 1875-property register. PuthiyaKudiyans or new tenants had no permanent right over their tenancy. If the Jenmi was dissatisfied with the services of his tenant, he had every right to evict the Kudiyan from the tenancy. So they were in a way, tenants-at-will.

Though generally the Kudiyans under the NadapuTenancy acquired a sort of fixity of tenure. At the same time the land-lord could enforce the customary services by filing suits against defaulting tenants and could claim damages. This resulted in a lot of litigation between the two. The cases had to be filed before Amin or Monegar, landlord and tenant.

In course of time, the Kudiyans with absolute right to plant trees in their possession had more trees than they had at the time of the original grant. Demarcation of the property became a difficult affair. In many cases, the Jenmis could not identify their properties except by the possession through tenants.

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[27] Lower caste could break this tradition only during the middle of the present century. See also Mannadiar supra n. 6 at p. 91.

[28] See K.P. Ittaman, Amini Islanders, pp.181-182. See also Mannadiar, supra n. 6 at p. 232.

Pattom Tenancy

Pattom was generally regarded as a temporary tenancy governed by contract between the parties.[29] The tenants had to render no compulsory service to the landlord but they were expected to serve him in some other way like helping him to thatch his house, doing services on the occasion of social functions, etc., in addition to the payment of rent. However no compensation was demanded for the failure to do these services. In many cases, the tenants were allowed to plant trees and they could enjoy the usufructs from their trees. But the landlord had the right to terminate them at will by giving compensation for the improvements made on land[30]. Thus there was no security of tenure for the tenants under Pattom tenancy.

House-site Tenancy

This system of tenancy broadly reassembled 'Kudikidappu' system of Kerala (completely abolished after 1970). Under this system, the tenant could build a house on the plot, which belonged to the landlord. Though no rent was to be paid, the tenants had to render certain customary duties to the landlord. It was possible for the tenant to live in that houses as long as he liked. But, in case the house was dismantled, the site reverted to the landlord[31].

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[29] N.S. Mannadiar, supra n. 6 at p. 232.
[30] N.S. Mannadiar, Id,. at p. 232-233.
[31] Id., at p.233.

Property

The discussion made above leads one to the conclusion that the islanders had no idea of the property in the form of land. For them property consisted entirely of trees and houses upon land. During period of Rajas the uncultivated land were confiscated as Pandaram land and the islanders were forced to plant more coconut trees wherever they were having space. During the British period they have been given land for improving leases known as Cowle and the cowldar was supposed to pay tree tax for the existing government trees but not for the new trees, planted by him. It is pertinent that this Cowle was initially for a 40 year long term though the government could redeem the land by paying compensation for the improvement made by the cowldar. That obligation to pay compensation prevented the government from redeeming it. Both Rajas and Britishers were interested only in improving their profit from coir monopoly.

This resulted in a peculiar custom, which enabled a person to plant a coconut tree in any vacant space provided that he maintained certain minimum distance from any other person's coconut trees. Within in the minimum distance the right of planting is exclusively reserved for the owner of that tree. This custom also is having linkages with their idea right over a particular area is not upon land but upon trees only till the death of those trees. For example, in Nadapu Tenancy in between the 40 trees he is getting as Nadapu, the tenant could plant as many trees as he wanted. These newly planted trees are the tenant's trees. For this he is not accountable to the landlord. This keeping of minimum distance was may be for allowing the tree to get enough space and sunlight to

grow[32]. By preserving that distance for the owner they are preserving the right of the owner of the tree in perpetuity. If he is keeping that area vacant after sometime after the death of that tree he will lose his right over that particular space i.e. somebody will plant a tree. So to avoid this sort of dispute, the owner of dying tree used to plant another tree within that minimum distance. Now it can be seen that many person's tree in the one and the same plot. For identifying their trees, each tree was having its own identifying marks. The major duty of Tharawad is the maintenance of its members. When the family is becoming bigger in size the branching out of family was accompanied with maintenance arrangement by allotting coconut trees.

Earlier in the island they were having mortgage or lease[33]. But this had affected none with respect to land but with trees. Ellis has mentioned that in the Amindivi Islands

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[32] In some areas, due to more member of trees than that area can contain lowered the yield. In Kalpeni island you can see the coconut trees are standing very close to each. This may be the result of this custom or custom violation.

[33] For comprehending this idea of leasing out of trees and how it was operated in the society an instance of the leased deed executed in favor of Karechetta Adima of Amini island on 25th March, 1953 by Nangattiam Abdulkader Koya of the same island reads as follows.

"according to the deed, I, Abdulkader Koya, lease out 11 coconut palms owned by me of which 2 are located in the Mankiodeware Vadkkubhagam plot, 6 are located in the Aalipallikeel plot and 3 are located in the Thaithottathil Keel plot to the said Adima for five years fixing the rent at the rate of 1 Thulam of copra per year. As I have taken a loan of Rs. 45 (Rupees forty five only) from you on this date I hereby allow you to take this rent of 1 Thulam of copra to the mainland to sell during the month of march and the sale proceeds thus obatianed to account towards the loan taken by men and if the loan amount is not recovered completely during the said 5 years period I hereby allow you to keep the trees under your possession under the same conditions till the entire loan is recovered.

The said Abdulkader Koya (signed)

Witnesses:

Ella Kader(signed)

Pattiam Mohammad (signed)

Since I, were the above said Kader Koya have again loaned a sum of Rs. 25 (Rupees Twenty Five only) from the said Adima on 14th April, 1955 the coconut trees refered to above are again leased out to him for a further period of two years or till the entire amount is cleared through the adjustment of the sale proceeds of the copra fixed as rent towards the loan according to the conditions laid down in the previous lease deed.

(f.n. contd.)

the ancestral property could be subject of a mortgage but the right of redemption is reserved on the reversioners at the rate of rupee 1 per tree[34].

The yield of coconut trees forms the basis for the classification. One high yielding coconut tree is equated with 2 or 3 low yielding trees. Though the early part of 1900 the measurement of land gradually entered the Amindivi Islands first and later to Laccadive Islands in general there was not big change in the concept of property based on tree. Land based property concept was also taking roots in the society slowly along with tree based concept. But the concept of property as in the mainland was legally enforced by the introduction of Laccadive, Minicoy and Amindivi Islands, Survey and Boundary

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The said Abdulkader Koya (signed)
Witnesses: Thithechetta Mohammad (signed)
After leasing out for seven years, the coconut trees owned by me shown in the lease deed on the reverse side of this document, on 25th march, 1953, due to certain financial difficulties I, the said Abdulkader Koya, have again taken a loan of Rs. 50 (Rupees fifty only) from the said Adima on this 15th day of January, 1958, and have leased out the same trees to him for a further period of five years for the purpose of realisation of the loan given to men according to the same conditions laid down in the previous lease deed. But if the entire loan amount of Rs. 120 (Rupees one Hundred and twenty only) is recovered from the sale proceeds of the rent of 1 Thulam of copra any time within the total 12 years of lease period, the rent of the trees for the subsequent years should be paid to me directly and if the amount of Rs. 120 (Rupees One Hundred and Twenty only) is not recovered within the specific period of 12 years. I hereby allow the said Adima to keep the trees leased out to him under his possession until the entire loan is realised completely.
The said Abdulkader Koya (signed)
Witnesses:
Moktessor Ella Ander (signed)
Thittechetta Mohammad (signed)
I, the said Kader Koya again lease out the coconut trees owned by the mentioned in the previous lease deed for a further period of 5 years to Adima on his 17th January, 1961 after accepting personally a sum of Rs. 101(rupees One Hundred and one only) from him. I here by allow Adima to realise this loan amount according to the same procedure and conditions laid down in the first lease deed.
The said Abdulkader Koya (signed)
Witnesses:
Moktessor Ella Ander (signed)
Thittechetta Mohammad (signed)
For details see K.P. Ittaman Amini Islanders social structure and change. (1976), pp.227-228.
[34] R.H.Ellis, supra n. 8 A short account of the Laccadive Islands and Minicoy, pp.45-46.

Regulation 1959 and by the implementation of Lakshadweep Registration Act in 1967[35]. The coercive force of law and the resultant governmental sanction induced the society and culture of these islands, far away from the mainland, assimilate the general concept of property. This has given an initial blow on the islands culture identity and social ethos since independence. Chain reactions occurred later in this society. The impact of the change on impartible joint family property and the matrimonial setup in the society is devastating[36]. The transplantation of concept of property was contrary to, then prevailing common property (impartible joint family system) system in the Lakshadweep and it caused in the due course the disintegration of the very basis of the society, the joint family system and the matriliny.

Even from the time of William Logan in 1880 the Britishers tried to inculcate mainland property culture to the island. But the islanders could unknowingly resist with the strength of their community oriented customary law of Marummakkathayam. The separation of plots by erecting fences and walls are of only recent origin in the islands. Even now for equalization of share they are allotting coconut trees in another mans land. This right of the tree owner is only till the death of the tree.

The Transfer of Property Act 1882 (TPA) was not applicable to these islands till 1967. It was extended after enactment of Laccadive, Minicoy and Amindivi Islands Laws, Regulation 8 of 1965. Till that time the law to be administered in the island was to be based on justice, equity and good conscience. The doctrine of lis pendens provided in section 52 of TPA was not applicable to islands. But based on the principles of justice,

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[35] published in the Lakshadweep Gazette dated 1st July 1969.
[36] For details, see the infra. Ch. IX.

equity and good conscience, the Kerala High Court has made this doctrine even applicable to transfers made even prior to the extension of the TPA to their island in Aliyathumma Beedbiyapura Pookoya Thangal v. Azhikkakath Haji Koya Thangal[37]. In this case a 1956 document was in question which was based on a 1933 document. This is a good example how judicial precedents superimposed mainland legal concepts on these islanders.

The major area of operation of customary laws is property right of the people. The unique character of customary laws of Lakshadweep on this aspect is linked with the peculiarity of property concept and the land tenure of the society.

Land Revenue

Land revenue means and includes those receipts, rents or rates, which are received from land sources. The income from cultivation of land cultivators comes under this category. The revenue from Lakshadweep is too small. As the land holdings are too small the agricultural income tax is out of question. So the land tax would be the source of revenue. The 1965 Regulation has made provision for the collection of land tax in place of tree tax. This is a good approach.

The survey and settlement operations started under M & A island survey and boundaries Regulation 1959, has got new dimension after the implementation of land reforms.

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[37] AS138 of 1981 of Kerala High Court. This case was decided by justice T.L.Viswanatha Iyer and the judgement was pronounced on 29th July 1993. Actually this is an appeal on the file OS 9 of 1972 on the file of Subordinate Judge of Kavaratti.

The success of the land reform is based on the proper record of rights with clearly defined rights over land of individuals house holds. Actually this is the problem which troubled the authorities to implement the land reforms in the various other Indian States 1965 Regulation stipulates a record of rights for each island. That is a comprehensive land register so that will be the final shape of the settlement operations.

The old system of planting trees as mentioned earlier, later created the problem of extra-ordinary mixing up of the properties. One's trees used to stand in another land. This was a fertile cause of disputes. In the days of maintenance arrangement as detailed in the chapter on Marumakkathayam, the maintenance arrangement used to be made by allotting a definite number of coconut trees each. Even now, in 1999 when the land based property concept is prevalent the practice of allotting trees in another land is common but the practice is restricted to a situation, when partition takes place, for equalizing the number of coconuts trees that one may be given or allotted properties in another land. This allotment of trees is till the death of the tree or the death of the allottee. By maintaining this practice, island property mechanism keeps up its identity to some extent. But within a short span of time it is feared that this may be wiped out of the society.

Land Reforms

The LM & A Islands Land Revenue and Tenancy Regulation 1965 and the Land Revenue and Tenancy Rules 1968 came into force in the territory with effect from 1968. The important provision which are having impact up on the customary

laws were the abolition of NadapuTenancy, fixity of tenure to Kudiyans and tenants, conferment of occupancy right on a Cowledars and other persons in occupation of Pandaram lands.

The peculiarity of the Lakshadweep land reforms was that it is an aftermath of the voluntary agreement reached by the Jenmis and Kudiyans in 1963. This voluntary settlement has arrived at under the active leadership of Administration and peoples leaders. For arriving at such an amicable settlement they had to strive hard for years through repeated negotiation. According to this agreement, three fourth of the land held by Nadapu tenant with trees would vest in him and the remaining one fourth of such land with trees there on would revert to the Jenmi or Cowledar. The Land Revenue and Tenancy Regulation 1965 gave a statutory recognition to this voluntary settlement arrived in 1963. The important reason, which helped the islanders to arrive at such a silent revolution, is the particular community oriented attitude then prevailing, in the island. The Regulation abolished [38] the nadapu tenancy. The tenants were enabled to become independent of Jenmis. By the abolition of 'nadapu' tenancy the customary Jenmi-kudian relationship came to an end. The system of customary services and the exploitation through that system also were wiped out from the islands.

The tenants other than Nadapu also were benefited by this Regulation. Section 86 guaranteed the fixity of tenure to tenants other than Nadapu tenants. It made the interests of such tenants heritable; but not transferable except to a member of the family. This guarded the illiterate tenants against the wrongful acquisition of their properties by others. The regulation also protected the tenants against wrongful

eviction by the Jenmis.[39] It also provides the first option to purchase land to the tenants, in case the owner to sell it[40]. The Kudiyans who had neither a homestead nor any land either as owner or as tenant in possession were also given fixity of tenure in his 'kudi' (the land and the homestead or hut)[41] So as to safeguard the interests of kudians the rights of the kudian in his 'kudi' was made heritable, but not transferable except to his wife or husband or any unmarried minor child.

The maximum rent was fixed as one fourth of the produce, payable in kind or its value and four times the land revenue in other cases. The right to fix the rent is fixed not on landlord but on the land revenue authorities. This was for protecting the tenant from exorbitant rent.

By this Regulation the Administrator is empowered to confer occupancy right on the cowledars, persons in occupation of the Pandaram lands and other allottees of Pandaram lands. This would entitle them to acquire ownership with permanent, heritable and transferable rights.[42]

The Regulation also provided for the replacement of tree tax system with land revenue. At the time it was introduced the basis of property in these society was coconut trees alone. They had no idea about the concept of property in land. When

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[38] LM & A Island Land Revenue and Tenancy Regulation 1965, S. 85.
[39] Id.,S. 87.
[40] Id.,S. 95.
[41] Id.,S. 99.
[42] Id., S. 83 and 84.

the tree tax were imposed on the society, their concept of property was based upon trees, that is, on coconuts. At that time for them land was abundant. The only income was the nuts of coconut tree. Centuries later population increased and pressure on the land necessitated to consider land as a more valuable thing. At this stage the integration of the society with the mainland culture and their administrative and legal norms pressurised this society to move to the universalisation of their concept of property to be a land based one. The new legal norms enforced through the Survey and Boundaries Settlement Act and Registration Act made it difficult to pull on with their old tree based land concept. In the old concept it was easy for Government to collect tree tax. The shift in the concept of the property in the society made that tree tax system unscientific and irrational. Tree tax is replaced with land revenue that enjoins paying tax in proportion to land in hand. Earlier land records of this society had given importance to the number of trees. In the new system it became imperative to draw out a land Register based on land area with specific boundaries.[43] That gave final shape to the settlement operations started under LM & An Island, Survey and settlement and Boundaries Regulation 1959. The abolition of tree tax is to be read with the changes introduced through survey in settlement and shift in peoples concept of property from the number of trees to land area.

The evolution of land reforms in Lakshadweep indicates for understanding how a society should adjust its social and legal relations in tune with the economic

[43] This also was introducing in different stages This stage by stage implementation is for lessening the burden of such levy on the islanders. By this the Administrator is empowered to grant excemptions in case any hardship is caused by such levy. This land revenue is inevitable for **(f.n. contd.)**

needs. Earlier in Lakshadweep there was enough land to be brought under cultivation. There was no scope for the availability of casual labours. The Koya families asserted their overlordship on land and handed over the land to the Melacharies of lower caste for improvement. At that stage of this insular society they had to bring everything from mainland From their social and economic necessity, a particular form of customary tenancy is emerged by which the tenants of this boat owning class landlords are obliged to work as Khalsies in the voyage to mainland and back atleast once in an year. Apart from this it was compulsory for this tenants to ship their produce to the mainland and to bring their necessities from the mainland only by his landlords boats. Although there was a social and economic necessity of the society for ensuring the transportation of goods in that risky situation, the boat ownership class denied the opportunities to others to go freely out of the feudal net they have thrown on the society. The baster was the only system.

The relationship between the landlords and tenants started strained when the tenants started asserting their rights. The disputes between landlords and tenants for enforcing the customary duties of tenants came before Amins and Monegars.[44] The serfs of Koyas, the so-called Melacheries were not allowed to own mainland going boats. These boats were the instrumentality of oppression of this class. As a repercussion against this in 1869, the Melacheries constructed three-mainland going boats which invited lot of land and other problems in their society. When strains occurred in the field of customary practice in tenancy area, as a settlement when the

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the island. There is no scope for Agricultural income tax here, because the land holdings are two small.

[44] Report of H. Bradley, Assistant Collector, South Canara dated 30-06-1880.

property register was compiled in Amindivi Islands, another modification in customary practice evolved. By this modified custom, the tenants who were there in that 1875 register were treated as pazayakudian (old tenants) and their fixity of tenure was recognized[45]. This modification of custom had reciprocity. The right of the landlord to claim compensation for the loss of service was also recognized by the legal system. The importance is that at that juncture it was inevitable for the society to preserve this customary practice to meet the community needs. At the same time the rampant disputes also should be contained. The society achieved the balance through the modification of custom.

Naturally, this society which was isolated and distanced in time and substance from the dominant norms in the mainland, had an insular economy. Their life was simple and dependant on each other. Any tilt on the balance-preserved centuries together will have a volcanic impact upon this society.

[45] Abraham George, Lakshadweep; Economy and Society (1987), p.125

CHAPTER – IV

LEGAL SYSTEM: PERIODS OF OBSCURITY AND RAJAS

CHAPTER-IV

LEGAL SYSTEM:

PERIODS OF OBSCURITY AND RAJAS

The Lakshadweep islands' legal system has a distinct character different from the mainland. This is due to the evolutionary nature of the system and its relative isolation for centuries. Like most legal systems that have grown in isolation, the islands also have peculiarities of its own. At present we see a synthesis between the modern and the traditional systems. There are alternative courses to analyze such a complex phenomenon – historical, sociological or even legal methodologies. Truth of the matter is that, this phenomenon is a by-product of all these historical forces and as such can only be comprehended fully in the broadest canvas. An attempt is made to evaluate the interdependence between the legal system and the socio-political and economic forces. One can trace the growth, synthesis and metamorphosis of this legal system into four periods:

1. The Period of Obscurity,
2. The Period of Rajas,
3. The British Period and
4. The Post-independence Period.

During the first period we were unaware of the details of working of the legal system. The second period was solely based on the custom of the society. The third period witnessed a gradual inter-mixing of formal western legal system into the customary law governing area. Institutionatilisation has started in the legal system. The

fourth period experienced the mainlandization of the legal system providing the exclusive professionally managed judicial institutions with the flood of new legal rights and obligations imported by the extension of mainland laws, echoing the death knell of the customary law.

Period of Obscurity

The ancient period of islands is based upon the sketches provided by the earliest of visitors. In the case of the islands it was the civil servants that chanced upon these beautiful islands as part of their duties. These sketches provide but little information on the long lost memories that lingered in form of folklore and verbal forms of history.

From these shaky sketches one is able to conclude that there was a method of administration of justice, far from the tribal animal justice, and it was based upon the conscience of the community. The only certain information about this administration is that, there was a headman called Muthalal[1]. He was considered as the principle inhabitant of the island.

[1] William Logan, Malabar Manual, Government Press, Madras (1887). Appendix XX p. cc\XXXI.

The first authentic records of the island spring from one man, Sir W. Robinson who deserves special mention. Mr. Robinson has visited Amindivis in 1845 and the Malabar islands two years later[2]. After him William Logan, and Ellis visited the islands at different periods.

The earliest records indicate that the settlement of the islands took place around 1000 years ago. The settlement in this period is believed to have been taken place in the Islands known as tharawad islands. They are Amini, Kalpeni, Androth, and Kavaratti. The earliest and partial occupation is attributed to an accident, and the occupants of the tharawad islands are believed to have high caste origin. They trace themselves to the Nairs and Namboothiries in Kerala. [3]. Later a great volume of immigration from the Kerala coast took place to the major four Islands known as tharawad Islands. There also took place a great influx from the disturbed coast of Kerala, principally from the lower caste, to the Islands known as Melacheri islands, which is composed of Chetlat, Kilthan

[2] While submitting the report prepared by Robinson to Government, the Collector of Malabar wrote a forwarding letter. This letter dated 23 – 6 – 1848 written by H.V Conolly, Collector of Malabar to J.F Thomson, Chief Secretary to Government, Public department, Fort Saint George is clearly shedding light on the circumstances which necessitated the report. It reads as follows: "An address was presented to me in 1846 by certain inhabitants of Ancutta, one of the Beebee's islands, complaining of various oppressions under which, as they asserted, they, in common with their fellow islanders, laboured. The subject appeased to me beyond my jurisdiction, and I gave an endorsement to that effect. The address was then forwarded by the islanders to the government; who, under date the 21st august 1847, transmitted to the collector of Canara and myself, with instructions to inquire into its allegations. This order was received about the time when Mr. Robinson was preparing to visit the Laccadives in order to ascertain the amount of injury which they had received from the storm April 1847. The opportunity was too seasonable to be lost. Mr. Robinson is making the researches for which he was particularly directed, took advantage of his visit to acquire such information, as would enable us to answer the government call on the general conditions". It may be noted that Ancutta mentioned in the letter is present Agathy Island. At that time W. Robinson was, Head Assistant Collector in Malabar. W. Robinson Report on the Laccadive islands dated 19th May 1848 (1874), Government Press, Madras, pp. 1-5.

[3] Id. at p. 9.

and Agatti. The melacharies claim their ancestry from Teers and Mukuwars. The ancient settlers of these three islands recognized subjection to those of Amini[4].

The early polity of the islands seems to have been very simple. Each island was an independent administrative and economic unit. Only exception seems to be the case of Amini. Though it was not authority, they enjoyed some sort of priority over the other three smaller islands Chetlat, Kiltan and Agatti of that group[5].

The colonizers responded to their environment by creating their own social order. It was patriarchal in nature. Muthalal conducted the administration. One of the members of the principal families that originally migrated was considered as Muthalal or chief. It seems that on those days the administrative machinery was run by the Muthalal with the heads of other principal families, which constituted a council. In Amini the council was consisted of four families [6]. Traditions of the islanders was that even during the early centuries their ancestors carried an active trade with the coast of India and the more distant harbors of Cutch and Arabia. It is to be believed that during this period the seas were not so infested by pirates as they subsequently became[7]. This independent internal economy seems to have existed till the relations with native princes of the coast started about 600 years ago. The Islamaisation also seems to have happened during this period.

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[4] Id. *at p.* 10
[5] Ibid.
[6] N.S Mannadiar (Ed.), Gazetteer of India: Lakshadweep (1977) p. 46. Ibid., See also supra n. 2 *at p.*10.
[7] Ibid.

No authentic data on the then legal system was available. The Muthalal or the chief inhabitant of the island was assisted by a team of old people to settle all sorts of disputes. This team of elders was known as Mukhiasthans or Karanavans. Their assembly or council is known as kootam. Since the population was too thin and the principal families heads were there in the council which helped the Muthalal in the administration. The councils might settle the disputes that might have arisen. Apart from that, the isolation and the simplicity of the life rules out the occurrence of any severe problems. The council of head of principal families and the Muthalal on considering the community consciousness naturally might have done the dispute resolution. The presence of the rigid caste mechanism also made the dispute resolution very easy, due to the straight flow of the authority from the top to the bottom of the society. There were no prescribed rules, law or procedures. The logic and common sense of the Karanavans were the undercurrent of this.

Period of Rajas

By the end of 11^{th} century Raja of Cannanore got suzerainty over the islands. One agent was appointed in each island. This agent was called Kariakar. He has assumed the position of Muthalal. This system was continued during the period of Ali Rajas also. During the reign of different families of Raja's the mechanism of legal control was same.

The Kariakar or agent of Raja in each island administered both civil and criminal justice. A committee of the principle inhabitants of each island assisted him. These

principle inhabitants were known as Karanavans. The power[8] of these traditional judicial functionaries, Kariakars and Karanavans were extended only to petty civil and criminal matters, and the maintenance and protection of monopolies. Raja or his main Karyastan at Canannore tried the grave matters and serious violations of fiscal rules.

Resolution of Disputes

Disputes were decided not on the basis of any written law or procedure. The accumulated wisdom of the society – the customary law – as interpreted by these Karanavans was the rule. The conscience of the community played a major role in the decision making. Punishments were death, mutilation, imprisonment, confiscation, fines, and a special form of punishment, Kavarcha. There was no practice of keeping the records of the cases. Therefore, no records are available to indicate the procedure and the principles involved in the dispensation of justice. On the complaint of the parties, the Karyakar and the principle inhabitants inquired into petty civil matters. Oath or arbitration were also used for settling disputes. Khasi adjudged matters, which are having religious connotations like marriage and divorce.[9]

The Karyakars and the principle inhabitants adjudged the petty criminal delinquencies and the minor breaches of fiscal rules. The punishments were fine, imprisonment and stocks. Generally no heinous crimes were reported. A portion of

[8] R.H. Ellis, A Short Account of the Laccadive Islands and Minicoy, Govt. press Madras (1924), pp. 35-37.
[9] Supra n.6 p. 255.

Robinsons report comparing the Malabar islands and Cannanore is given a different note.[10]

Kavarcha

Kavarcha[11]- the Malayalam meaning of this term is robbery with violence. This term also used by the islanders to refer plundering of pirates. This is a peculiar form of punishment prevailed in the islands during the period of Rajas. Generally this form of punishment was enforced for the offences against Pandaram (government property) and some other heinous crimes. In this form of punishment, the house of the offender against whom this punishment was ordered would be attacked by a mob headed by the Nadapals of Beebi and every thing, including the ornaments on the persons of females and house hold utensils, would be carried off. The trees standing on their property were also confiscated to the private property of the Beebi. It was a species of wild irregular punishment, which has got customary status during the period of Rajas; especially Beebi's period.

A clear picture of Kavarcha as a form of punishment is emerging from the series of correspondence among H.V. Conolly, Magistrate of Malabar, R.Chattfield, Joint Magistrate, Cannanore and W. Robinson, Acting Head Assistant Magistrate starting from

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[10] It reads: "No case of a heinous nature, has ever occurred since the commencement of the company's rule in Malabar. Probability and analogy negative such a supposition, and I heard of one murder which is said to have taken place in Kowraty about twenty years ago, besides other cases which should have been brought forward judicially. On the company's islands serious cases are by no means uncommon, though the population is less by one half than that of Cannanore islands. But the Cannanore family, sensible of their very anomalous position and dreading interference are most dangerously anxious to conceal what they fear may be considered a plea of introducing institutions which would deprive them of that police power which is deemed essential to the continuance of their fiscal system". See supra n. 2 at p. 52.

[11] Id. at pp. 53,142-145.

6th October 1847. There were two instances of Kavarchas administered in 1847 and one in 1843 in Androth Island.

The 1847 Kavarchas

The circumstances leading to this 1847 Kavarcha could be stated as follows. On 17th April 1847 the entire Androth island was destroyed in a hurricane. When the disaster was reported to the Pandaram of Arakal (the local name for Beebi's government) about 400 Moodahs of rice were despatched to the island to be sold to the people. The sale was regulated by exchanging the rice for coir at monopoly price[12]. The rice was stocked as usual under the Karyakar and accountant and some of the principal inhabitants for the purpose of distribution. There was a famine during that monsoon in the island. There was rampant corruption. Those who needed got little of rice even at the prescribed price. The rice was housed in an open shed, the Arackal godown. Shortly after being placed there, three moodahs of rice disappeared. Embezzlement was suspected. The Nadpals were examined. So many houses were searched. The rice could not be traced out.

After eight days principal Karyakar subjected all the 15 to 20 suspects to the ordeal. One of them confessed the guilt and implicated another one as his accomplice. Against these two persons Kavarcha was ordered. This was in addition to other punishments[13].

Houses of both the culprits were subjected to Kavarcha. A large body of men headed by the nadapal and a younger member of the karyakars family participated in this.

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[12] Monopoly price was six maunds of coir worth value of five or six rupees per moodah of rice. Ibid.

[13] The other punishments given were to bring back the rice and a fine equivalent to double the price of the rice stolen. Id. at p. 53.

They took away everything in the house. The females were turned out of the house and striped out the jewels. Several bangles have cut with knives and wrenched and broken in striping them off. In this form of punishment the other customs of island life also were violated. For example in this case a lady from the delivery bed also was driven out.[14] During this, the newly born infant have fallen or been pushed out of her arms. The child died within 12 days of the occurrence.

The participation of nearly half of the people of the island to punish brutally the two youths who had stolen rice just to keep their family alive from starvation was an indicator of the inhumaness attached to the administration of justice. The notion of modern punishment is that the offender alone will be punished on conviction. Here the entire family was subjected to the brutality of the state might, which was enforced in the form of community activity. This is beyond the reach of civilized law.

Chakyatillath Case

A child was murdered .The family of the murderer was subjected to kavarcha punishment. In this case, their trees were taken to the Government.[15]

Valiyaillath Case

In this case the whole family was exterminated. The Valiyaillath kavarcha case was apparently a campaign organised from Cannanorre against a family that had setteled and became very influential in Agathy island. In this case the last survivor of the family

[14] In the islands the custom mandates a woman who gave birth to a child to observe seclusion for a period of fourty days. The observance of this was very strict. Id.at p. 80.
[15] Id. at p. 81.

an unfortunate woman, concealed herself for some days in a cave in Kalpitti islet was put to death[16].

The existence of this peculiar type of brutal punishment which is totally against modern concept cannot be discarded as a measure just to produce fear psychosis against people who were violating the rules against Pandaram, i.e., the government property. The deductions from the history of other societies leading to a conclusion that in all the isolated societies, the violations of rules which is having connection with the sustenance and security, were treated with brutality even with capital punishment. For eg: the English people who migrated to America imposed capital punishment for stealing cattles in the good old days. Similarly the rules and regulations of army, navy and even ships in high seas, where the men have to lead life bearing the difficulties exhibit some sort of generality in the form of ruthless quick and fast justice. Beebi who was governing portions of coastal India was not enforcing such methods as Kavarcha there. From this we have to assume that such a ruthless brutal form of punishment was the necessity of the peculiar environment of the then island. The involvement of the public in this community punishment also supports such a version of this peculiar form of punishment.

Oaths and Ordeal

Oaths and ordeal are methods that existed in the past to prove guilt and innocence of which ordeal[17] is a primitive means used to determine guilt or innocence by submitting the accused to dangerous or painful tests believed to be under supernatural control. At times it is a severe trial or experience. In the mainland from very early Vedic period

[16] This place is now known as Kunhi Bi Para. Id . at pp. 80 and 81.

oaths and ordeals were considered as a way of deciding the guilt of the accused. The ancient Indian lawgivers like Manu, Narada and Brihaspathi had explained this meticulously. Narada has prescribed this just after mentioning the valid and invalid evidence. He mentioned that this has to be followed were there is absence of both witnesses and documents. The term used to denote this is 'sapatha'. This term denotes both an ordeal and an oath; some commentators deny that the former meaning to 'sapatha'. If other ways to prove the guilt had failed "let him cause the defendant to undergo one of the ordeals by fire, water, proof of virtue and so forth, (which may seem) appropriate to the place, to the season, and to the strength (of the defendant). If a man who is performing the ordeal by water does not rise from water, and if blazing fire, which he is holding in his hand does not burn him, he is freed from the charges, otherwise he is deemed guilty." [18] The recorded history of the Lakshadweep has mentioned that oath and ordeals[19] were used in the administration of justice. They settled the disputes. That is, by same means the detection and search and penalties were restored in criminal, civil, commercial and fiscal arrangement violations. All these were settled summarily.

The oath in the name of Rajah was considered solemn. The oaths on the Koran were usual. Once administered the oaths are seldom violated and make the detection of delinquency and settlement of doubtful cases very easy. This is clear from the fact that the incident leading to award punishment as Kavarcha in 1847 in Androth originated when the authorities could not trace out the thieves, the principal Karyakar administered

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[17] Webster's Ninth New Colegiate Dictionary, (1990-edn.), p. 830.

[18] Manu VIII, 115. See Julius Jolly, The Minor Law Books, Part I (1988), p238.

[19] Robinson supra n. 2 at pp. 53,54. See also Report of Mir Shujaat Alikhan dated 28 th July 1988, which recorded as: "The marvelous sense of honour, they scrupulous regard for truthfulness and great dread of an oath on the koran which the islanders possess, make it very easy for the mokasars or elders who assist the Judge to arrive at the truth, however old any given case or suit may be". See also Mannadair supra n. 6 at p. 255.

all the suspects with oath. From that confession on oath by one, ultimately ended in awarding Kawarcha as a punishment. Robinson specifically mentions that the barbarous ordeals commonly practiced in native states were used in these islands also. Though they were practiced, there was no mention of any rules for this as mentioned by Narada and Brihaspathi. Nowhere it is mentioned that there was different oath for different castes. It is to be differentiated from the cultural angle. The great law giver Narada prescribed these distilled principles of Indian customary law of oaths and ordeals as a guidance to the Kings and Chief Judges how to perform administration of justice based upon Dharma through this instrumentality's of law. In Lakshadweep the concept of Dharmas had no sway as in the Indian mainland as in its original form and with roots as a philosophy. Their plain simple life and commitment towards truthfulness, God fearing, and allegiance to the Raja were all their assets. When a group of people are living in the midst of uncertainties and difficulties, their belief in God and their commitment to truthfulness would be great. This simplicity from life is gone, when the society moves up in the ladder of development. This was through societal integration with a developed culture. At that stage some of such cultural specificities started vanishing. The peculiar dispute resolution methods existed in that society also ceases to exist. That is what happened in Lakshadweep in modern times. At a certain stage of social development this system ceased to exist.

Compensation and Fine

On those days the most common punishments were confiscation and fine[20]. The fines were collected not in cash but in kind. The common product in the island was coir. It was by exchange of the coir, the fine was collected. These fines were frequently carried over to account, and became book debts. This collection of fines and making them as debts are quite contrary to the modern concept of fine. Now fine should be paid in cash.

In default of payment of fine the convict has to undergo imprisonment simple or rigorous. This peculiar system of collecting fine in kind and treating this as book debts has originated because of the continuous transaction that existed between each of the islander and the ruler. Because of monopoly in coir the islander could sell his coir produced only to the agent of Raja the Karyakar. Karyakar was the only way through whom an islander could obtain his ration rice. So there was certainty as regards the collection of the deferred payment of fine. This certainty paved the way for transferring fine as book debts. The people were highly truthful and trust worthy. This forms one more reason for this peculiar system. The society was more or less zero mobile. Without Karyakars knowledge nobody could escape from the island also supports the prevalence of such a peculiar collection of fine. In the modern situation where the people are not that much trust worthy, when there is no certainty as regards the future payment of the fine imposed their high level of mobility makes that the practice cannot be followed now. This shows that the mode of punishment and the way of execution depend upon the circumstances and culture of the society.

The fines imposed in rupees were equated to coir. When compared with the rates of coir in company's islands, the fines of Cannanore islanders were high. This form of punishment is, considered as, mild in its nature.

General Administration

The quality and method and administration of justice in each period is directly dependent upon the form and quality of administration, especially the societies were there was no separate entities for the general administration and judicial functions.

The Raja or Beebi managed the general administration of the islands at their respective periods from the mainland. The nature and quality of the administration had been varied from period to period, depending on the individuality of the Raja or Beebi, sometimes by a Yellyah (Beebi's husband). During certain periods, the control from the mainland was nominal. Control of the Raja over the islands progressively increased from earlier periods. When it reached the later period of Beebi it assumed despotic and oppressive.[21]

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[20] Supra. n.6 at p 254.

[21] This is clear from Robinson's observation: " This rule seems to have been most despotic and powerful when wielded by an able chief like Bamaly and Karnur; and most oppressive and unscrupulous when in the hands of a Yellyah or some agent acting for a Beebi, as from 1777 to 1784 and again under Hossen Cutty Yellyah. Nor has it remained uninfluenced by the domestic discord, which has occasionally disturbed the family. From this want of uniformity and the studied mystery which is maintained about these things, it is impossible to gather any fixed principle of conduct. At present, the administration is entirely conducted by the Kariasthans of the female head of the family". Supra n. 2 p.49.

Monopoly

To assimilate the social conditions in which the then administration of justice and legal system was operating the idea on monopoly[22] system is a must. At that time actually there was no trade at all. All the resources of the islands were fettered by fiscal arrangements. The islanders enjoyed freedom only in the manufacture and export of coarse jaggerry[23]. The Raja introduced the monopoly of the supply of salt and tobacco[24] as and when that has been introduced in mainland. In the Canara islands the use of tobacco was optional but in Laccadive Islands it was not even optional. People were forced to purchase tobacco.

Though the coconut trade was free till 1825, Hussan Yellah who then became guardian of the minor Rajah, took advantage of existing commercial relations, introduced the monopoly of coconuts also. The natural consequence of unremunarative prices and the system of monopoly paralysed the industry. The deterioration of the quality of the coir had been very serious. It even reached a stage of rejection in the government

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[22] The clear picture on the monopoly existed there during Rajas period will be obtained from Robinson's Report which reads as: "Trading relations were no doubt easily established between the Rajah and people of these islands, but the right of purchase of coir, to the exclusion of all others was first introduced by Bamaly Rajah about M.K. 940(AD 1765). The market value of coir was then between 60 and 70 rupees per candy, and the price paid to the producer was fixed at Rs. 30 to 35 rupees per candy imported into Canannore. It was paid in rice at a commutation price of Rs. $2^{1/4}$ per robbin. The duties on coir & c., exported from the islands and on rice & c., imported were transferred to Canannore, where they were charged as import and export duties, and deducted from the payments made for coir. The actual payment to the people thus became reduced (20 percent) to about 24 rupees per candy. There were some further miscellaneous deductions amounting to about one percent. On the whole, on account of Nazeranah and the people received about $23^{1/2}$ rupees worth of rice, at $2^{1/4}$ rupees per moodah for each candy of coir, which left a profit- on a market value of 65 rupees per candy of coir- of about rupees 40 to 50 per candy". Supra n. 2 at pp. 32-33.

[23] Id. at p. 7.

[24] Ibid.

godowns as third class coir[25]. The monopoly existed even for tortoise shell and Kowaries.

Generally these monopolies were very rarely been violated. But the violations were dealt with brutally. An inhabitant of Agatti fined 51 maunds of coir (worth at lowest rate 51 rupees) for selling half a seer of cowries in Calicut. Another was fined five rupees and another sentenced to eight days confinement. Two others were fined two rupees on suspicion, having been detected with cowaries tied up in the shape of a pot of jaggery. For violating tortoise shell monopoly, rupees 12 to 25 were used to be fined[26].

Local Administration

The local administration of the island had been entirely carried over by the Karayakar/Karyastan (or agent on the spot). The King or Beebi or the head agent never visited the island personally. A Karyakar was appointed in each island and he was under immediate orders from Raja or Beebi at the mainland. In addition to this, accountant and three or four Nadapals (village runners) would complete the paid establishment of each island. These servants were aided and checked by a committee of the principal inhabitants, in conducting the local business of each island – such as administration of the criminal and civil justice, the management of the Raja's private property and trade.

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[25] Id. at p. 37.
[26] Mannadiar, supra. n. 6 at p. 77.

Nazeranah

Nazeranah[27] was a peculiar term, present in the then process of administration, denotes arbitrary contributions or collections for extra ordinary exigencies. Its presence was noted in all the realms of administration, even in the administration of justice. The different forms and its all-pervading nature in the governance of the islands make, encompassing these phenomena in the form of a precise definition difficult. The disproportionately huge, casual but constant revenue that has generated would reveal its impact on the social life. These collections were made from the various forms of Nazaranahs exacted for the appointment of Kazees, for granting audiences, conferring local titles, licenses to wear jewels and other local distinctions.[28] There were variations in the amount depending on purposes and occasions. Certain forms of Nazernah were attached with customs, which decides in which proportion that has to be divided among various persons. The importance of Nazeranah in their social life would be revealed from the details of various forms of Nazeranahs and its collection.

The Karyakars and accountants should pay a Nazernah on appointment. These Nazeranahs collected from appointment as local officers, were very large amount consisting of cash payment to the Rajah. On receipt of the appointment order known as perwana he has to remit a Nazeranah of 30 rupees. This is in addition to what he had to pay as Karyastans or Vazeers fees. Their salary was so meagre. The pay of the office consists of 24 moodahs of rice to the Karyakar and 15 moodahs to the accountant per

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[27] See William Logon, supra n.1 at Appendix XXI.
[28] Supra n. 2 at p. 78

annum (value 36 and 22 rupees respectively). Their remuneration consists of cesses levied on the people. The Perwana -- the appointment order must be renewed on every occasion of leaving the island under the same Nazeranah. This had to be renewed almost annually. The Nazeranah and the fees extracted from the Karyakars were more than their annual salaries. This they had to pay almost annually. Even then the competition to get that appointment itself indicates how lucrative it was. The injustice in the conferment of appointment made these Karyakars to enforce various authorised and unauthorised fees from the people. In one case just for with holding fish's head -- the Karyakars due-Karyakar fined a man rupees two in Kavrathy.[29] The absence of any supervision from the King or Beebi gave these Karyakars an unbridled power to implement their greed and nepotism. By the end of Beebi's rule it is reported that changed feeling of the people and circumstance of the Cannanore family have reduced the rates of Nazeranahs. Which ultimately reduced the competition for these offices.

The junior officer's accountant and Nadapals also enforced the extraction of unauthorised collections. The accountant receives in every case a fee or contribution equal to one-half of what exacted by Karyakars. The Nadapals (village runners), whose pay is from 1 to 4 moodahs of rice each per annum, have certain claims on the people of the same nature[30].

Nazaranah in the form of collection of cessess and contributions have been effected by the Nadapals. A different plane of these cesses is revealed from the fact that the remuneration of Karyasthans and the other officers consist the cesses levied on the peoples also. These Nazaranahs on people were enforced through attachments and

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[29] Id. at p. 79.

confiscations. The violations were treated with fine and imprisonment. These servants were responsible for managing the Raja's private property and trade at distant islands. But the control of Raja over these servants and trade was more or less nil. The lack of superintendence and accountability when coupled with the distance and absence of communication made this Karyakars extremely powerful.

From the period of Chirakal Rajah, titles used to confer on chief people as Bandor, Patlor, Mulanjee Ror, Cheye Anje Ror etc. Chirakal Rajah adopted this to attract peoples' early submission to his power. This was a technique to conciliate the headman and to establish his influence. During Beebi's period also these dignities were continued. These titles are of Hindu origin and corresponds with the title of the person sent by Raja of Chirakkal to aid in the extermination of Portugese. The individual name used to merge for life in the title. The respect and quality of these titles had been totally reduced in the Beebis period. The liberality in conferring these titles and the fall in the family prestige of Beebi were the reasons for this. A Patlor was created at Kalpeni in 1847 at a Nazaranah of rupees 200.[31] Similarly Nazeranahs ranging from 100 to 300 rupees were to be paid for other titles. These titles carry a few local privileges and a right to levy certain contribution on the people such as the pick of fish when anybody is landing on the shore with fish catch. Unreasonable execution of these privileges led to the grievance among the people.

Another form of Nazeranah was collected from the people who came to see Raja. The amount collected as audience Nazeranah was not less than 8 rupees. This has been apportioned 4 to the Rajah, 2 to the Beebi and 2 to the head Karyastan. This collection

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[30] Id. *at p.* 50.

was used to exact for all interviews or audiences granted by the Rajah. This varies in accordance with circumstances. Other expenses also were attached to this. There was a custom by which the Raja should reciprocate by supplying a cloth or a moodah of rice to the persons who were meeting him. By the end of Beebis rule, because of the corruption and unreasonable exaction of Nazeranah the number of audiences sought for has considerably reduced.[32]

Malmi Maryida[33] or pilot fee was another form of Nazaranah. The islanders are known for their piloting skills. The people who captained the crafts belonged to Malimi caste. They used to pilot Arab crafts from the port till they cleared these islands. For this, a fee known as malmi maryadi (Pilot Custom) used to be charged. It was an important head of collection on the Beebi's revenue. The rate of this Nazeranah was 4 rupees to the Beebi, 2 to the local Karyakar and 1 to the accountant for the Arabian trip. For the shorter trip at rupees 2 to the Beebi, 1 to the Karyakar and ½ to the accountant. On the other hand inland import duties of 10 percent were remitted, viz. on 8 moodahs of rice in the first case and on 4 in the second. Since the local officers were interested, they had performed this levy with utmost care and diligence. This caused difficulties to the natives and also the pilots going from coasts. Aboker Malmi of Agatti left the island and resided with his family in Calicut. From where he made several trips as pilot. But he withheld the customary share from the Beebi. To force him to pay the pilot fee dues, the Karyakar attached and administered his sister's property for two or three years till a

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[31] Ibid.
[32] Id. at p. 43
[33] Ibid.

portion of the arrears were liquidated.[34] This attachment of sister's property for brother's dues was effected because of the prevalence of Marumakkathayam there.

Nazaranah was collected even for allowing wearing ornaments[35]. This right to wear gold ornaments should be purchased by a payment of rupees 25 to 51. Its peculiarity was that, once it was got, it was hereditary. Many used to purchase this right.

Apart from this, vinegar, fine sort of coconuts etc. were extracted for the use at Cannanore or for the local agents Toddy drawers had to pay cess under the name of Nazeranahs towards the support of public servants.

In Beebis islands when a person was released from confinement a fee has to be paid to the local judge Karyakar. In those days complaints were even made to the effect that the power of punishment was put in practice for collection of Nazeranah in this form also. This customary fee was known as 'marshady'[36].

The way in which the innocent helpless natives reacted to the practice could be traced out from old reports. They started with holding cesses. The people of Agathy had contributed nothing for more than two years in 1846 and 1847. The people of Kavarathi also followed the time and the desolation of Androt and Kalpeni rendered their levy no longer possible[37]. The above facts disclose us the role and the staff of Karyakar who was administering civil and criminal justice.

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[34] Id. at p. 78.
[35] Willam Logan supra n. 1 at p. cc/XXX.
[36] Supra n. 2 p. 80.
[37] Id. at p.51.

Degeneration of Kootam

The other set of people who played important role in the rendering of civil and criminal justice administration on those days were principal inhabitants (Mookyastans or Karanavans). On each island there was a small body of hereditary Mookyastans, who had considerable local influence. They were the proprietors of the shore going boats and were chief landowners on whom the bulk of the people were dependent. On those days all these qualifications belonged only to the Koyas. Some of these Mookyastans were conferred with petty titles and were enjoying some privileges and immunities "under the immemorial and customary constitution of the islands, the Mookyastans ought to be assembled to constitute a katcheri for transaction of local business... The dilatoriness, feuds and individual interests of these parties retard business". This assembly of Mookyastans is called Kootam the administration of the island including the administration of justice was effected through the collective decision of this Kootam

Corruption

The civil services are basically the instruments of governance in all society. Political will is ultimately structured and executed through public administration. A comparison of the customary Nazeranah prevalent in the Lakshadweep islands with modern eras corruption is compelling to record that the structure of civil administration and commitment of its higher functionaries are critical determinants to achieve progress in any society. This is very much linked to the attitude of the ruler. The basic pattern of political structure reflects the Raja Praja relationship. The norms of behaviour in the society will be shaped in consonance with the prevailing ideas and culture. Self managed

societies and communities like earlier Laccadive were deeply rooted in tradition. When the free flow of communication is fragmented and made opaque by the super-imposition of any unlimited, unaccounted, unguided centers of authority, the system of administration will be turned into anti-people. The result was a stagnated period in the history of the territory.

The Lakshadweep experience shows that people's participation in the governing process is the better check for corruption. When Kootam was working properly, without any hindrance the term corruption was unheard in Lakshadweep. The problems of each society are rooted in the socio-economic factors and culture of that society. Without understanding the under current of the society the governance cannot be made beyond the shadow of suspicion. By involving the maturity and wisdom of the society in the process of governance through the proper local participation one can eliminate this ill effect on the society. Particularly in an illiterate society where the laws are not recorded. In an illiterate society like Lakshadweep, it was a must.

In Lakshadweep during Raja's period an authority of Karyakar with unguided and unbridled power had replaced the community participation (Kootam) in the public administration. For every activity of man they stamped authorised or unauthorised collections in the name of Nazeranah. In turn, it percolated down to authority to authority whether it is governmental authority or religious authority. For eg: In that period for the appointment of Khasi, exorbitant Nazeranah was collected: This religious head in his turn collected it from people. The hereditary Khasi of Androt died in 1846. His heir a boy of 15 was appointed to succeed in 1847.The boy was forced to pay 400 rupees as Nazaranah for Khasiship. 300 rupees of which were set down in the account outstanding against the island. About 100 rupees were borrowed from the Karyastans of

Cannanore and others. The effects of the hurricane ruined the family of the Khazeez. The relations of the boy took him on tour in the islands to raise charitable subscriptions to pay the Nazaranah. The fact is that this Khazee of Androth was the direct descendant of the Munbae Mollaka.[38]

When the Karyakar, the administrative head of the island was appointed by taking bribe for appointment in the name of Nazeranah and paid very meagre pay, the Kariyakar got a moral support to extract unauthorised collections from the society. Ensign Bently who visited the islands in 1795 identified same species of administration in three of the islands-Androt, Kavaratti and Agatti, there the Karyakars were the servants from the coast and their allowance was 48 moodahs of rice (four moodahs per mensem). The accountants allowances were in proportion to that. On the contrary, in Kalpeni, the Karyakar was a native of the island and on one half the allowances. By the time 1848 Karykars in other islands also were from island with lower allowances.

The form of interactions in the society made easy way to corruption to percolate horizontally and vertically. Swallowing all the positive and healthy values of the society it attained an unbearable oppressive form by the time it reached the lower end of the society. As today, the aristocracies were not touched by this corruption. The survival of corruption required such an in built adjustment in all societies. Ultimately the entire society is plunging into the grip of corruption. When the political will is not that much strong and committed the bureaucratic inefficiency will creap into the system. It will grow making links with all sorts of authorities in the society. Then corruption will reach a stage as a way of life. In that period Lakshadweep was in such a position. We can

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[38] The person who converted the entire islanders to Islam, Saint Ubaidullah is also known as Munbae Mollaka. See supra n. 6 at p.44.

identify this with the corruption in the present day India. In the Rajas period there was stiff competition to purchase the post of Karyakar. In the modern period lakhs and lakhs of rupees were paid to get a posting as inspector and other lucrative posts. When such posts are available for purchase, whether it is old Lakshadweep or modern India it is proved as a good form of investment. In Lakshadweep this has happened when there was no code or rules for providing the basic conditions, requirements and style of work, discipline and accountability for all public servants irrespective of the categories or services to which they belong. Inspite of the existence of all these, the corruption originated in the modern India from the declining standards of personnel and cadre management, declining standards of productivity, poor quality of performance appraisal, diluted accountability, low motivation and morale, and excessive political interference. Robinson has described the ill defined, irregular, arbitrary nature of the administration of justice.[39] Two hundred and fifty years back it is reported that at the peak of corruption that degenerated even the traditional guardiance of this society, the Mukyasthan's or Karanavans.

This is an example how a practice that is quite alien to legal and cultural ethos of this island destabilised the society. There were even complaints of unholy nexus between

[39] Robinson observed: "The police, civil and fiscal administration of the islands seems to be exceedingly irregular, ill defined, and uncertain. Ruled nominally by custom, it is dependent in a great measure on the will of the Rajah or his Karyastans and on the discretion of the local servants and principal people. There seem to be no prescribed rule of procedure, no record of trials or proceedings. Matters of importance were referred for orders to Cannanore and there settled by the Karyastans. All minor affairs are tried on the islands. At one time the administration was no doubt most arbitrary and severe: and stories of ordeals and capital executions for with craft & c, of the most barbarians kind are preserved among the people, but it (f.n cont)

Mukyastan's and Karyakar.[40] This led the Britishers later to terminate the Karyakar rule.

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has probably been tempered for many years by a melder spirit, and its present fault is perhaps weakness and timidity". Supra n. 2 at p. 52.

[40] Robinson said: "The connection of these with the administration of the internal affairs is a relic of the immemorial and ancient form of polity. The existence of the body may become valuable still, but from what I have seen I doubt if at present their influence is beneficial. It is too great, and it is said the bargains driven with their debtors are very hard. That efficient control so necessary as well to check as to render their assistance valuable is wanting. I have had opportunity of testing these assessors in the Canara Islands, and valuable as they are assessors, and important as it is that they by so used, I must admit I have experienced considerable want of integrity. The native officials complain that the intrigues of these men complicate and retard, business and from what I saw I think that these remarks may be applicable to the same class of the Cannanore Subjects. The people openly complained against them; and the expression "our mookyastans and Karyakars are worse than our Rajah" was frequently used in open assembly. When the Karyakar fined a man, they begged of a portion. Instances were mentioned in Agathy where they had been the channels between persons and Karyakar". Supra n. 2 at p.80.

CHAPTER – V

LEGAL SYSTEM: BRITISH PERIOD

CHAPTER-V

LEGAL SYSTEM: BRITISH PERIOD

The Amindivi group of islands, which were otherwise known as South Canara islands, came under British control in 1799. Even then the indigenous system of judicial administration by Karanavans continued till 1846. In Malabar islands the system of administration by Kariakars nominally prevailed till 1875 - the last attachment[1] by the Britishers. Under the British control the single Kariakar who administered the Amini was removed. In his place Monegar resident on Amini, assisted by a karani or clerk, with peons were permanently stationed at each smaller island. The Karanavan who sat in traditional Kootam (assembly) with the permission of the Monegar decided disputes. All civil disputes were referred to them. Collectors used to refer all questions involving customary rights for the decision of the society of these elders. Their dispute resolution process was based on custom and hearsay. The process of their dispute resolution was dilatory in nature. They were not impartial. Being the prominent citizens of the island, their vested interests made the system dilatory. The Monegar tried Criminal offences of minor nature. The marriage and divorce related matters were decided by Khasi.

[1] In 1791 Britishers conquered Cannannore. That led Britrishers to claim the rights of sovereignty over the possessions of Beebi, including her islands. But as a 'matter of policy and conciliatory of the mappillas in general' the Beebi was permitted to retain her possessions on paying tribute to the company. The British Govt. attached the islands on 3rd April 1875 for an arrears of Rs.49789. See. R.H.Ellis, A Short Account of the Laccadive Islands and Minicoy, Govt. press Madras (1924), pp.15-21. See also N.S. Mannadiar, Gazetteer of India: Lakshadweep (1977), at pp57-66.

MONEGAR

The powers of the Monegar were since then progressively raised. In 1845 he had the powers of an Amin of Police. In 1847 Madras Government directed the Karanavans to assist the Monger as assessors both in police and civil cases of petty nature. The working of the system was that of a court with Monger as president. In 1866 South Canara Collector reported the inter relation between the Monger and people in the following words:

> "I am inclined to think that virtually the Monegar possess very little authority and that islanders have altogether outgrown the State of simplicity and pupilage in which they were formerly"[2].

He recommended the appointment of a superior responsible officer as Monegar who might be vested with more magisterial powers. Accordingly in 1867, the Monegar was vested with the powers of Village Magistrate and Village Munsiff.

In 1870 the Monger was empowered to try civil suits, the subject of which did not exceed ten Arcot rupees in value. If both parties consented, the Monger was authorised to summon panchayats for the decision of civil disputes without any limit on pecuniary

[2] Madras Government Order no. 2045 2nd September 1867. As quoted in N.S Mannadiar, id. at p.256.

value[3]. He had power to impose fine under the Cattle Trespass Act[4]. The salary of the Monger was raised from Rs.17.50 to Rs.70 in 1871[5]. In 1872 the Monegar was invested with the powers of Third Class Magistrate. It was specified that in case beyond his jurisdiction under Regulation XI of 1816 and within his summary jurisdiction as Third Class Magistrate he should associate with not less than three Karanavans of the island in which the trial is held as assessors. It was stipulated that the apart from the view of the Karanavans the evidence also should be recorded.

Though the Indian Penal Code and the Code of Criminal Procedure had not been extended as such to these islands, it was stipulated that the Monegar should be guided as far as practicable by the provisions of the Code in the matter of investigation, trial and committal of cases coming up before him. The Monegar was also required to associate with him as assessors not less than three Karanavans in all cognizable cases, which were beyond his jurisdiction under the Madras Regulation XI of 1816. His powers as Village Magistrate were to be excised by himself without associating with assessors. The Collector of South Canara District was the District Magistrate as well as Sessions Judge for these groups of islands. The Collector had been empowered to delegate his powers to his assistants [6].

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[3] Madras Government Order no. 1428 9th September 1870
[4] Madras Government No. 186, 30th Jan 1872
[5] Ellis p.36
[6] Madras Go N0.186. 30th Janauary 1872. The Powers of Village Magistrate and village munsiff as defined in Regulations of XI of 1816, IV of 1821, and IV and V of 1816.

In 1874 the Laccadives were declared as Scheduled District [7]. The combined effect of Scheduled Districts Act 1874 and the Local Laws Extend Act 1874 was that many of the laws in force were not applicable to the Scheduled Districts unless they were specifically extended to these districts.

The Madras Regulations IV and V of 1816 were not applicable to the Scheduled Districts. Therefore the powers of the Monegar as a Village Munsiff ceased to exist. Even then the Monegar continued to excise his power under the sanction of custom. The issue whether the Monegar could legally exercise any civil powers was pointed out by the Collector of South Canara to the Secretary Board of Revenue Madras[8]. A portion of the letter itself is self-explanatory of revealing the complex situation arose at this period:

> "It seems to be rather a case of civil jurisdiction conferred by long established custom. Practically the system has been found to work well and to be suited to the conditions and requirements of the islanders but the system nevertheless appears to be wanting in the essential sanction of law.... It is essential that the disputes and differences of the islanders should be settled on the islands. There is no reason to suppose that under the present system substantial justice is not done and it is better that there should be technical irregularity on the part of local authority than that the

[7] Scheduled District Act 1874.
[8] Letter of Collector of South Canara to the Secretary, Board of Revenue of Madras dt. 27 Dec 1880.

people should take the law into their own hands and resort to violence in order to the settlement of their disputes"[9].

A special enactment to rectify the irregularities and to legalise the procedure was suggested. No action has been taken on this. On 1888 the Inspecting Officer reported that the Monegar was invested with the powers of a Third Class Magistrate. Mistakenly he reported that in 1872 Criminal Procedure Code was in force in the island and that he was exercising these powers without the Code of Criminal Procedure or the substantive law of offences contained in the Penal Code being formally in force. In 1889 the Government held that the most of the Acts were de jure in force in the islands and it was quite unnecessary to put them formal in force[10] and thereby the Monegar continued to exercise both civil and criminal jurisdiction.

The Monegar's duties were so multifarious and he was required by custom to exercise authority in so many ways outside the scope of the Civil Procedure Code and the Regulations. The result of binding him down to laws was 'to curtail his power to the verge of uselessness and upset a form of government which people were accustomed to and found sufficient'[11]. So it was clear that in addition to powers conferred on the Monegar by the various orders, he wielded a large amount of powers under the customary law, a remnant of the old system where there were no codified laws. The report of Mir

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[9] As quoted in N.S Mannadiar, supra in 1 at p.259.
[10] Madras Government Order No. 438 Dated 31st May 1889.
[11] R.H. Ellis, A Short Account of the Laccadives and Minicoy (1924), p. 36.

Shujaad Ali Khan in the year 1888 listed[12] nineteen offences, which were punishable under the customary law.

The highest amount of fine enforceable for such an offence was Rs. 2 and the lowest was one anna. The offences punished under the customary laws reflect the standard of social and moral ethics of the community. The Inspecting Officers who visited the islands periodically imposed checks on the powers of the Monegar under the customary laws so as to avoid their indiscriminate use.

Through a Notification in the year 1909 under Sections 36 to 43 of the Code of Civil Procedure was made applicable to these islands. The Monegar became a regular Third Class Magistrate under the Code of Criminal Procedure. On the assumption that the Code of the Criminal procedure and Indian Penal Code were on force in these islands appeals and revisions under the Code were used to entertain. Both in civil and criminal matters the appeals were filed before Revenue Divisional Officer and the revision was filed before the Collector[13].

[12] Report of Mr. Sujaad Ali Khan, Acting Head Assistant Collector of South Canara dated 28th july,1888,para 78. Those 19 offences listed are as follows: Disobedience to a call for a *Koot* to kill rats; Disobedience for landing or hauling *Kundras* or boats; Disobedience watering government plants; Disobedience for repairing government buildings and mosques; Invitation to a large dinner without permission; In attention to orders regarding sanitation; Fishing in the Kadmat lagoon without permission; Damage to betel-vines and sugarcane; Throwing down sandals from a mosque; Making noise at the *cutcherry*; Omission to do Sircar work; Speaking a falsehood; Sitting concealed to surprise woman; Preventing men from attendance in accordance with a summon; Slaughtering animals without permission; Reading the Kutba or mosque service without permission; Occupying a new house without permission; Building a house without permission and Disobedience to an order in a revenue case.

Amins of Malabar Islands

In Malabar islands after 1875 the Raja's Karayakars were replaced by Amins appointed by the Collector. At first the mainlanders were appointed as Amins. Their pay was Rs. 35 per mensem. Because of the corruption and incompetency, in the year 1877 Mr. Winter Botham recommended to recall all of them. On his recommendation the competent islanders were appointed as Amins on a salary of Rs. 25, assisted by mainlanders called as Gumastans. The appointment of Amin was hereditary earlier. That hereditary system was stopped afterwards and Amins were selected from among the Karanavans[14]. These Amins summoned Kacheris to hear and dispose of cases with the assistance of Karanavans. The Amin had jurisdiction in petty and civil and criminal matters. The Amins were also subjected to inspection as in the case of the Monegars so as to check the misuse of powers. The offences triable by Amins were listed in 1877. In 1905 some more items were added to the list of offences. That list as approved[15] by Government in 1905 is given below:

1. Theft,
2. Theft in a building,
3. Assault,
4. Using abusive language,
5. Contempt of court,
6. Use of Criminal force,
7. Hurt,
8. Obstruction in the seizure of stray cattle,

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[13] N.S. Manadiar, Gazetter of India Lakshadweep (1977), p. 260.
[14] Supra.n.5.p. 37.
[15] Go. No. 384 political dated 8th June 1905.

9. Not attending the cutcherry without reasonable grounds when ordered to do so,

10. Obstruction in the execution of an order of Amin or any other public officer,

11. Disobedience of the order of the Amin or any public servant,

12. Not giving information to the Amin of births and deaths,

13. Injury to property other than by fire,

14. Criminal trespass,

15. Slander, and

16. Escape from lawful custody.

The Amins were authorised to pass sentence of imprisonment not exceeding 15 days and fine not exceeding Rs.15/. The maximum fine which could be imposed for failure to assist in launching or hauling up odoms and failure to attend a rat hunt was Rs.2/-. Similarly the maximum fine leviable under one item was limited to Rs. 5/-. Serious offences were tried and disposed of by the Inspecting Officers on their periodic visits to the islands. In the year 1912 a comprehensive statute came into being.

The 1912 Regulation

The uncertainties and arbitrariness attached to the administration of justice paved the way for a Regulation to declare the law applicable to the Laccadive Islands and Minicoy. This Regulation came into being on 3rd February 1912.[16] The Regulation defined 'the Islands'[17] confining to the Laccadive Islands and Minicoy and thus

[16] The Lacadive Islands and Minicoy Regulation 1912. It received the assent of the Governor General on 22/1/1912 and was published in Gazette of India on 3/2/1912. For text, see Appendix-C.

[17] The Lacadive Islands and Minicoy Regulation 1912 s. 2 (i)

excluding Amindivi groups of islands. It may be mentioned that this Regulation continued in force even after independence till new courts were established in the islands on 1-11-1967.

The Inspecting Officer was the most powerful authority in the Island administration as per the Regulation. This was defined as:[18] "any officer directed by the Local Government or Collector to inspect the Islands or any of them". In the year 1937 by the Adaptation Order of 1937, the word 'Local Government' was substituted with 'Provincial Government'. Later by the Adaptation Order of 1950, the word 'Provincial' was substituted for 'State'.

The 1912 Regulation laid down that the words and expressions used in the Regulation had the same meaning as those of Indian Penal Code[19]. To certain extent the law of the Islands was made in tune with the mainland laws. In the original Regulation of 1912 there were only three definitions mentioned above. But after independence of the country in 1949, the term 'Amin' also defined[20].

By the original Regulation, Madras State Prisoners Regulation 1819, the State prisoners Act 1858 and the Scheduled Districts Act 1874 were the enactments applicable to these Islands. Through the Adaptation Order of 1937, the Bengal State Prisoners Regulation of 1818 also made applicable. In 1926 the Indian Penal Code made

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[18] Supra. n.11 s. 2 (ii).
[19] Id., at s. 2 (iii).
[20] This was inserted by Section 2 of the Laccadive Islands and Minicoy (Amendment) Regulation
1949 (Central Regulation of 1949)

applicable to these Islands[21]. In 1949 chapter IX of the Code of Criminal Procedure extended and new Sections 34 to 36 were added[22].

Criminal Justice under 1912 Regulation

The local Amin was to conduct an investigation to find out whether there is any prima facie case against the person to be charged or tried by Inspecting Officer or Collector or his assistants[23] .It was specified that when the trial was being held in the Island, the presiding officer should sit with two or more Island assessors[24]. The offences punishable by the Inspecting Officer, Collector/Collector's assistants were the following: rioting, giving false evidence, murder, culpable homicide not amounting to murder, causing death by rash or negligent act, grievous hurt, wrongful confinement, kidnapping, rape, extortion, dacoity, criminal misappropriation, criminal breach of trust, dishonestly receiving stolen property, cheating, mischief by fire, and forgery[25].

Actually those were the offences mentioned in the Indian Penal Code. The punishment prescribed for those offences were the same as that had been prescribed in the Indian Penal Code. In 1926 the Indian Penal Code was made applicable to these Islands.

The 1912 Regulation had detailed some minor offences which were triable and punishable by Amin to the extend of fifteen days or fine which may extend to fifteen

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[21] The words "the Indian Penal Code" were inserted by Section 2 of the Laccadive Islands and Minicoy (Amendment) Regulation, 1926 (Central Regulation 1 of 1926).
[22] Section 3 of this 1912 Regulation has been amended by Section 3 of Laccadive Islands and Minicoy (Amendment) Regulation 1949 (Madras regulation 1 of 1949).
[23] Id., at s. 4 (2).
[24] Id., at s. 4 (3).
[25] Id., at s. 4 (1).

rupees, or with both. These minor offences[26] were theft, criminal force, assault, hurt, criminal trespass, use of abusive language, obstructs any person in seizing stray cattle, failure to attend courts (kachahri) when ordered to do so, causes mischief to property otherwise than by fire, liable to harm the reputation of the person, and escape from the lawful custody.

Amins position retained

The law for the attendance in Kachahri (court) and the punishment provided for that helped the Amin to enforce his authority in his local area. The prescription of specific punishment for the use of abusive language indicates that it was a social issue then. The situation was such that there was no walls, boundaries or fences in the islands. According to the old people at that time the efficiency of the Amin was assessed in accordance with his capacity to control or contain the stray cattles. In 1926 when Indian Penal Code was introduced, some of those offences mentioned above were deleted.[27]

British recognation of customary laws

The failure to obey reasonable orders of Amin to assist in launching or drawing up a boat or to attend when called upon to assist in protecting coconut plantations from the ravages of rats, were made punishable with fine which may extend to two rupees[28]. The peculiarity of this penal provision is that a fine imposed for non-participation in rat hunting may be refunded if the offender within forty-eight hours makes reparation to the satisfaction of the Amin and assessors. If anyone disobeys any reasonable order of an Amin or other public servant, was made punishable with imprisonment upto fifteen days or fine or with both. This peculiar provision was very important from the point of view of

[26] Id., at s. 5.
[27] Id., at s. 5 (a) (e) (f) and (g).

their peculiar community life. The customary practices of the society, which were very much inevitable for keeping the community life in harmony, had given a legal color and was supported with legal sanction. This was an instance of the British attempt to preserve the customary practices and the customary law in its original form. It is to be particularly noted that while framing it into a law, the Britishers had kept the chance to correct the earlier mistakes or the original reparation chance intact. Being isolated in deep sea the islanders could not pull on without launching or drawing up a boat. This is just the recognition of the custom prevailed in that society. This shows life of the society was very much community oriented. Their sense of justice and the then prevailing administration of justice were given preference to the community interest or common interest over the individual freedom and individual choices. Thus there was an amicable system embedded in the customary law. One could compensate or correct the fault with in a specified time. The English people had maintained their hands-off approach to the social life of the local people until the particular custom was not going to affect their authority of governance.

It may be of great interest to many in the mainland to examine certain particular problems of the island. The rat menace[29], which affected this Island society, had been recognised by a new legislation. The Britishers had exhibited their ingenuity to take laws closer to the needs of the society and the culture.

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[28] Id., at s. 8.

[29] The only crop in the islands is the coconut. The rats destroy all the tender coconuts with out allowing them to be ripen. The extent of loss was much more than what they could collect.

The tactful approach of the Britishers on the legislation and administration of justice was evident in keeping the two assessors as mandatory for the trial conducted in the Islands. This was to keep the people feel that their interests was taken care of. Earlier those assessors were selected from among the Karanavans of the noble families of the Island. So it was deviced by the Britishers as an instrumentality to get the popular support and control over the society.

At first the Britishers had introduced two distinct sets of offences. One was triable by Inspecting Officers/Collector/Collector's assistants. Comparatively those group of offences were grave in nature. Another set of offences minor in nature was made triable by Amins.

This is also evident from one more angle. When the Regulation was first introduced in 1912 the Indian Penal Code as such was not introduced in the island. Only few provisions were introduced. When their pilot law was well accepted, slowly Britishers introduced the entire Indian Penal Code after 24 years of the inception of the some of its provisions. The Britishers were very cautious in the just maintenance of the law and order and to make the administration of justice an accountable one. That was why they introduced only IPC without extending Criminal Procedure Code even after 24 years. They realised that this society was not that much ripe to receive the technicalities of the law minutely. For the procedural fairness they have formulated a broad-spectrum device to interpret and to tackle all situations according to equity justice and good conscience.

Jurisdiction

The Regulation provided the minor offences exclusively within the jurisdiction[30] of local Amin of each Island. In exercising his criminal jurisdiction the local Amin had to sit with four or more assessors called Karanavans. While trying minor offences the minimum number of assessors was four. There was no restriction as regards the maximum number of assessors.

After the trial, if the Amin found the accused guilty he could impose the punishment provided in the Sections. The punishment[31] was imprisonment upto 15 days or fine upto 15 rupees or both. Where the Amin who tried the case was of the opinion that the convicted person ought to receive a more severe punishment than the Amin was empowered to inflict, then he should submit his proceedings and forward the file to the Collector, and such officer may pass any sentence of imprisonment not exceeding one year.[32]

Status of Amin

By the 1912 Regulation if at all any offence was made punishable by the Governor in Council under Section 6, that also will be triable by the court of Amin. This Section underwent lot of changes later, which reflects the changes that came into the position of the office of Amin itself and also the changes in the criminal justice system of the Islands.

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[30] Id., at S. 9.
[31] Id., at s. 5 & 8.
[32] Id., at s. 9.

The position of Amin was progressively enarmed with more and more powers. In the year 1926 the Amin was vested with the power of a Magistrate of Third Class by empowering him to try offences which, if committed in an area in which Code of Criminal Procedure, 1898 was in force, would be triable by a Magistrate of the Third Class under that code and offences punishable under Section 224 or Section 500 of the Indian Penal Code[33] Later the Amins were empowered to try offences notified in the official gazette.

Procedure to be followed by the Court of Amin.

The Amin would take cognizance of cases on complaint or on his own initiative[34]. He has to record memorandum of the evidence[35] of the prosecution witnesses, the plea of the accused, and the evidence of the defence witnesses. The evidence was taken in the presence of the accused. The accused and the complainant had the right to cross-examination.

The Amin would deliver a written judgement[36], recording therein the opinions of the assessors sitting with him and the reasons for his decision. It is to be noted that the Amin was not bound by the opinions of the assessors. But if he gave a judgement different from the opinion of assessors he had to record reasons why he differed. The provision for judgement[37] was a turning point in the legal history of the islands, making reasoned judgement mandatory. In one respect this was a real transplantation of the

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[33] Id., at s. 9(1)(b)
[34] Id., at s. 10
[35] Id., at s. 10 (1)
[36] Id., at s. 10 (2) (3)

procedure prevailing in the British India and a modernisation of the island legal system by bringing it closer to the legal system of the main land or basic fair trial procedures.

Further modernisation was effected on 1926 by introducing new concepts like security for keeping the peace and for good behaviour, imprisonment in default of security and power of superior officers to cancel bonds or to release from prison[38]. After 1976, when an offence other than offence triable by Amin is committed, the local Amin would hold an investigation. If a prima facie case was made out against any person, such person should be charged before, and tried by, the Inspecting Officer or the Collector or any of the Collector's assistants empowered by the Collector by general or special order in this behalf. The Amin was doing the basic duty of the police namely the investigation. The system of police was introduced only in 1958. In a way, duties of Amins indicate the reasons for Amins enormous power and authority. In 1926 yet another important change brought about in the Criminal justice system was by prescribing[39] that when the trial was conducted in Islands, the superior presiding officers like Inspecting Officer, Collector or Collector's assistant should sit with two or more Island assessors. This brought the procedure to be followed by the superior officers and Amin down to the same pedestal by involving the local inhabitants in the adjudication process. This had reintroduced cultural linkages of law in the administration of Criminal justice at higher level.

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[37] Id., at s.10 (4)
[38] Id., at s. 10-C
[39] Id., at s. 10-B

There was yet another development of the Criminal justice system. Hitherto unknown provision in islands - the security bond provisions - denotes an extension of the Governments control over the law and order situation keeping the society within scrutiny.

After an inquiry, if the Inspecting Officer or the Collector or any of the Collector's assistants empowered was satisfied that any person in the Islands (a) was a habitual offender, or (b) was likely to commit a breach of the peace or disturb the public tranquility, or to do any wrongful act which tend to breach the peace or disturb the public tranquility, or (c) was so desperate and dangerous as to render his being at large without security hazardous to the community, he might require such person to execute a bond, with sureties for keeping the peace or for his good behavior for such period not exceeding three years as he thought fit to fix.

If any person required to give security under the above provision did not give such security, he could be committed to prison or, if he was already in prison, be detained in prison until the period fixed under the above provision expired, or until within such period he gave the security. Imprisonment for failure to furnish security might be either simple or rigorous. The Collector or the Inspecting Officer is empowered to cancel any bond for keeping the peace or for good behavior. They may also release from prison any person imprisoned for failure to give security. The Regulation empowered the Collector to withdraw to his own file any case pending before the Inspecting Officer or an Amin. A similar power was vested on Inspecting Officers to withdraw to his own file any case pending before an Amin.

A provision enabling the Collector to transfer any case pending before him or before the Inspecting Officer to any of his Divisional Officers for trial also was added in 1926.

For the first time in the island's history the proper provision for appeal had been provided. The peculiarity is that only one appeal is provided. Second appeal has specifically been prohibited[40]. From decisions goes either to the Collector or the Inspecting Officer in cases in which the Collector or the Inspecting Officer grants special leave to appeal.[41]. These appeals from the decisions of Amins are not as of a right, but only discretionary. Thus it is clear that depending upon the gravity of the punishment if the sentence exceeds imprisonment for five years or more the convict would get the right of appeal to the High Court. If the imprisonment is more than three months and less than five years as a matter of right the appeal shall lie to the Collector. But if the punishment is imprisonment for three months or less, or the fine is less than hundred there would be no right of appeal from the decision of the Inspecting Officer of the Divisional Officer.

Any sentence or order passed by the Collector as a court of original Criminal jurisdiction can be challenged in appeal[42] in the High Court. Since the second appeal is banned[43] there is no question of challenging the decision rendered by the Collector under appeals. Every appeal shall be stamped with an eight-anna stamp and shall be accompanied by a copy on stamped copy paper of the judgement or order appealed

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[40] Id., at s.15. No second appeal shall lie in any case whatsoever.
[41] Id., at s. 12.
[42] Id., at s. 14.

against. But the prisoners are specifically exempted from payment of stamp duty. This is in tune with the trend of modern Criminal jurisprudence.

Civil justice administration

The system of Civil justice introduced by the 1912 Regulation had brought in an institutional set up for the Civil dispute resolution. At the lowest level the local Amin and four assessors formed a Civil court[44]. This court was having jurisdiction[45] over all the Civil claims emerging there in the island.

A provision[46] has been made for proper appeal. From the decision of the Amin the appeal can be filed either to the Inspecting Officer or to the Collector. The Collector was also vested with the power to transfer any appeal to the Divisional Officer for disposal[47]. In the case of appeal, the regulation has divided some technicalities and difference between the Inspecting Officer and the Divisional Officer.

The appeals can be filed to the Collector. This is particularly with regard to the appeal on original jurisdiction exercised. In the case of the Inspecting Officer exercising original jurisdiction, ordinarily no appeal[48] shall lie. It is not absolute. The discretion[49] has been given to the Collector to entertain an appeal if the original jurisdiction exercised by the Inspecting Officer, if sufficient grounds are shown. In the case of decisions of

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43 Id., at s. 15.
44 Id., at s. 22.
45 Ibid.
46 Id., at s. 26.
47 Ibid.
48 Id., at s. 26(2).
49 Ibid

Collector's Assistants exercising original civil jurisdiction, it is an absolute vested right. And appeal shall lie to the Collector[50].

The regulation has also provided an appeal to the High Court[51] from any decision of the Collector in the exercise of his original jurisdiction. This is for the first time the islanders were linked to the High Court-a court of record – as a matter of right. The High Court mentioned here is Madras High Court. As in the criminal case, no second appeal[52] would lie in the civil case also [53]. Procedure to be followed in the filing of civil appeal has been specified. Every appeal should be stamped with an eight-anna stamp, a copy or stamped copy paper of the judgement or order appealed against[54].

The peculiarities of island situation presented an abnormal limitation period for appeal to the islanders. Remoteness of the islands, the fact that appeal had to be filed at mainland, the difficulties of reaching the mainland in country boats and the improbabilties of reaching the mainland during the monsoon period were the reasons for the extension of limitation period from the normal one month rule to six month period. It is interesting to note that there was an exclusion of 4 monsoons months. So every appeal should be filed within six months from the date of judgement or order appealed against[55]. The integration of the island system with the mainland had been done recognising the islander's difficulties and accommodating their needs.

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50 Ibid.
51 Id., at s. 26(3).
52 Id., at s. 27.
53 Id., at s.15.
54 Ibid.
55 Ibid. (the months of June, July and September were excluded in reckoning such period).

By this Regulation 1912, the Britishers had given legal sanction[56] to the custom. The custom continues in areas like the inheritance. Thus, the legalisation of the customary laws in the island society formed a strong base of Lakshadweep legal system even today. This has been done by specifying that all questions relating to any rights claimed or set up in the civil courts of the islands 'should be determined in accordance with any custom not manifestly unjust or immoral governing the parties or property concerned and, in the absence of any such custom, according to justice, equity and good conscience'[57]. So when selecting the law to be administered in the civil courts the Britishers have given first preference to the local custom. But they validated only that custom which was not manifestly unjust or immoral. This is the general pattern of the British reforms. Wherever they have attempted legal reform they were very much cautious in not touching personal laws. Wherever the custom is absent to govern the particular rights the Britishers were trying to administer justice with broad-spectrum flexibility in the form of "according to justice, equity and good conscience".

This Regulation had provided setting up civil court for each island. The local Amin of each islands sitting with four or more assessors shall be the civil court for the island, and shall have jurisdiction over all civil claims arising there in the islands. This role of assessors can be approached from different angles. By keeping the influential people of the society itself as assessors, the people may not feel disgusted in the implementation of new laws. By selecting the assessors from among the influential the Govt. is getting an instrumentality and additional authority to implement their laws. This was a mechanism used by the Britishers to get the community participation. They are

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[56] Id., at s. 20.

highly cautious enough not to get rejected by the new laws and system by the community en mass. At the other hand the Amins may not be knowing the local customs very well. The presence of the assessors, who are well conversant with the local customs, would be an additional safe guard to avoid mistakes. Apart from that the Amin who was entrusted with the administration of justice was not a professional lawman. So, instead of depending upon the Amin, the better choice was the collective wisdom of the society.

For forming a civil court at island level at least there should be four assessors. In the formation of criminal court also the presence of at least four assessors was a must. These assessors were appointed by the Collector.

Reference to assessors and changing of assessors

There is a special provision to refer[58] the civil cases to the assessors. As per that the Collector or the Inspecting Officer may refer any case for disposal or report to two or more of the island assessors. Here it is to be noted that in case of reference the appointment of assessors is not individually, it is in-groups. So this is a technique used to tap the collective wisdom of the society as a whole. The provision for the changing of the assessor[59] as "the parties may challenge any assessors, and on sufficient reason being given another assessor shall be selected in this place" supports the above proposition.

Trial procedure

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[57] Id., at s.21.
[58] Id., at s. 25.
[59] Id., at s.25(2).

Presenting a plaint[60] to the Amin having jurisdiction over the suit shall commence every suit. The parties would be allowed to attend the hearing of the suit in person or by a Mukhtyar, The evidence[61] should be taken in open court. Representation of the parties has been regulated in such a way that no pleader should be allowed in any court except with the special permission of the Collector. But the parties are allowed to be represented[62] by their island Mukhtyar. The appearance of every Mukhtyar appearing before a court on the mainland on behalf of a party in the islands, must produce stamped Mukhtyarnama[63] or power of attorney bearing a court-fee stamp of eight annas. But this power of attorney was not needed in the island courts.

The officer trying a suit was duty bound to make a memorandum of the evidence of each witness as it is given.[64] After the conclusion of the hearing the judgment should be pronounced in open court. That pronouncement of judgment should be in presence of the parties or after furnishing notice to them[65]. The form of the judgment was also provided in broad outline. It should be in writing and shall contain the points for determination and decisions there on.

Service of process

The service of process was also regulated. The process issued by a mainland court against an islander or by one island court against a person residing in another island shall be forwarded to the Collector for execution and he should cause it to be executed unless

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60 Id., at s. 23.
61 Id., at s. 25(2).
62 Id., at s. 18.
63 Id., at s.19.
64 Id., at s. 25 (4)

reason to be recorded in writing. If the execution is inadvisable, he may refuse to execute it. This provision is made applicable to the service of decree also.

In case of any such refusal an appeal shall lie to the Governor in Council. This is the only provision in which power to appeal is vested on the people to approach the Governor in Council.

Execution

The power to execute all decrees was given to the Amin of the island where the suit was instituted. But the Collector or the Inspecting Officers were given the discretion to execute their decrees if convenient[66]. In the case of resistance to execution or if the judgement debtor willfully refuses to obey the decree of the court the Amin can punish him for imprisonment up to fifteen days or fine upto fifteen rupees or both[67]. When the Amin feels that the judgement debtor ought to receive a more severe punishment than he is empowered to inflict, he shall submit his proceedings, and forward the judgment debtor, to the Inspecting Officer or to the Collector, and such officer may pass such order, as he thinks fit. But such officer shall not pass any sentence of imprisonment exceeding one year [68].

Attachment and sale

The cases in which attachment and sale[69] of property is found necessary should be reserved for the Inspecting Officer. The Inspecting Officer is the authority to attach and sell the property of the judgement debtor in execution of the decree.

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[65] Ibid.
[66] Id., at S.28.
[67] Id., at S 8.
[68] Id., at S (9) & S.29
[69] Id., at S 30.

Inherent powers

By the Regulation a wide discretion and flexibility to meet contingencies has been injected into the civil justice system. It is revealed from the regulation that: "Nothing in this Regulation shall be deemed to limit or otherwise affect the inherent power of a civil court to make such order as may be necessary for the ends of justice or to prevent abuse of the power of the court".

Power to exclude mainlanders from the island

Power of Governor in Council to exclude[70] inhabitants of mainland from islands was an important provision of the Regulation of 1912. The Governor in council may issue order, prohibiting persons residing on the mainland from visiting or taking up their residence in the island, and may require persons ordinarily residing on the mainland who have taken up their residence in the islands to leave the islands. The power has been given to make such rules as he deems fit in pursuance of the above purpose.

This provision had very deep impact on the later Lakshadweep development. This has been followed in Government. of India Act 1935 and even after Indian independence. The post Independence laws passed also do not permit mainlanders to acquire land in the islands. This 1912 law has laid foundation stone for that even by stipulating a power to Governor in Council to require person ordinarily residing on the mainland who have taken up the residence in the islands to leave the islands. Even today in 1999 the mainlanders cannot visit Lakshadweep without obtaining permit from the Administration. The importance of this provision is that this was the major reason which safeguarded the customary law of the islands unpolluted even though the mainland law on the very same

respect had undergone vast changes and extinct by legislative hammer in the year 1976. This exclusion of the mainlanders kept their culture intact, saved them from the tricks and plays of the capital market and the affluent group of the mainland. So for laying the foundation stone for preserving this culture intact we are obliged to the men of 1912 Regulation. In 1912, the civil law was run in the mainland in accordance with Civil Procedure Code and various substantive laws. At the criminal side, the Criminal Procedure Code was applicable to the whole British India as procedural law along with substantive laws like Indian Penal Code. The Evidence Act has to be followed in the entire civil and criminal cases in the mainland. The gist of these mainland enactments was introduced in the islands by bit by bit without disturbing the public sentiments. Assessors system linked or bolted the new system in this traditional society. Not to make the people offensive, they have recognised the customary law, and they have not touched the personal law. The Britishers were very clever. They knew that if this remote isolated island people are turning hostile, they cannot maintain these islands profitably. The economic burden that may arise in creating and maintaining a police force in this distant island prevented British from starting police force in the islands.

Even then Britishers have totally changed the legal system. They introduced open court system and allowed Mukthiars to conduct the cases for the parties in the court. They laid down how a legal proceeding, civil or criminal has to be initiated and how a case has to be conducted in a court[71]. In the criminal side the offences were defined. The trial

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[70] Id., at s. 33.

[71] It extended to many para of a case how evidence has to be adduced. How process has to be served. How the judgement has to be pronounced. What should be the form and the contents of the judgment, how and were the appeal has to be filed. What is the period of limitation. How the orders has to be executed. What are the authorities for the execution. How the resistance for the

(f.n.contd)

procedure for trial and appeal was laid down. Special care was taken for providing punishment for the violators of customary law also. So the customary practice also has got legal sanction in the 1912 Regulation. A new wave of institutionalisation has been introduced. The set up was not akin to mainland. New procedure and new concepts of justice were introduced. Their attempt was to make the territory under law and order control and to free it from arbitrariness. While introducing these changes the British were very much conscious about the fact that the administrative expenses shall not exceed the income derived from the territory. This might be one of the reasons for a difference in approach.

During the British period the local courts in the Amindivi Islands were presided over by Monegar. His judgement was in English. In Malabar islands Amins pronounced the judgements in Malayalam. For getting an idea about the working of the legal system it is better go through the decided cases. The cases covered a wide range of offences from destruction of plants[72]; theft of an umbrella[73] or toddy, attempt to molest woman, and breaking open locks[74] fabrication of false evidence for supporting a property dispute[75], criminal trespass and planting of coconut plants[76].

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execution to be dealt with, inherent powers of the civil court etc has made the Lakshadweep legal system in its broad principle as close as mainland legal system.

[72] Kalpeni Amin Kalcheri criminal case No.1/1922.
[73] Kalpeni Amin Katcheri criminal case No. 36/1922.
[74] Kalpeni Amin Katcheri criminal case No. 35/1922.
[75] Kalpeni Amin Katcheri criminal case No. 28/1922.
[76] Kalpeni Amin Katcheri criminal case No. 26/1922.

A suit for justice filed by a lady was for restraining her brother from plucking coconuts from the trees allotted to her[77]. There is a difference from the practice in the mainland where in similar instances parties are restraining the defendant from entering into a plot. In that period land was not the basis of property concept of the islanders. They followed peculiar system of allotting trees, which led to a situation, that in one and the same plot three or four persons may have their trees. This led them seek injunction prohibiting plucking of coconuts from trees allotted. In order to identify trees they used to create marks. The case was compromised.

Another case to be noted was common civil case. The grievance was that one of the sharer in a five-share family was not getting her due share through proper allotment[78]. Amin and Karanavans present have settled this case. According to this settlement the Karanavan should supply the monthly allotment of each family by plucking the coconuts monthly and by dividing it into five equal parts. It was also stipulated that at the time of plucking coconuts, all these five parties might be present at the spot of plucking.

One of the Amindivi Islands Monger courts civil case[79] is a example of the then living style. It was a suit for the recovery of 4 Mura's of rice and amount of Rs. 7. A suit was filed against three members of family, Fatade. For the amount due to the plaintiff from the head of the family who was already dead. The defendants did not turn up, despite summoned for several times. The plaintiff was willing to take an oath. The

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[77] Kalpeni Amin Katcheri civil No. 65/1932.
[78] Kalpeni Amin Katcheri civil No. 69/1932.
[79] Amindavi island Monegar Court civil case no. 74/1924. In those days the shortage of rice made rice as a precious thing. Apart from that barter was the mode of exchange. See Appendix D Cannanore Khader v. Fatade Sara

Mokthessors present in the court were of the opinion that the case has to be decided upon oath. As the person who borrowed was not alive the Monegar accepted the opinion of the Mokthessors who suggested oath taking. This case was decided on 18.9.1924.

One case of Kalpeni Amin Katcheri[80] was filed by a woman for getting maintenance and Mahar from her old husband who married again. This case has been settled through Raji (compromise) petition. In this context another interesting factor to be noted is that the marriages were used to be registered stating the Mahar amount also[81]. In this register both husband and wife along with two witnesses were to be signed. This may look a little odd in the circumstances in the island where divorce was so frequent. Perhaps registration was devised to avoid litigation as to the quantum of the Mahar amount and allied matters.

Though the Lakshadweep people are considered as scheduled tribes due to the reasons mentioned earlier. One may not call their laws as tribal law as such. The need for legal institutions in a society will be moving from lower to higher levels depending upon the development in the social structure and the economic needs of the society. In the primitive Lakshadweep the 'Kootam' could manage everything. When the social mobility and the governmental regulations were channelised through specific rules and regulations, Monegar or Amin came into the field. Their presence in the society led to institutionalisation of the governance in a different plane which paved for the growth and need of Mukthiars.

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[80] Kalpeni Amin Katcheri civil case No. 68 of 1932

In the period of obscurity 'Kootam' used to decide the disputes. Later the Britishers legalised the 'Kootam' as assessors. It is interesting to appreciate this fact. In a mono-religious Muslim Society, as the society in the island was, the religion has no role in the decision taking by the 'Kootam'. This is very much different from the peculiar culture prevailing in some Hindu dominated societies in South India. Where the authorities of Matt or the religious head used to impart advisory jurisdiction. Their advices were treated as supreme law.

Even during British period the role of Karanavans was maintained. Though the minimum number limited to four Karnavans for the Civil and Criminal trial, in some serious matters, their number may go to ten. This assessors group worked on the democratic principles of majority. It was more reasoned or rational; it was flexible and informal. The nature of decision making process is evident from a decided case[82]. In this case the Monegar has mentioned:

> "I consulted the marginally noted Mokthessors present with regard to the custom followed in the island. The majority of them corroborate the plaintiff. I agree with the majority and order that the management of the Nzarakal Palli and its properties shall lapse to the tharawad and vest in the plaintiff on the usual conditions subject to the Nazirship of the defendant, who is the Karanavan for the time being[83]".

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[81] Registration Register of Kalpeni 1879, p.12.

[82] Amindivi Islands Monegar court civil case No 53 of 1926. The cases had been decided on 27.10.1927. For details see Appendix D, Case Nos. 2&3.

The community-oriented nature of the decision making is further clear from the decision taken by the Monegar earlier[84] on 24th March 1919 in civil case NO. 13/1919. This is a typical case, which throws light on how the islanders were cheated or trapped in the mainland. In this case the plantiff messers Jos. V. Alvares & Co, Manglore had given Rs. 100/- to Kundevyapure Kasim Koya of Chethlath Island to purchase one native craft, called, Thakalaodam. This had been given on executing an agreement in an eight anna stamp paper, executed at Managalore. In that the islander was bound down to pay 12% interest per annum and for next 5 years from the date of agreement to hand over all cargo's brought by the Odom to the Jos. V. Alvares to be sold on commission. If the cargo is sold to any other person within the said five years a damage of 500/- also is agreed.

In the suit for recovery of this amount the Monegar ordered that "the amount borrowed by the defandant may be decreed with interest there on at 12 % and that the claim for damages may be disallowed as there is no custom to decree such damages". He accepted the opinion of Mokthassors and decreed[85] this case as such. On those days in transaction with mainlanders at mainland the islanders due to circumstancial compulsions the islander were forced to bound down themselves to unreasonable terms and conditions dictated by the mainlanders. This was a problem faced by that community as a whole. This decision is an indicator that the decision-making was guided (possible) by the community interest, even if it is against mainland legal norms.

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[83] Ibid

[84] Amindivi Islands Monegar court civil case no 13/1919. The case was decided on 24th March 1919. See Appendix D case No. 3.

[85] The amount ordered was as follows: Principal- Rs.100, Interest 12% Rs. 130. 14 Anna 8 Paise, Total Rs. 31 Anna 6 and Paise 8.

The rationality and reasoning had a back seat. This is a deviation from the western law. Even during the British period the oath was frequent. For deciding disputes the Mukthessors used to recommend oath. Such decisions also used to be confirmed by the Divisional Officers. The lack of pinpointed reasoning and the presence of blunt justice to preserve the community interest prevailed in this society. To sum up, they were approaching matters with a preconceived notion, more community oriented than individual oriented. The operation of majority in the decision taking process of the assessors in away reflected the public opinion. This is especially true when the Monegars did not comment upon the reasonability of opinion of the Mukthesors. The Monegars were just endorsing. However, they cannot be charecterised as a signing machine. They know the facts and materials of the case. They were living with parties. So one cannot call the approach as bereft of objectivity or neutrality. One may see the presence of these two elements more, in western state laws or principle of Dharma followed in the courts in the mainland. But one has to differ when he measures the quantum of justice in these islands.

From the memory of the old people who were interviewed by this scholar, it is revealed that theft of coconuts during those days were very common. In the customary practice prevalent, then, the thieves who had stolen coconuts were used to take from one end of the island to the other wrapping his body with cut coconut leaves and a garlanded with coconut shells. All the persons used to follow him making sound by hitting coconut shells and shouting aloud "coconut thief! coconut thief!". The group was joined by others from every house in the procession. By reaching other end the procession would

be big. Old people said in their interview that punishment inflicted by the people in this way had very good results. This was considered to be the most humiliating.

The practice went beyond 1912 Regulation is a clear evidence to show the hold of community participation in customary law on the society. This is especially of great importance when it is found that this phenomenum is on the very same area where the state was prescribing punishment under state laws. This intermixing of state law and peoples law or non-state law has presented a multilegal system to the society. This interaction and the give-and-take policy was very much there in the earlier periods of the implementation of 1912 enactment. The gaps in the enactment were filled by custom. There were no prescribed rules for the identification of the custom. The legislation of custom was beyond the preview of the then existing system.

If the matured consensus of the society were deciding on the basis of the common good of the society in a particular matter that would also take the form of custom. In the case described[86] above the damages was denied on such a ground. The interesting factor is that the agreement was entered into a stamp paper of 8 Anna at Mangalore and that damages clause was in accordance with the law prevalent in the mainland. At that time the Contract Act was in force there at Mangalore. But that was not extended to Lakshadweep. When an interface arouse between the competing demands of a state law of the very same British Government in the island, the official paid by the British, who was sitting as the head of the island civil court along with Mukhathessors the traditional representatives of the society had accepted their opinion based on customary practices. It was glaring that no one in the Mukhathessors group has supported the damages. The reason might have been the ill feeling towards mainlanders and their practices. They used

[86] See Appendix D

to extract the islanders by binding down them to unreasonable conditions as was seen in the case. When they got a chance, customary law had been given predominance over the state law of mainland even if it was supported with generally accepted and duly acknowledged document.

The discretion, which was given to the Karanavans, was operated here from a psychological angle. Here this community en-masse retaliated when they got a chance to decide upon the unreasonable conditions and extracting methods forced by the Dalals at mainland by upholding that those unreasonable terms and conditions are not enforceable as against islanders even if it was supported by proper documents.

All systems of laws gave importance to impartiality. In the English law this is through elaboration and maintenance of rules of procedure and evidence. The English law was very strict for the relevance of facts brought before the court in support of rival contentions. It will never go behind the particular dispute in issue. But the indigenous system in Lakshadweep is different. It may take up another dispute, which is lying behind it. To distinguish between the authentic and the false version of parties and witness is a must in every legal system whether it is indigenous or western. In the western system this is accomplished through meticulous adherence to elaborate rules of evidence, procedure and pleading. In the Lakshadweep they take into account hearsay too. But their system had no support of recorded rules for that. The evidence was gained from the close knowledge of the society, a rationalising factor of this traditional society in their effort of separating of truth from untruth. In doubtful cases oaths and ordeals were used. At this level the indigenous group had no recorded or devised standards or formalities to

invoke that custom. In its absence the community common sense emerging through the collective wisdom of the Karanavans were the rule.

A search[87] into the original records reveal the different faces of interaction between the customary law and British introduced new system of state Law. Before the advent of the British the native system of disputes resolution worked through 'Kootam' that cannot be termed as a court in its pure sense. But in tribunals of arbitration, their leaning was to settle the disputes amicably with a collective might of the society. The familiarity of the subject matter of disputes and parties made the 'Kootoms' more informal and approach more emotional. They administered personalized justice which is different than other parts of India where the imported legal system was supported by a strong administration. In Lakshadweep this administration was neither so strong nor technically so refined as that of mainland.

The attempted codification of laws not made in the Lakshadweep. When in the mainland the panchayat system of administration of justice was displaced by English system with technical and formal procedure device[88]. In the British model judge acts as an impartial umpire trying to keep the balance between two adversaries. As seen early this was contra-distinction with the justice concept of the Kootams. Their commitment was to truth and natural justice relying more often not on necessary, common cause and truth worthiness of parties themselves. Lakshadweep legal systems as moulded by Britishers were only half-baked in their way. Lakshadweep administrative system also

[87] Case records kept in Amin katcheries and Monegar courts, old cases kept in the new courts and the registration records were also examined by the scholar.
[88] Mill, The History of British India Vol V.425

was in a half-baked stage under Britishers. The development of a full-fledged legal system requires a fully developed administrative system. Which in turn requires integration with the mainland system. That was too expensive. This expense was one of the major reasons which forced Britishers to keep both the legal system and administrative system in the Lakshadweep in a half-baked stage.

The success of the adversary system of Britishers, a product of an individualistic society, depends on the people's willingness to invoke the jurisdiction of the court. It is related directly to the standard of right consciousness of the people. In this traditional society the recognised tools of social adjustments were duties and obligations[89]. But not the rights. In this situation generally the new authority would not have enjoy proper sanctity on the minds of common people. But in Lakshadweep the new institution by the Britishers has been well accepted by the people. May be due to defencies in the earlier system. The uniform rules and the presence of an outsider who is supposed to be about caste and other considerations tempted the people especially melacheries to accept higher quality of impartial justice. For melacheries this new institution under Britishers would level up the caste based hierarchical character of the society.

In Lakshadweep religion, social commitment, family and law were very much attached in their earlier life. The British idea was to keep the law and religion apart. The secular based rationality was culturally alien to this society. But in the Lakshadweep, the only officers who would have applied British law were Collectors and Inspecting

[89]The duties and obligations were working in the society through the privileges and disablities attach to birth in the media of caste, matriliny based joint family with its peculiar property system.

Officers. The difficulty to file appeals at mainland reduces numbers of appeal considerably. Inspecting Officers and Collectors also a preference to customs as is evidenced from the case decided by Divisional Officer Manavedan Raja[90]. At the island level the Mokthassers or Karanavas in the form of locating customs, were giving opinions, which is fundamentally decision making rooted in the island culture and the customary law preserved its purity till 1967 when the Indian status and judicial institutions with legally qualified officers were appointed in the islands.

[90] Case decided by the Divisional Officer Manavedan Raja Case No.345/1920, Pudia Kulap Muhammed v. Kulap Muhammed. For the judgement, see Appendix D, Case No. 1

CHAPTER – VI

LEGAL SYSTEM: POST- INDEPENDENCE PERIOD

CHAPTER-VI

LEGAL SYSTEM: POST-INDEPENDENCE PERIOD

After India became independent, in 1947, many changes in relation to the legal system took place in the mainland to achieve the constitutional goals. But they have not reached Lakshadweep. This was mainly due to the absence of initiative and lack of communications in dealing with the Lakshadweep affairs. The high cost and risk involved in the modernization of this society was the deterrent factor. A change in this set up started on the basis one inspection report filed by a civil servant.

The Report

Changes took place in Lakshadweep in the post-independence era. In heraldic to these changes one official report on the islands is very important. The report which popularly known as Krishnaswamy report,[1] is prepared by the then Special Inspecting Officer of the Laccadive and Amindivi Islands, Sri. S.Y. Krishnaswamy. Perhaps after Ellis published his report in 1920 a study worth examination was almost nil till that of Sri. Krishnaswamy. The report admitted that largely due to their inaccessibility to the mainland, the islands could not achieve progress on par with the mainland especially in state assistance, political awakening or social reform. It was mentioned that the islanders are by no means a backward people as may be mistakenly supposed. Their isolation from the mainland should not be taken that they are not cultured. Their human relations are more cultured than the general mainland system. However, the modern gains of

[1] For the details of the report, see G.O.No.1453 of the Government of Madras dated, 22nd April 1955.

civilization is yet to reach them. God only knows whether they may become as "cultured" as the mainlanders may.

Though the inhabitants of these islands (except for Minicoy) are ethnically one and speak the same language, yet have had little contact with one another. One example is that people of Agatti speak of the people of Kalpeni as foreigners with quaint customs. As a matter of fact each of these islands has had separate, but more frequent, contact with mainland than with one another. Krishnaswamy reported that various local customs have, therefore, sprung up in each island and legal sanction has been given to these by adhoc decisions by inspecting officers. This indicates the prevalence of different customs in different islands and its legalization. The people were divided into three groups, the Koyas, the Malmis and the Melacharies in the descending order of social importance. It is said that:

> "The Koyas are uniformly the priests and landlords and the owners of boats and the Melacharies are workers who may be described as hewers of wood and drifting into the upper or lower strata. The Koyas neither spin nor toil. The first is done by the tree culture which calls for neither sowing nor reaping, nor even any kind of maintenance, have made the Koyas lazy and litigious and the problem of their employment is one that confronts any one trying to reform the islands".[2]

[2] Id. at pp. 13-14.

Of late some changes in the social hierarchical order took place. An inter-group integration reduced the rigour of social stratification.[3] The men and women marry early and divorce frequently in those days. The general law of inheritance is matriarchal. Krishnaswamy found that inter-island differences existed in the laws of inheritance, landlord-tenant relations and marriage customs.[4]

Rationing and Coir Monopoly

The food situation was peculiar in the island. The islanders have to subsist entirely on the rice from the mainland. There were no alternative foods. There was no scope for cereal cultivation of any kind. There was no additional black market supply of food. All the islands were under an informal system of rationing. The quantity allowed except in Minicoy was 8 ounces per head per day.[5]

The custom of purchase and distribution was also peculiar when an odam (boat) is proposed to go to the mainland; the owner of the odam presents a petition to the Amin to allow him to purchase a particular quantity of rice. The petition is to be accompanied by a statement showing the particulars of the families whom he intended to supply. The heads of those families should sign the statements to show that they accept the arrangements. The Amin recommends the quota to the Collector who issues the permit. When the rice is brought to the island the Amin issues an order to the boat owners to supply the ration as specified in the original petition.[6]

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[3] Backward integration of Koyas with Malmis and by the forward integration of Malmis with Melacharies through marriage.
[4] Supra n. 1 p.14
[5] Id. at p. 16.
[6] Id. at p. 16.

The system had many limitations. There is limit to the carrying capacity of the boats. The financial capacity of the owner, which could be assessed on the price he gets for the island produces, is a determinant factor. Lastly, how many have signed the petition also was important. At times the boat-owners used to give preference to their friends and dependants. The persons who did not have copra at the time of sailing of a particular boat were facing difficulties to raise the fund for their rations. Ultimately this also forced them to spread over their needs. The system led to the common malpractice's exploiting poverty of the indigent persons by the boat owners. The boat owners were collecting the signatures of the poor people who were not having the money for the ration. The purchase of rice in the name of these poor people was financed by the boat-owners themselves. But when the rice was brought to the island it was not distributed to the signatories of the original petition. The practice was that the one third was given to the signatories as credit advances. The two-third was retained by the boat-owners for private sale at enhanced rates.

In effect this system was inefficient, it could not provide ration for all people atleast for certain period at same time[7] These were the problems at island level. There were difficulties or problems at the mainland also. The important difficulties experienced by the islanders for procuring food items at mainland were (1) the inability to find the prevailing market price for the island produce and (2) the exploitation[8] by the middlemen on the mainland known as Dalals.

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[7] Id. at p. 17.

[8] Jos V. Alavares & Co. v. Kudeya Pure Khasim, for details of the case, see Appendix D(3) and see also supra Ch. V.

The Dalals offer various facilities of boarding, lodging and providing ample credit to the boat-owners of the islands. The credit created long-run accounts between them, which remain unsettled for years. The Dalals used to deduct the dues owing to them before sending the accounts due in island produce. In most cases the islanders became scapegoats. There were cases of whole boatloads being confiscated for debts. The islanders could not spend much on rice as they required or they could not take the rice allotted by government.[9]

Thus the procedure of rationing was neither uniform, nor enforced strictly. One of the reasons for this was the collusion between the boat-owners and the Amin. At the same time the Amin of Kalpeni has reported that on return to the island with rice, the boat owners were not producing it before him but were distributing it according to their whims and fancies. Jettisoning of cargo was not uncommon. The problems emerged from the use of country boats added to the misfortune. The boats could not keep the time schedule.[10] Thus islanders were left with meager supplies or no supplies at all. The defects in supply led to the emergence of an internal 'black market' operating on the rationed quantity. The boat owners did this internal black market.[11]

Relation with Coir Monopoly

There was a difference between two groups of islands. In Malabar group rice obtained by exchange of coir was in addition to the normal ration. This was an incentive

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[9] During the early 1950s, they never took wheat. In 1950 there was a balance of 312 bags of rice in Androth. But this was not purchased for want of funds. Ibid.

[10] We could not predict anything. Generally they took three-four days of journey. But sometimes it may extend two to three weeks depending on whether the sea is rough or not.

[11] This was in addition to the customary 10 percent transport charges for coir given to the owners in terms of rice.

to produce more coir and get more rice. But in Amini group an additional supply of rice over the quantum of ration was made. In certain islands then there was no ration for small children. Minicoy was a favorite child in every welfare measures. There was no coir monopoly. The islanders were given ten ounce of ration while others got only eight ounces. In Minicoy, the government officials were ruthless and forthright while shopkeepers kept their correct accounts without mistakes and malpractice's.[12] Rationing arrangements in other islands was anti poor, inadequate and mal-distributed.

Coir monopoly is the term for the state monopoly in transaction of coir-a product of Lakshadweep. This was for the benefit of those engaged in the production, to free them from the mercy of the boat owners and the mainland merchants. According to the report of Mr. Krishnaswamy, coir monopoly should be abolished only on the establishment of co-operative mechanism for the transactions that relate to coir and coir products. The island wise transaction is to be carried out under a co-operative society. Purchase and sale in each island on all materials can be effected through the society. This will help the islanders to get things at proper price and to earn regular permanent income for the island produces. [13]

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[12] The Collector of Malabar was supplying rice through two approved agents on the mainland who in turn supplied it to various shopkeepers on island each householder was provided with a card. He could collect the rice from any shop on getting it stamped. The shopkeepers were bound to keep stock registers showing daily sale. The purchases were made daily as a rule. Generally the rice was purchased by cash also. It could be seen that copra was not used as an exchange because the shopkeepers used to buy coconut and to prepare their own copra.

[13] On every island a co-operative society should be started. It should function:

(a) the Government ration depot,

(b) The agency for buying coir, coconuts, copra, jaggery, vinegar and other island produce and

(c) A consumer stores for articles, required by islanders.

A federation of co-operative societies was also proposed. This was to sell coir in the main port in Cochin to fetch a competitive price at international market level. Krishnaswamy suggested that the tax to be collected at the single point where the import and export of things took place at the island. The proposed agency for this import and export was the co-operative society of the island.

The importance of Krishnaswamy report lies in the fact that later this report formed the very foundation of the modernization of Lakshadweep. The law of a particular society is very much linked to the socio-economic life of the society. To avoid social friction and to eliminate arbitrariness the injection of rule of law in a territory is a must. It is directly necessary for a peaceful social living. The isolation from outward world is a negative factor in achieving development of a territory. So to improve linkages and interaction with the mainstream of the country he recommended regular ship service. Regular shipping to the island started in the year 1958-59.[14] Its impact on the social life was tremendous.[15] Scarcity of things bade good bye to this territory. That helped them to pursue higher studies in mainland. They could solve their health problems with the modern medical facilities available in the mainland. For improving, the level of literacy he suggested various ways and means. Today Lakshadweep is having highest literacy among Indian union territories.[16]

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[14] Mannadiar, Gazetteer of India: Union Territory of Lakshadweep (1977), p. 253.
[15] The establishment of regular shipping service reflected in the social life. It paved the way for the amicable settlement of customary tenancy related issues and customary services. Ultimately this issue has been solved by an amicable settlement arrived at between the landlords and kudiyans. See the chapter on land reforms.
[16] See Appendix B(4).

He has suggested introducing money compensation for nadappu tenancy[17] by eliminating compulsory customary practice. He has given the reason for this change as: by the inauguration of regular ship service, the need for customary boat services by tenants' would disappear. Later the post and telegraph office at each island was established on the basis of his recommendation. For a better society the legal culture is as important as the efficiency level of the economy. So he has suggested modernisation of the legal system by establishing a Judiciary as in the main land. It is highly fruitful to have a idea about the working of a legal system in the post independence period but before the introduction of modern judiciary.

Civil justice

To get a picture of the working of the legal system after the independence in 1947 and before the introduction of modern courts in 1967 the picture given by Sri. Krishnaswamy is very much useful. The nature of suits filed is money suits for recovery of dues, arise from the unsatisfactory landlord tenant relationships. Younger members of the tharawads were filing suits for separations. A large number of miscellaneous petitions were related to execution of decrees, petitions regarding boundary disputes and other matters of civil nature. The delay in disposal of cases is appalling especially in Malabar islands. In 1954 in Androth island cases were pending right from 1942. Three to five years delay in disposal is quite common in other islands also.[18]

[17] For a detailed discussion, see supra Ch. III.
[18] Supra n. 1 at p. 50.

The reason identified for the heavy arrears[19] in the Malabar islands are many. The incompetence of the Amins to manage the court work was most important among them. Because of the involvement of interpretations of local custom and the absence of the practice of reducing into writing the maintenance arrangements the decision in island suits are inherently difficult. Absence of land boundaries and the computation of property by coconut trees and the interplanting of trees by several owners as well as by landlord and tenants in a plot, which is identifiable only by local name, are making the decision extremely difficult. The Amins were totally incompetent to adjudicate in the face of such vague and conflicting evidence. In Amindivi Islands major reason for the arrears was the delay in visiting the islands by the officers and the frequent transfer of officers.

Criminal Justice

Criminal justice was administered on the Malabar islands in accordance with Regulation of 1912 by the local Amins. He was trying the offences under Indian Penal Code - offences triable by a magistrate of third class and certain customary offences as specified in the last chapter. In south Kanara islands, the Deputy Tahsildar functions, as if he were a second class magistrate under the Criminal Procedure Code. He had to try IPC offences and the customary offences.

The general criminal case were criminal trespass, theft. Defamation was third. The major portion of criminal trespass is due to civil disputes about property, and are often attempts made by one party to intimidate the other into accepting an unwelcome maintenance arrangement. Coconut thefts were very common. The mixing up of property

[19] Id. at pp. 44-45. For the exact figure of delays in disposal see Appendix B(6).

created a particular situation facilitating this theft. The chances to mix up the coconuts without any risk of identification with ones own coconut made this offence an easy one. The difficulty in obtaining adequate food and difficulty to procure foods by paying black market forced them to eat coconuts.

The criminal cases were allowed to be compromised irrespective of the nature of the offences. The delaying factors of the civil cases are equally applicable to criminal cases also. In Agatti a theft of coconut filed in 1948 was pending 1954.[20] The delays in the disposal of criminal cases were more dangerous than in the delay in civil cases. This had reduced the respect for law and increased the lawlessness.[21] At that period there was no police force. The first police station in the island was established in 1958. The absence of police also helped to worsen the societies peaceful atmosphere. There were session's cases like arson that has gone undetected.[22]

Police

The first police station in Lakshadweep was opened at Minicoy in 1958. Later in 1964 three more stations were opened at Kavaratti, Amini and Androth. In the very same year the Post of Deputy Superintendent and one Circle Inspector was created. Now the Lakshadweep is having one police superintendent. All the islands are having its police station.

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[20] For explaining the then delay in the disposal of cases in Androth, out of 44 cases filed in 1943, only 10 were tried by the Amin that year, 2 were tried in 1944, 2 each in 1945 and 1946, 8 in 1947 and two were pending in 1954 also.

[21] For details of delay and pendency during 1941 to 1951, see Appendix B(9).

[22] This has happened in Kavaratti Island. See supra n. 1 at p. 51.

Till 1967,the police had no powers to investigate.[23] Their duties were limited to keep law and order alone. Till that Amins who were assisted by Karanavans in Malabar islands conducted the investigations. In Amini group of islands, the preliminary enquires into the crimes were done by the peon of the Monegar, and arrest also was done by peon. This Monegar had the powers of police Amin. Even today the police of the island cannot be compared with the police of the mainland. The people are not taking them as an isolated group. From what I could identify is that due to the lack of crimes, the people are friendlier with police than in mainland. They are considered as part and parcel of the same social group.

Deviation as regards the recommendation on customary laws.

In bring out such a basic document with pragmatic recommendations Krishnaswamy has consistently followed an ultimate aim of bringing island administration in par with rest of India. In such circumstance his observation on customary law is gathering importance:

> "It is not desirable to codify customary laws at this stage of social flux and impending administrative changes, though a policy may deliberately tried of standardizing custom to the maximum extent possible by judicial decisions. No Changes are proposed at this stage in respect of ordinary leases between landlord and tenant."[24]

[23]This is deviation from general concept of police duties. In all societies the prime function of civil police is investigation of crimes.
[24] Supra n. 1 at p.47.

Introduction of Mainland Model -Modern Judiciary

The breakthrough from the customary justice System came in the form of a Regulation; The Laccadive, Minicoy and Amindivi Islands (Civil Courts) Regulation 1965. By this how far the laws of Lakshadweep reached in par with mainland laws is an important area to be searched. The President of India has promulgated this regulation under Article 240 of the Constitution with a view to constituting certain civil courts for this Union Territory and the related matters. A three tier civil court set up[25] has been envisaged for the Union Territory such as the District Court, the Court of Subordinate Judge and the Court of Munsiff. The power for deciding the qualifications of the Subordinate Judge and the Munsiffs were given to the Administrator in consultation with the High Court[26]. The Central Government was empowered to fix the place or places at which the courts are to be held. Its peculiarity is that such places can be within or outside the territorial limits of the islands[27]. This is the basic provision, which is enabling the island court to conduct their camp sittings in the mainland even now. Original jurisdiction of these judicial officers was governed by section 15 of the Civil Procedure Code.[28]

The 1965 Regulation had a reference to customary law. Section 16 of the Regulation reads:

> "Certain decisions to be according to the personal law or custom:- where in any suit or other proceeding it is

[25] Section 3 of Laccadive Minicoy and Amindivi Islands (civil courts) Regulation, 1965.
[26] Id., S. 5.
[27] Id., S. 7.
[28] Civil Procedure Code, S. 15.

necessary for a civil court, to decide any question regarding succession, inheritance, marriage, caste or any religious usage or institution, any custom having the force of law, or any personal law, governing the parties to or, applicable in relation to the properties in issue in, such suit or proceeding shall form the rule of decision except in so far as such custom or personal law has, by legislative enactment, been altered or abolished".

The regulation was providing a special procedure for cases involving customary law.[29] In such proceedings four assessors should assist the court. It is the duty of the court to obtain the opinion of the four assessors separately on fact in issue. Presiding officer was not duty bound to follow the opinion of assessors if he disagrees with the opinion of the assessors. But the reason should be recorded. Presiding officer can decide the case in accordance with his own opinion. This procedure of obtaining the opinion of assessors was specifically excluded in the case of appeals.[30]

The powers to appoint assessors to each civil court were vested with the Administrator or any officer appointed by him for this purpose.[31] This list shall be revised annually. The process of selection of assessors for each case is to be by lot. Whenever any objections as regards partiality or anything[32] is leveled against any assessor the court has to change the assessor. The specific guidelines prescribed for

[29] Id., S. 17.
[30] Id., S. 17(2).
[31] Id., S. 18.
[32] Id., S. 19.

changing the assessors on the ground of impartiality, incompetence etc is an innovation on 1912 regulation. The regulation was designed in order to suit the local condition, which is different from the mainland situation. For example the 1912 Regulation provision of the exclusion of the four-month monsoon period from computation of the limitation was maintained in the 1965 Regulation.

The peculiar situation, which is prevailing in Lakshadweep islands even now, is that all ministerial officers attached to the courts are under the control of executive side of the government. The reason for that is section 23 of Regulation which specifies that ministerial officers of the Courts of Subordinate Judges and the Munsiff shall be appointed by the District Judge in consultation with the Administrator.

With effect from 1-11-1967[33] the central government has extended to the Lakshadweep almost all the central enactment. As envisaged by 1965 regulation, on the date of commencement of the new courts the procedure followed was that of Civil Procedure Code 1908. This has a far-reaching impact on the customary law. In 1967 the system of assessors in trial has been taken away except in cases involving customary law. The customary law involving cases also have to be tried in accordance with the general principles of Civil Procedure Code. The judicial setup envisaged in this regulation constitute the Lowest Court was the Munsiff Court.

Consequent upon the notification in 1965, the officers in the administration acted as Subordinate Judge and Munsiff's[34] despite, then, none of those first officers were

[33] Though the Civil Court Regulation published in 1965, the notification which is giving, effect to this Regulation came into being in the year 1967 with effect from 1-11-1967.
[34] At first Munsiff's Courts were established in four islands, Kavaratti, Minicoy, Androth and Amini.

having legal qualifications. That is, the judicial powers have been conferred on executive officers. By another notification[35] the magisterial powers has been conferred on these officers with effect from 1-11-1967.

At this period from 1.11.1967 District and sessions judge at Tellicherry was the District and Sessions Judge and the appellate powers were with him. In this set up only the District and Sessions Judge at Tellicherry was the only legally qualified presiding officer to hear the matters. Thus when the modern courts were started in 1.11.1967 the judicial set up was that the first Munsiff's were not legally qualified persons. Tahasildars of their four islands were appointed as Munsiff's. The pecuniary Jurisdiction of the Munsiff was fixed at RS 5000/-. This regulation brought about a revolutionary change in the judicial system by providing for the first time in the island history the institution of regular legally qualified judicial officers.

The next court established in the hierarchical order is the Court of Sub Judge or Subordinate Judge. The pecuniary Jurisdiction of the subordinate Judge was unlimited. The territorial Jurisdictions of the Subordinate Judge was the entire union territory, that is, all the islands. The Subordinate Court is the court, which is to hear the appeals from the judgements and orders from the Munsiff Court. Here also the person appointed as Sub Judge was not a legally qualified person. But, the Secretary (Administration) was appointed as Sub Judge in addition to his other duties.

[35] Notification F.No./27/4/66Gen(3) – III dated 24.10.1967.

The District Judge, Tellicherry in the mainland, State of Kerala was appointed as the District Judge for the entire islands also. This District Court was having unlimited pecuniary Jurisdiction.

The High Court of Kerala, situated at Cochin was designated as the High Court for this entire union territory. This was the case since the formation of the union Territory from 1-11-1956.

One more important enactment, which came into force on 1-11-1967 also, has an important bearing on the Lakshadweep Judicial history. That was a turning point of Lakshadweep legal system. That was the Laccadive, Minicoy and Amindivi Islands (laws) Regulation 8/65, promulgated by the President of India. Through this, various mainland enactments were extended to this union territory. This notification was dated 24-10-1967.

List of enactments made applicable to the islands

Sl. No.	Short title	Date of enforcement
1	The Judicial Officers Protection act, 1850	1-11-1967
2	The Indian Fatal Accidents Act, 1855	1-7-1968

3	The Indian Penal Code	1-11-1967
4	The Police Act, 1861	1-11-1967
5	The Court-fees Act, 1870	1-11-1967
6	The Cattle-trespass Act, 1871	1-11-1967
7	The Indian Evidence Act, 1872	1-11-1967
8	The Indian Contract Act, 1872	1-11-1967
9	The Indian Oaths Act, 1873	1-11-1967
10	The Indian Majority Act, 1875	1-11-1967
11	The Indian Law Reports Act, 1875	1-11-1967
12	The Negotiable Instruments Act, 1881	1-11-1967
13	The Transfer of Property Act, 1882	1-2-1968
14	The Power-of-Attorney Act, 1882	1-2-1968
15	The Indian Explosives Act, 1884	1-10-1968
16	The land Improvement Loans Act, 1882	1-11-1971
17	The Agriculture's Loans Act, 1884	1-4-1972
18	The Indian Telegraph Act, 1885	1-2-1968

19	The Suits Valuation Act, 1887	1-11-1967
20	The Provincial Small cause Courts Act, 17	1-11-1967
21	The Police Act, 1888	1-11-1967
22	The Indian Reserve Forces Act, 1888	1-11-1967
23	The Revenue Recovery Act, 1890	1-7-1968
24	The Charitable Endowments Act, 1890	1-4-1968
25	The Banker's Books Evidence Act, 1891	1-11-1967
26	The Land Acquisitions Act, 1894	1-1-1970
27	The Epidemic Diseases Act, 1897	1-6-1969
28	The General Clauses Act, 1897	31-12-1965
29	The Code of Criminal Procedure, 1898	1-11-1967
30	The Indian Post Office Act, 1898	1-3-1969
31	The Indian Stamp Act, 1899	1-11-1967
32	The Prisoners Act, 1900	1-11-1967

33	The Code of Civil Procedure, 1908	1-11-1967
34	The Explosive Substances Act, 1908	1-6-1968
35	The Indian Registration Act, 1908	1-11-1967
36	The Indian Patents and Designs Act, 1911	1-10-1968
37	The Indian Lunacy Act, 1912	26-7-1969
38	The Wild Birds and Animals Protection Act, 1912	1-8-1968
39	The Destruction of Records Act, 1917	1-2-1969
40	The Police (Incitement to Dis-affection) Act, 1922	1-11-1967
41	The Workmen's Compensation Act, 1923	1-7-1973
42	The Indian Official Secrets Act, 1923	1-8-1968
43	The Child Marriage Restraint Act, 1929	1-10-1969
44	The Sale of Goods Act, 1930	1-11-1967
45	The Indian Wireless Telegraphy	1-11-1968

	Act, 1933	
46	The Petroleum act, 1934	1-4-1969
47	The Criminal Law Amendment Act, 1938	1-11-1967
48	The Registration of Foreigners Act, 1939	1-7-1968
49	The Arbitration Act, 1940	1-11-1967
50	The Delhi Special Police Establishment Act, 1946	1-11-1967
51	The Foreigners Act, 1947	1-7-1968
52	The Prevention of Corruption Act, 1947	1-8-1968
53	The Minimum Wages Act, 1948	1-8-1973
54	The Census Act, 1948	1-10-1968
55	The Police Act, 1949	1-11-1967
56	The kazis Act, 1880	17-10-1970
57	The Government Grants Act, 1895	1-11-1972
58	The Indian Electricity Act, 1910	1-10-1972
59	The Children (Pledging of Labor) Act, 1934	1-7-1973

Though this modernization of legal system was partial at this stage (the Presiding Officers were not legally qualified). It is to be noted that this 1-11-1967 as a watershed mark in the Lakshadweep legal system. Hither to, these islands were Governed only by the general principals of mainland laws which was enshrined there in the 1912 Regulation. By that 1912 enactment so much flexibility and desecration was vested with the officers. This was very much ideal and conducive for the peculiar set up in which these people were lived. But by the sudden import of all those enactment's and the variety of technicalities had wide range of impact on their social life, social institutions, their out look to life and even on their value systems. Till that basically they were having a community-based life and outlook. On analysing the function of the society, one could see that the import of mainland laws later started working as a bridge between the two. Hither to, these islands was having separate legal identity in the Indian continent, by the introduction of those laws, that separate identity has been melted away in the deep Arabian Sea. I have named this 1-11-1967 island as watershed mark of the Lakshadweep legal system not only on the ground of this flood of new rights and liabilities through new enactment. But also for creating a special judicial setup. Inspite of this, on 1-11-1967 judicial courts have been entrusted with legally not qualified executive officers. It is very pertinent that at that period in India the bifurcation of the Executive and Judiciary was not implemented. That object has been achieved later by 1973 Criminal Procedure Code in mainland of India. But this is a recognition of the need and importance of the legal institution as a tool for the modernization of this society. The integration of these tiny islands with the mainstream Indian legal system actually started on 1-11-1967. The list of enactment's extended to Lakshadweep during 1967-73 itself will explain how many

new rights and duties have been introduced in the island all of a sudden. Among these most of them have been introduced in 1967.

Completion of mainlandization of judiciary

In the year 1969 the mainlandization of the judiciary was completed by appointing legally qualified persons as Judges and Munsiffs. In this year separate courts were established and officers of Kerala Judicial Service taken on deputation manned them. Later by a Notification,[36] the Ministry of Home affairs of Government of India issued order changing the then setup of courts. This notification reduced the number of island courts from five to three. By this 1969 notification the courts were located as follows:

1. Court of subordinate judge - Kavaratti
2. Court of Munsiff - Androth
3. Court of Munsiff - Amini
4. Court of District judge - Tellicherry

In the year 1969, another major change was effected in the Lakshadweep Judicial system. The powers of the Munsiff were taken away from the Tahasildars and separate Munsiff Courts were established in 1969. Major change came into another form also. Legally qualified persons were appointed as Munsiffs. As there was no legally qualified persons in the islands, judicial officers from the Kerala Judicial service were taken on deputation and appointed here. In this new set up implemented in 1969, the number of Munsiff Courts has been reduced to two from the 1967's four Munsiff Courts. These two

[36] Dated 19th March 1969.

new Munsiff Courts started functioning in 1969 were at Androth and Amini. The territorial Jurisdiction of the Munsiff Court at Androth is over Androth, Kalpeni, Minicoy and Kavaratti islands. All the rest of the islands are under the Jurisdiction of the Munsiff Court Amini. That set up is still prevailing. This brought no change to the pecuniary Jurisdiction. By the very same order a Sub Judge also was appointed at Kavaratti who is having Jurisdiction over the entire islands. He also was a judicial officer of the Kerala Judicial service on deputation. The reasons for the import of the Judicial officers from the Kerala Judicial service were (1) There was no qualified persons in the Islands (2) The language of Kerala people and Kerala Judiciary is Malayalam which is being used in Lakshadweep. (3) Lakshadweep is under the Kerala High Court. (4) This deputation from the mainland helped the new island legal system to obtain the service of highly experienced and qualified judicial officers who were working for a long in the legal environment which was introduced in the islands. This reduced the chances for trial and error and it also helped the island legal system to achieve highest standards of legal values. But the major set back was these mainland officers did not know anything about the cultural roots of island laws.

In 1969 one more major change also came into force in the Lakshadweep Judicial set up. That was the change of the District Court under which the islands were placed. With effect from 1-6-1969, instead of District Court Tellicherry, it was placed under District Court, Kozhikode[37].

[37] The island people represented that it is difficult for them to go to Tellicherry from Calicut if appeals in original cases are heard by the District Judge Tellicherry. (The nearest port is Calicut only) and requested to attach this powers with the District Court, Kozhikode. The meeting of the Advisory Committee associated with the ministry Home Affairs endorsed this on 21.11.1968. The Bar Association at Tellicherry objected this transfer. Ultimately the powers of District and sessions judge had been conferred on the District and sessions judge Kozhikode with effect from 1st day of June 1969.

That is more beneficial and easier for the people from the standpoint of to and fro travel.

Criminal Justice System

Tahasildars were invested with the powers of the magistrate. The Secretary (Administration) was the District Magistrate. A change came into this with effect from 1-3-1970. This was through the Union Territories (Separation on of Judicial and Executive functions) Act XIX/69. The effect of this enactment was that the powers of the First Class Magistrates were conferred on both the Munsiffs at Androth and Amini in respect of all the respective islands over which they are having territorial jurisdiction. The power of the chief judicial magistrate was conferred on the sub-judge who was also having the powers of the 1st class magistrate. The sessions powers were given to the Sessions Judge Kozhikode.

Executive Magistrate

By the above order, from 1-3-1967 on wards the Collector is the District Magistrate. The Thasildars of Kavaratti, Amini, Androth and Minicoy have been appointed as Executive Magistrates in their respective jurisdictions. The later changes, which came in to force in the Lakshadweep judicial system, was in the form of island District Court.

Formation of District Court at Kavaratti.

The powers of the subordinate judge Kavaratti have been given to the Munsiff Androth. This position continued till separate full-fledged judicial district is formed for

the Lakshadweep by appointing Mr. B. Amanulla as 1st District and Sessions Judge[38]. It is pertinent to note that this Mr. B. Amanulla was the first island Judicial Officer. He entered in Lakshadweep judiciary in the year 1978 as Munsiff.

Now he is holding the post of chairman of Consumer Redressal Forum in addition to his normal duty of District Judge. Thus introduction of consumer protection courts in the island judicial system has also done by introducing the Kerala State Consumer Protection Forum as the State forum for Lakshadweep. So it achieved another milestone in the mainlandization of laws. Now we have come across the various fundamental changes occurred during this period. How it affected this customary law predominant society, is very crucial question, which is to be answered.

Impact of Mainlandization of Customary Laws

The sudden flood of laws, regulations and enactment's as on 1.11.1967 without making any change in the then existing Mukhthiar set up in the island totally confounded the society. These Mukthiyars were not at all trained in modern legal techniques. They do not know English or the fundamentals of the English legal system, which was introduced there. The highly technical law introduced in the islands actually worked in the hands of Mukhthiar of islands just like a violin was provided with a five year old boy who is witnessing the violin for the first time in his life.

For people, all of a sudden they got new courts, new laws, new rights and new obligations. Their social life was essentially community oriented. Their concept of life

[38] Notification No. F 18020/1/96 jus dated 11.10.1996 and designated as District and Sessions Judge Lakshadweep.

and property were based on common property, impartible estates in the form of Tharawad properties[39] and more than a dozen peoples trees in the one and the same plot of land were the identifying marks of this simple society. It may be lived in distant past in a remote corner of the country. Their life was so plain and simple with lesser wants, with lesser interaction beyond the lagoons.

To them, even for relishing the new rights they had to restructure their fundamental out look to life. From community based thinking and approach to the individual oriented materialistic way of life. To make the confusion more complex, there was not even a single person who can interpret the implications of the new laws and statutes and the newly created rights and obligations. If they want to assert their rights legally, nobody was there in the islands to take up their case. So for a long time without knowledge, without guidance they lived in ignorance as if they were not having these new rights. Though they were having lot of statues at this period, this blessing of total ignorance created a wide gap between the law in the books and the law in action in this island legal system. The law in action was confined to the customary laws. The major areas of formal legal disputes were limited to the partition and partibility of the common property. In short there is a change in the legal status of the islanders. That was basically quite alien to their culture.

By the introduction of new laws in par with the mainland legal system, attracted a well-defined, professionally manned hierarchy of legal institutions in 1969. This gathered the form of Munsiff Court, Magistrate Court, Sub-Court, Court of Subordinate Judge, police, Assistant Public Prosecutor, Public Prosecutor. The proven inefficiency of the

[39] For details, see infra Ch. IX.

Mukthiars to deal with these new institutionalization, technalisation and professionalisation in the administration of justice forced the islanders to import the mainland lawyers to argue their cases. At first this was a necessity. In the later period this was a status symbol. The islanders are known for their litigious nature. The legal necessity and status requirement when coupled with exorbitant fees charged by the mainland lawyers on the basis of the risk in travelling to these islands resulted in the draining away of the island income to the pockets of mainland lawyers. Another impact of these can be identified in a new development in the island court halls. That was the mainland lawyers used to argue cases in front of the then mainland origin judges by interpreting the law and facts in the light of mainland culture and social life.

The non-availability of properly trained legal practitioners in the islands paved the way for a peculiar system of camp sittings away from the place where the law has to be implemented[40]. Earlier almost all cases which required the assistance of trained lawyers, whether it is of the Munsiff or Judicial Magistrate of the First Class or Subordinate Judge who are not having the territorial jurisdiction, used to conduct trial only at mainland camps sittings. Earlier the District Court was at Kozhikode in the mainland. Now, after the establishment of District Court in the islands, the hierarchy of the judicial institutions in the island is completed up to District Court. Camps sittings are even now prevailing in the continuing excuse of lack of experienced lawyers in the islands.

[40] The camp sittings were held at Kozhikode in the mainland. All the persons involved in the cases are very much happy in this. The clients-for them all their necessaries have to be brought from mainland. The mukthiayars also came in the above group. The judicial officers, all the judicial officers were of from mainland. For them this is a good opportunity to visit their home in governments expense without taking leave.

By stopping the assessor's post, the administration of justice was purely professionalised from the angle of bench. Thus remnants of community participation also was taken away. This is unversalisation of the legal system except in the area of inheritance. The elimination of assessors made the system more accountable and objective. The operation of the customary law is now limited to the inheritance of Belliazcha swoth. In a way the cultural linkages of the legal system got a severe shock. The legal and social structures are dissociated from one another. The new law in this island environment was devoid of social class and historical content. The western model mainland law encapsulated the island society.

In all other societies, even in the mainland, the structural changes in the legal system is introduced in the society through legislation's gradually one by one. But all these mainland laws were extended to Lakshadweep, all of a sudden on 1.11.1967 as flood of laws. At that point that society was not that much equipped or prepared to receive that thunderstruck. It is highly important that at this stage, this society was not so developed politically. They do not have a purely democratic political body, which can take policy decisions affecting them.

Yet another impact of the 1967 was the completion of the non-Islamisation or in other sense the secularization of the island legal system. The process which was started by 1912 Regulation. This process has completed the dissociation of legal system from the religion.

Interrelation of Democracy, Bureaucracy and Judiciary

Indian independence has made fundamental changes in the direction of the governance of the country. This is reflected in Lakshadweep also. The constitutional goals are social, economic and political justice: freedom of expression, faith and worship; equality of status and opportunity; fraternity assuring the dignity of the individual and unity and integrity of the nation"[41]. After independence the entire country has been brought under a single administration guided by the constitutional principles. It is felt that the entire nation is moulded uniformly thereafter. The presence of plurality of socio-cultural, political and economic specificity caused the regionalism to encroach into the developmental models. The outcome is the regional character of the problems of the society with specific cultural roots.

In the new developmental phase the questions emerging are: (1) Whether the newly emerged political and beaurecratic setup could tackle the differences between the mainland and the island. (2) Whether the reaction of this customary law based society was any way different from the mainland India. In this analysis the attempt is to address the modernization of the islands with in the specific cultural setup.

The Constitution is attempting to implement (1) separation of powers i.e., legislative, administrative and judicial power, (2) rule of law, (3) distributing powers between various levels of government. i.e. Central, State and Local Governments. As Montesquieu and Locke in Europe and Madison in USA propounded the mechanism of

[41] Constitution of India, Preamble.

separation of powers ensures the checks and balances required for the smooth functioning of a democratic system and visualize the limitation of government upon the functioning of the various organs of government.

The major deviation from the separation of powers in the Lakshadweep is to be identified in the absence of legislature. There is no elected state legislature. Being a Union Territory its affairs is looked after by Parliament who have to enact laws or by the President who has to promulgate Regulations. Although the distance between Lakshadweep and New Delhi is about 3500 km, the cultural difference is far beyond that range. This may be the reason why the peculiar problems of the island are not getting adequate consideration. When the laws are formulated the people in Delhi or in other parts of the mainland cannot visualize the shape of problems of the islands. Only those who were resident in these islands for a long time can identify themselves with the island social life and understand the problems in their true perspective. The prevailing practice is that the senior officers of Delhi will come here for one or two days. In most instances this is considered as a tourist trip. In February to April the islands do have a pleasant climate. During this period it is the main headache of the Lakshadweep administration, to provide and rationalize the priorities in the room allotment. For equipping the powers that be in Delhi to draft laws and regulation for the islands, a prior constant association with the island culture is highly necessary. How to bridge the gap between law and culture is a major problem. For example, the implementation of Coastal Zone Regulation Act,[42]

[42] When the coastals of regulations was implemented it was stipulated that no building shall be constructed with in 100 meters from the sealine. If you are implementing this in islands no building can be constructed because of the specificity of these small islands. Many of the islands are not having this 100 meter width in many areas. Later considering these peculiarities of these small islands this 100 meter rule has been diluted to general 50 meters and even to 20 meters in small islands like Chetlat and Bitra.

drinking water problem in islands.[43]

The correct perspective of this problem will be revealed when we are identifying the theoretical base of the working of the separation of power doctrine. As per that the legislature should play a leading role in formulating laws and policies. The judiciary and administration should be neutral. The basic reason is that all the laws are in a way, the fulfillment of peoples desire to achieve higher level of living. This can be identified and formulated into timely laws only by Legislatures who know the heart-beat of the society. This being the cultural base of the law in any democratic legal system, the absence of a Legislature in the Lakshadweep, which should decide the policies of developmental options, is the greatest bane to the social, political and cultural life in the islands. Parliamentary legislation or the Presidential Regulations are laws framed for the mainland. The problems of mainland and the problem of islands are totally different. The methods proved successful to contain the problems in the mainland may be a total failure in the island situation. That may even confuse the island legal system. The inconsistency of pursuing the Marummakkathayam law[44] is a good example.

The peculiar set up of the Lakshadweep made the executive head, the Administrator, also as the legislative head in effect. So far not even a single islander has reached this position. The next senior positions in the islands' administration are Collector and Secretary to Administration. Except in the case of Secretary to Administration all other higher functionaries are aliens who reach the island for the first

[43] In Attakoya Thangal v. Union India, (1990) KLT 580, raised a very important question as to how far pumbing of water is sustainable in long run? Whether pumbing can be allowed there.
[44] For details on Marumakkathayam, see Ch. IV, VII and IX.

time to take up the charge of his office. Obviously, this situation is not conducive to the objectives of bringing the islanders to the mainstream culture or democracy.

The Constitutional mandate is there, for the total upliftment of the Scheduled Tribe[45] and a Scheduled Area[46]. This has been enlarged by the strategic importance of the islands from the security point of view. All these forced the government intervention and the government spending in the region enormously high[47].

The socio-economic development of this island had to commence from nothing[48]. Delhi had to delegate enormously high quantum of power and authority through delegated legislation to the island bureaucracy. Thus the power is concentrated on bureaucracy who with its financial and non-financial powers takes policy decisions. The absence of a legislature to oversee this allows the bureaucracy unaccountable locally.

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[45] Measures for the advancement of Schedule Tribes are exempted [Art.15(4)] from the general category against discrimination on the grounds race, caste, and the like contained in Art. 15. It means that special provisions are made by state in favor of members of Scheduled Tribe is not amounting to discriminatory as against others. While the rights of free movement and residence through out the territory of India and of acquisition and disposition of property are guantanteed to every citizen. In case of members of Schedule Tribe special restriction may be imposed by the state as may be required for the protection of their interest. For instance to prevent the alienation or fragmentation of their property, the state may provide that they shall not be entitled to alienate their property except with the concurrence of a specified administrative authority or except on the specified condition [Art.19(5)]. The preferential claims of Scheduled Tribes in the appointment in the services and post in connection with the affairs of the Union or of a state is provided in Art. 335. By amending Art. 338 of the Constitution (65th Amendment) Act, 1990, a National Commission for the Scheduled Caste and Scheduled Tribe has been set up for investigating and reporting on the working of the safeguards provided to the Scheduled Tribes in the Constitution.

[46] The financial aid for the implementation of welfare schemes of Scheduled Tribes is provided for in Art. 275(1) which requires the union to give grants-in-aid to the states or meeting the costs of the schemes of the Scheduled Tribes for raising the level of administration of the Scheduled Areas in a state to that of the administration on the areas of that state. Special provisions are laid down in the Fifth and Sixth Schedules of the Constitution read with Art. 244 for the administration of areas inhabitant by Scheduled Tribes.

[47] In the second five year plan the islands got a plan outlay of Rs. 73.85 lakhs. This was the first plan of the territory. In the 8th five year plan outlay was Rs. 120 crores and the expenditure was Rs. 148.72 crores. For details see Planning and Statistic Department, Lakshadweep and its People 1994-95 (1997), pp.22-26.

[48] For details see Ch. VI.

Immediate legislative control over bureaucracy is a diar need to dispense with the total supremacy to bureaucracy.

Inter-relationship between the Executive and the Judiciary

From the above administrative backdrop verification is necessary as regards how the legal system worked in this bureaucratic set up. In the judiciary almost all the presiding officers are posted on deputation from the mainland who is not having any experience or interaction with the island's socio-legal culture[49]. For keeping away from the local influences, in accordance with the general trend of the judiciary elsewhere they never used to interact with the island people. The net result is that the presiding officers, being born and brought up in the culture of nuclear family in the mainland, with different prescription for individual property and highly materialistic out look may not see eye to eye with the island culture and custom. For them the modernization of society means making the island society akin to mainland socio-cultural and economic environment. This may effect their power of assimilation of the island legal system and ethos. This may in turn reduce the initiative of the island judiciary.

The staff of the judge, Munsiff and Magistrates comes from the administration's staff. Judiciary is not having any separate staff or proper control over them. The execution duties of individual orders are to be entrusted to the executive officers. This setup is not conducive to the independence and initiative of judiciary. The dependence of judicial officers on administration for all and sundry may go through a large extent affect their freedom of movement and action.

[49] At present the District Judge is an islander. This is a recent development. For details see Ch. VI.

The absence of Legislature and the absence of a congenial atmosphere in which judicial officers can work place the executive in an unquestionable omnipotent pedestal leading to the collapse of administrative neutrality, one of the basic assumptions of the concept of separation of powers. The immense and indiscriminate power and discrimination vested without accountability results in the development of interest groups and lobbies within the bureaucracy.

One of the basic ideas rooted in the Indian democracy is abstinence of bureaucrats from politics. The Lakshadweep practice seems to be somewhat different. They are even openly involved in the politics without causing any complaints. They have taken this as a way of life although the bureaucrats in the mainland and in the islands are governed by same set of rules.

Rule of law

The response of legal systems to the rule of law is important to the federal system in the island context. Here the extension of meaning from basic concept of rule of law from negative stand of protecting the individual from arbitrary power to the positive role of the state to ameliorate the woes of the people attains importance. This extended meaning made Lakshadweep administration's role more important than their counterpart in the mainland. Since the legislative capital of this territory is nearly 3500 kilometers away in a totally different cultural setup, it is imperative that the laws and policies are to be made with more care and attention so as to generate more people friendly and culture friendly programs. For this higher level of delegation is necessary.

The administrative action in a society will be increasing in proportion with governmental intervention in the developmental and social welfare activities. The disputes based on the legal norms of constitutional status of public authorities, and their power discretion, and duties are areas of adjudication in a rule of law society. The legal relationship between officials and the departments and that between departments and public are also the areas where the courts have to make decision. The legality of the administrative actions is also often challenged in a modern state. But there is a different story in Lakshadweep. An important change took place in the Lakshadweep due to expansion of governmental activity in the employment sector. By 1996 the number of governmental employees reached ten percentage of the total population. The large number of cases at the Central Administrative Tribunal at Cochin is an indicator of this trend. However at, the grassroots disputes between people and the government is very rare. Even then some issue such as drinking water, the excessive airfare and subsidized food in ships have reached the courts. This sort of challenges against governmental inaction or malfunctions are very rare in Lakshadweep. The reason is that the chances of transferring the officers from the posts that they hold are very rare. The lack of professionally trained lawyers in Lakshadweep is another reason why there is little litigation.

Because of the peculiarities in the island the executive is unable to implement laws. One example could be shown in the prohibition against collection of corals and sand. The islanders violated the law with impunity. This is with the silent support of the

officers in the Lakshadweep Administration who are supposed to enforce laws.[50] They say that unless the government is supplying the building materials at subsidised price the enforcement of this law would cause great injustice. The reason is that, on the enforcement of this law the entire materials for buildings should come from the mainland. Usually the faults or omission of law are corrected by an enlightened bureaucracy. But the absence of a legislative check leads to unhindered freedom and discretion to the bureaucracy. The close relations prevailing with in this small society make the mutual dependence between official and common people, much more personal than in mainland. This ultimately creates the same soft corner in the minds of bureaucrats.

At the level of legal services and legal advice the absence of purely professionally trained lawyers makes a peculiar vacuum in the administration. In Lakshadweep due to the absence of professionally trained lawyers the usual control over the bureaucracy is less than the one in mainland.

Democratic governing require a three-legged stool with equally strong Legislature, Executive and Judiciary. In Lakshadweep there is no legislature and hence one leg of the stool is missing. The other leg, the judiciary is not as strong as the judiciary in the mainland. Thus the whole scenario of the so called rule of law society in Lakshadweep is in bad shape with too much reliance on the administration.

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[50] For example under the Environment (Protection) Act and Wild Life (Protection) Act, the boulders and the sand corals shall not be removed from the beach or lagoons. But the environmental wardens the particular department have not booked any case under this Act, though the violations are rampant. Actually even now they are making all the buildings only by using corals and boulders collected from lagoons. When interviewed the environmental wardens personally they have disclosed that if these laws are implemented, unless the government is supplying building materials to the people on subsidized price the implementation of law will fall as an oppressive mechanism on these isolated groups.

There were various schemes fully financed by government. The number of benefits given in the form of various social developments schemes also attractive. The money circulation in the society has been expanded. By the government spending and the payments and salaries through government jobs opened up the market. In the wave of new purchasing capacity a new market was opened. As a result an affluent class of traders emerged. The most radical and far-reaching change was visualized in the property concept of the society. The changes introduced in this area have shackled the very basis of the society. Their preferences were shifted from community orientation to the individual based materialistic aspiration. Health was the important area of governmental attention. There was a revolutionary change in the medical care. The effect was that the infant mortality rate has reduced below national average. Free universal health care provided by the Administration, introduced a new level of certainty in life. It could wipe out the old uncertainties based on poverty and disease. The literacy sat among the islanders is now very high reaching the second position at the national level. Even at the girls' education islands were far ahead of national average. These educated islanders were totally absorbed in government jobs raising their ratio to 10 % of the total islanders. The steady income and new security experienced in the social life of the islanders totally changed their social set up, life style, social institutions and even in the very approach to life. The relation between individual and the society has undergone a change, which has shaken the very basis of the society.

CHAPTER – VII

MARUMAKKATHAYAM AS CUSTOMARY LAW: INSTITUTIONS AND AUTHORITIES

CHAPTER-VII

MARUMAKKATHAYAM AS CUSTOMARY LAW: INSTITUTIONS AND AUTHORITIES

The customary law's importance is very much prominent in deciding the rights and duties of members of joint family and in determining the inheritance to the joint family property. This particular branch of customary law, which governs the joint family relations, is known as Marumakkathayam. The Lakshadweep practice of Marumakkathayam is in many ways different from the Marumakkathayam prevalent in the mainland Kerala. How far Lakshadweep adopted the pristine Marumakkathayam and how far it has deviated from that? In this chapter a critical study is made on Marumakkathayam as customary law of Lakshadweep.

Lakshadweep Marummakkathayam – The Concept

Marumakkathayam is a body of custom and usage. There are no sacred writings binding on the followers of this system[1]. The matrilineal line of descent is the basis of Marumakkathayam. In this system of inheritance descent and succession to property were traced through females. The mother formed the stock of descent and kinship as well as a right to property was traced through females, not through males. The word

[1] Paras Diwan, Family Law (1991), p.418.

Marumakkathayam literally means inheritance by nephews or Marumakans[2]. This literal interpretation can be comprehended only by assimilating that the wife and children of the head of the family known as Karanavan has no right in the joint family property known as Friday property. This Marummakkathayam is to be contra distinct from Makkathayam which means descent by children.

Traditional Family Relations

For a proper understanding of the customary laws in this respect a grasp on traditional Lakshadweep family relations is a necessity. In Lakshadweep the marriage of a girl, never operates as a severance of membership from the family of her birth, nor does it create any membership in her husband's family. There is no mutual right of inheritance between the husband and wife as regards this 'Belliasha property' (Friday property). The traditional pattern of residence on marriage in Lakshadweep ordinarily excludes the possibility of husband, wife and children living in one domestic unit. Neither the bridegroom, nor the bride is required to leave his or her respective residence on marriage. Their pattern of life was that, the husband used to visit the wife's house during nights and return to his own natural home in the morning. They used to call the house of the husband as "Pura" while the house of the wife is called as Beedu.

The modern idea of a family is that - a group of persons related to each other by birth or marriage and (in the case of Hindus) by adoption also. A common ancestor with his wife and children together with the descendants in the male line constitutes an

[2] Sundra Aiyer, Malabar and Aliyasanthana Law (1922), p.2. According to Sundra Aiyer, this was the law of the indigenous people of Malabar Nairs and some other class below them constituting the major population of the Malabar. Ibid.

ordinary patriarchal family. The female members born in the family cease to be members thereof on their marriage, similarly the wives of the males acquire membership therein. In a patriarchal system, a change of family is occasioned on the marriage of the female members. But in the Marumakkathayam system, the marriage of a girl never operates as severance of her membership from her mother's house nor does she get a membership in her husband's family. Mutual rights of inheritance between the spouses do not find recognition under Marumakkathayam law[3]

The socially approved sexual relationship between the spouses, which the marriage establishes, is effected through the pattern of night visits of the husband to his wife.[4] As it is observed:

> "One of the intriguing sights in Lakshadweep is married men of all age groups, torch in hand, hurrying to their wives' houses, as soon as it is dark; then at day break, after a quick breakfast of rice water-Kanji (porridge)-striding back to their mother's home".[5]

In a study out of 670 married men of the Kalpeni Island 515 are visiting husbands. Of the remaining 155 married men, 124 live exorilocaly, 23 live nenolocally and in 8 cases the wives have moved over to live with their husbands.[6] The depth of this matrilinege ranges from three to six or even more generations[7].

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[3] K. Sreedhara Varier, Marumakkathayam and Allied System of Law in the Kerala State (1969), pp. 3-4.
[4] P. V.Balakrishnan, Matrilineal System in Malabar (1981), p.136.
[5] Omesh Saigal, Lakshadweep (1990), p. 122.
[6] Leela Dube, Matriliny and Islam (1969), p.19.
[7] P. V. Balakrishnan, supra n. 4 at p. 136.

Origin of Marumakkathayam in Lakshadweep

The natives of the present society of Lakshadweep Islands consist of hundred percent Muslims, who are classified as Scheduled Tribes. Basically, Islamic way of social life is a patriarchal one. How a social set up based on matriliny, which is diametrically opposite to the Muslim concept of family, is still prevailing in Lakshadweep is an important question in the study of customary laws. There is no recorded history to identify the origin of the matriliny in Lakshadweep. On the basis of tradition and available historical as well as ethnographic evidence, it can be assumed that except the people living in Minicoy, all other Islanders were immigrants from the Kerala coast, even though some people in Andrott are supposed to be from Arab countries[8].

They came first as Hindus and later embraced Islam. The resemblance of ponds found in the Lakshadweep resembles that of the Hindu temple ponds of Malabar in the Kerala Coast. The Tharawad names such as Illam, Madom and Edom are the suffixes, which are common among upper caste Hindus of Kerala coast. The old songs containing verses of snake worship and lines in praise of Rama and idols and sculptures were unearthed from various parts of the islands. All these point towards the Hindu emigration[9]. The local traditions also suggest that the early settlers of these islands were Namboothiries, Nairs and Thiyyas[10].

When we compare various other instances of Hindu Customs followed by Muslims elsewhere, we can see that Khojas retain the Hindu mode of succession even

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[8] Theodore P. C. Gabriel, Lakshadweep: History, Religion and Society (1989), pp. 12-13.
[9] N. S Mannadiar, Gazetteer of India: Lakshadweep (1977), p. 43.
[10] R. H. Ellis, A Short Account of the Laccadive islands and Minicoy (1922), p. 15.

after conversion. Similar is the case of "Cutchi Memons" and "Sunni Bohras"[11]. When we analyse these and other instances of en masse conversion of religion by a society, it can be seen that the converts used to retain the rules of inheritance, which they were following in their old religious set up. To make conversion a smooth process and sometimes to encourage conversion, the heads of the new religion might have conceded to retain their old customs and life style[12]. Thus, it can be seen that Marumakkathayam was the custom and usage, which was prevailing there in Kerala coasts among the Hindus at the time of migration to the islands. When people from the main land migrated to this new place - islands - they brought with them or transplanted the social set up then prevailing in the mainland. Later when conversion took place they might have followed the general trend, which is mentioned earlier. That may be the reason why matriliny is existing in this Muslim area.

In Kerala itself, Muslims of north Malabar and Muslim families in Edava, Varkala, Tirur, Parappanangadi, and Ponnani were following Marumakkathayam[13]. Some Christian families of Neyyattinkara, are also the instances of other communities who were following Marumakkathayam.

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[11] Supra n. 4 at pp. 122-123.
[12] Supra n. 2 at p. 231.
[13] Supra n. 3 at p. 2.

A different variety of dual property systems were there among the Muslims in Malaysia and Singapore[14].

Legitimation of Muslim Marumakkathayam in Malabar

At first the British authorities refused to recognize the local usage of Marumakkathayam among Mappillas of North Malabar[15]. The reason might be the strangeness of customs that was quite opposed to the precepts enjoined in the Koran. This attitude of the authorities changed later from the year 1816 onwards. The Provisional Court of the Western Division held that the Marumakkathayam Law of inheritance was generally applicable to Mappilla families in Cannanore[16]. Later the Sudder Court followed this rule in 1885 and 1860[17]. In the year 1895 Madras High Court has held that in the case of Muhammadans in North Malabar the presumption was that they followed Marumakkathayam[18]. Way back in 1939 Madras Legislature had passed the Mappilla Marumakkathayam Act, which regulated the Malabar Marumakkathayam Muslim's joint family matters[19]

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[14] "In the states of Malaya and Borneo the law applicable was not pure Islamic law but law as varied by Malaya custom, or rather the Malaya custom as varied by Islamic law. This Malaya custom was brought over by the Malayas when they migrated from Sumatra, where the prevailing form of tribal organization was matriarchal and exogenous. In the Menangkabu region of Sumatra, the matriarchy was developed into an elaborate system of customary law called the "adalat perpateh" See N. D. Anderson (Ed.), Studies on Modern Asia and Africa. Family Law in Asia. (1968), Ch. 9.

[15] 1 Sudder Decisions 29.

[16] A. S. No. 44 of 1816

[17] S. A. No.125 of 1855 and S. A. and 651 of 1860 as quoted in Moore, Malabar Law and Custom, (1922), p.323.

[18] S. A.No. 380 of 1895, H. C.

[19] The Mappilla Marumakkathayam Act xvii of 1939.

Marumakkathayam in Kerala

Marumakkathayam system of law was prevalent in the south western coast of India, from where it reached Lakshadweep. This area now forms part of Kerala, Karnataka and Tamil Nadu States. Before the State Re-organization Act 1956 all these places were in erstwhile Madras State, in Malabar region. Several legislation had been passed by the Provincial Legislatures of the Former State of Travancore and Cochin and the Former State of Madras. The ambit of pristine Marumakkathayam extended not only to succession, but also to marriage, divorce and joint family management. There were separate laws and later separate enactment for Nairs, Ezhavas, Namboothiries, and Christians and even for Muslims, who were following Marumakkathayam.

This history gives four different stages in the evolution of mainland Marumakkathayam. They are as follows:

a. In the first stage custom and usage guided the law strictly. There was no question of partition at this stage. But by allowing partition on the consent of all members the custom was modified at the latter part of this stage. No member could claim a division as a matter of right. Every member could resist partition if he did not like. That was the legal position at the end of this period.

b. The second stage witnessed various legislation to regulate Marumakkathayam laws of various sects of people. The general trend of this period was that, majority of the major members could enforce Thavazhi partition with the consent of the common ancestries.

c. The third stage enabled individual members to claim partition as of right. Enactment of Hindu Succession Act 1958 brought changes. Section 17 (g) of the Act reduced the rigour of the system. The impact is that the property need not devolve on female line only.

d. The fourth and final stage was the enactment of the Kerala Joint Hindu Family System (Abolition) Act 1976.This came with effect from 1.12.1976. The right by birth was taken away, joint tenancy replaced; and tenancy-in-common introduced. Thus the legislature put an end to the Marumakhathayam in Kerala.

In Kerala many people belong to castes and sub castes among the Hindus followed Marumakkathayam law. It included Namboodiris of certain region at the upper social hierarchy through Nairs and Ezhavas at the middle level. Down to aboriginal tribes like Kurichiyans and Vettuvans[20].

A School of Hindu Law

There was a controversy [21] whether or not Marumakathayam law is part of Hindu

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[20] Sundara Aiyer has listed the castes that followed Marumakkathayam as: 1) Nambudiris of Payyanur village. 2) Chakkiar nambiar, 3) Purapoduval, 4) Pisharodis, 5) Variar (They had custom of saraswadanam marriage by which the wife is adopted into the family of the husband), 6) Theyyambodi Kurups and karopanikar, 7) Kshatriyas, 8) Samantas, 9) Nayars, 10) Taragans, 11) Revaries, 12) Tiyans in North Malabar, 13) Kusavans (Potters), 14) Ottatu nayars of Tilers, 15) Vanians, 16) Kulangara Nayars, 17) Edachteri Nayars, 18) Vellutedans, 19) Villakkataravans in the North, 20) Yogi Gurukkals, 21) Wayand Chetties, 22) Paravans (in most parts), 23) Velans (physicians) and Karuthians in the north, 24) Mukkuvans in the south, 25) Vannans (in the north) 26) Moplas in North Malabar, 27) some aboriginal tribes like Kurichiyans, malakkars, Kasambalans, Vettuvans. Sreedhara variar, though followed Sundara Aiyers list, has added the following five groups. Such as Puspagars or Nambisans, Chakkiyars in some places, Thiyadi Nambiars in some places, Marrars in some places and Chaliyas in some places. Supra n. 2 at pp.328-329 and see also supra n.3 at p.23.

[21] Sundara Iyer mentioned that it was a school of Hindu law. See supra. n.2. However The Supreme Court in Kochunni v. State (A 1 R 1960 S.C 1080) held a different view though they did not categorically said so. The Full Bench of the Kerala High Court held in 1993 in Kamalamma.v. Narayana Pilai (1993 (1) KLT 174) that Marumakkathayam is a Hindu concept and practise

law. Old writers[22] pointed out that the very fact that the Christians and the Muslims who were following Marumakkathayam were originally Hindus and even on conversion they happened to preserve their Hindu Custom, the existence of 'mappila' Marumakkathayam and Christian Marumakkathayam does not wipe out the character or label of Hindu law to Marumakkathayam.

Halai Memons of Porbunder and Mappillas of Kerala are the communities known as anomalous Muslims[23]. They were a class of persons who were originally Hindus, but who became converts to Muhammadanism about four hundred years ago, retaining, however, many Hindu usage, amongst others an order or succession opposed to that prescribed by the Koran. A similar sect namely Memon Cutchees had a similar history and usage[24]. Labbais of Coimbatore, Hindu converts to Muhammadanism also retained incidents of the Hindu personal Law[25]. Though the Koran condemns magic, the Mappilla being superstitious and witchcraft was very much common among them. The Mappilla Jinns and Shaitans correspond to the Hindu "Demons" and are propitiated in much the same way[26]. The Mappillas of the West Coast, who are Mussalmans by religion, were largely adopted the Marumakkathayam law. Whether a particular family practiced it or not is a question of fact[27].

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[22] M. P. Joseph, Principles of Marumakkathayam Law, (1918), p.11
[23] J. Duncan M. Derret, Religion, Law and the State in India, (1968), p. 522
[24] Mayne Hindu Law (1953), p. 67.
[25] Shaikh v. Muhammed, ILR 39 Madras 664
[26] Thurston, Caste and Tribes of Southern India (1906), p. 489
[27] Assan v. Pathumma, ILR 22 Madras, p. 494

The author of Tuhfat-Al-Mujatidin wrote about the Marumakkathayam inheritance among the Muslims in the following words:

> "This custom of excluding the immediate off-spring to inheritance has been adopted by most of the Muslims in Kannur and its neighborhood. They copied this custom from the people of Hindu even though there are among these Muslims some who study the Quran, learn it by heart, and recite it beautifully, besides their acquiring knowledge of other branches of studies pertaining to Islam, and busying themselves in religious worship"[28]

It is a fact that Lakshadweep was under the Muslim Kingdom of Arakkal in Kannur. In that Arakkal family, the eldest in the maternal line, irrespective of the sex, succeeded to the throne. Some of the Hindu customs were preserved for centuries in that royal family. The line of succession was traced through the maternal side. That was contrary to the principle of primogeniture enjoyed in the Shariat.[29]

Marumakkathayam in Lakshadweep – Why?

Compared to mainland the Lakshadweep has a different scenario. The total isolation of each island in olden days created a separate world for themselves. Each and every island has its own peculiarities in their custom. That has not been touched or

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[28] Mohammad Hussain Ninar, Tuhfat-al-Mujahidin, p. 44

[29] This peculiarity is mentioned in a letter from Caliph of constantinople to the Beebi of Arakkal dated I[st] Shaival II94, Hijera, preserved in the Archives of Calicut University.

influenced by the custom of mainland or other islands. Since the island-mainland and the inter-island interactions were rare, the statutory interventions in the mainland Marumakkathayam never reached the islands. The Marumakkathayam is still preserved in its pristine form in the islands.

Dual Property System

In the islands, property can be classified into two. (1) Velliazcha swoth (Friday property) and (2) Thingalazcha swoth (Monday property)[30] It is to be noted that the concepts of Monday property and Thursday property are one and the same. With same incidence and features following the Customary Shariat. In all islands except Amindivi group of islands the property is called Monday property. For the purpose of discussion in the following pages the term is used as Monday property which is meant to Thursday property so as far residence of Amindivi are concerned.

The people of Lakshadweep have followed Matriliny under the rubric of Islam. Its impact is clearly visible in their concept of rights related to property. They followed Marumakkathayam for deciding the rights on the joint family property which is known as Friday swoth (Friday property). Friday property belonged to the Tharawad. Its characteristics are that this property cannot be partitioned, given away or sold with out the consent of all the adult members of the Tharawad. Originally this Tharawad property was impartible in nature. This partition or sale with common consent was of later origin.

[30] Hereinafter the Velliazcha swoth or Tharawad swoth will be reffered as Friday property and Thingalazhcha Swoth or Belasha Swoth or Swontham Swoth will be refered as Monday Property. The properties other than Friday swoth (joint family property)is known as Thursday property in Amindivi group of islands, and Monday property in the Lakshadweep group of Islands.

The devolution of this property is in accordance with Marumakkathayam. Basically this system of devolution of property is based on kinship.

The self acquired property is known as Thingalazcha swoth or Belasha swoth (Thursday property). This Monday swoth (Monday Property) or Belasha swoth (Thursday property) is also known as Swontham swoth which means one's own property. For these properties they follow sharia, that also customary sharia. The importance of this division of property is that Monday property is descendable to his wife and children under Mohammedan law. Reason for this name lies in the nature of the power to dispose the property. This property is individually disposable. The various ways in which a person is acquiring Monday sowth are ones own efforts or through a gift deed or inheritance from ones own father or non-matrilineal relative like father's or mother's father or father's sister. At present an important mode of acquiring Monday sowth is through the conversion of Friday sowth (Friday Property) into Monday/Belasha swoth through Sammathapathram[31]. In effect the devolution of persons intestate Monday sowth is to be governed by Islamic law. That is, sons will get two parts; daughters will get one part and the widow one-eighth share. The peculiarity of this Islamic law is that during a person's lifetime he can gift away his Monday property to anybody he wished. The owner can also prepare a will indicating the beneficiaries and their respective shares.

While the concept of common property have its origin in the Hindu Marumakkathayam law, the concept of Monday property, which would be latter

[31] This concept of Sammathapathram is in direct conflict with in the impartible nature of tharawad property known as the Friday sowth.

describe as divisible and alienable, is an off-shoot of the intermixing between Hindu and Muslim faiths. This is an adjustment for rendering specific identity based on Shariat Law.

The peculiarity is that the islanders are considering both these concepts as sacrosanct. Regarding the nomenclature of the properties behind some days of week, no reason could be traced out[32] from the authors like Robinson, Ellies, Logan, Mannadiar and Leela Dube[33]. Though all of them acknowledged the existence of concepts. It is submitted that one can deduce the sanctity and prominence to the Tharawad property i.e. the Friday property as the Muslims attach religious significance to Friday among the weekdays. So the common property named after Friday is to indicate the holiness or sanctity of this common property. Till recently, most of the island properties were Friday swoth and the proportion of Belasha or Monday swoth compared to Friday swoth was too small. In those days even the Monday property used to fuse with Friday swoth[34]. From this we have to deduce that they have given much importance to the Friday property than Monday property. So the importance given to Friday by Muslims among other weekdays has also been attached to the joint family property.

This custom of two distinct laws of inheritance, the Marumakkathayam rule governing the descent of tharawad property and the Makkathayam rule governing the

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[32] Supra n. 10 at p. 75.

[33] The etymology and significance of 'Friday' and 'Monday' are not known as Friday property could be interpreted as being collective, following the communal prayer characteristic of that day. The collective property of the tharawad is being justified by some persons as a form of wakf property created for the benefit of matrikin. This property is being kept in perpetuity for the lively hood of the members of the tharawad. It is well accepted principle that only the income of wakf property can be used the property shall not be disposed

[34] Androtт island specificity, which recently modified by the custom itself. For discussion, see infra Ch. IX.

self acquisition prevailing in the same family is prevalent in Malabar[35]. As regards Muhammadans this system of following two different set of rules for Tharawad property and self acquired property was allowed by Privy Council in Serumah Umah v. Palathan Vitil Maryaboothy Umma[36].

However this system of Friday property and Monday property is not prevalent in Minicoy. They are having only one set of property like other Muslims in the world who follow Shariat Laws for the devolution with some minor variations.

Tharawad

The basic unit of society in Lakshadweep is tharawad with inheritance and descent is traced through female line. A Lakshadweep tharawad consists of a mother, male and female children and the children of those female children and so on. As the membership of a tharawad is derived through matrilineal descent the children of females belong to the tharawad, they carry the tharawad name of the mother. The issues of male children do not belong to the tharawad of their father. The spouses of men and women, and children of men are excluded from its membership.

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[35] There were Muslim families in Tirur, Parappanangadi and Ponnani who had followed a mixed system of inheritance in the sense that their family property would descend to the nephews and the separate property goes to their sons and daughters

[36] Southland, Privy Council Reports, Vol. II, 418, The observations of the privy council in Murtaza Hussain Khan v. Muhammed Yasin Alikhan (I.L.R. 38 Allahabad, p.552) also supports the view that where it was admitted that the family was governed by the Marumakkathayam law as regards the Tarwad property, the presumption was that the self acquisition of the individual members descended according to that law. Their lordships said: " The Muhammedan law makes no distinction between ancestral and self acquired property and recognizes no principle of difference in the matter of lineal and collateral succession as is the case under the Mithakshara which divides inheritance into unobstructed and obstructed heritage. All classes of property, whether ancestral or self acquired follow one rule of devolution. If a custom governs the succession to the ancestral estate the presumption is that it attaches also to the personal acquisitions of the last owner left by him on his death; and it is for the person who asserts that those properties follow a line of devolution different from that of the Taluk to establish it".

A tharawad is joint in estate, food and worship. Traditionally, the members of the tharawad are living under one roof with 'community' of property, right by birth and right of survivorship. tharawad membership arises by birth. Each member of the tharawad acquires an interest in the tharawad properties only by reason of his birth. When any member dies, the interest of that member devolves upon other members of the tharawad. The interest of every member in a tharawad is a fluctuating one. It increases by death of other members. It reduces by new births in the tharawad. The customary law, known as Marumakkathayam governs the inheritance to tharawad property (Friday swoth).

Tharawad is having continuity through its members. The tharawad name and its joint property are valued as a great asset by the islanders. It is the property of all the males and females that compose of it. Its affairs are administered by one of those persons, usually the eldest member, called the Karanavan, who can be a man or a woman, if there is no major male member. The individual members are not entitled to enforce partition, but a partition may be effected by common consent. The rights of the junior members are stated to be:

(1) If males, to succeed to management in turn,

(2) To be maintained at the family house,

(3) To object to an improper alienation or administration of the property,

(4) To see that the property is duly conserved,

(5) To bar an adoption and

(6) To get a share at any partition that may take place.

These are what may be called as effective rights[37] This is applicable to the present day Lakshadweep Marumakkathayam also. The tharawad is essentially a matrilineal exogamous unit. It need not always be an economic unit owning all property in common and acting as a production unit. Members of tharawad may form one Pira or domestic group. They are at liberty to form several domestic groups also. It may be one consumption unit or it may be of different consumption units.[38]

Thavazhi

When the tharawad [39] grew in its membership with several daughters and descendents, it became difficult for all the members to live under one roof. A tharawad no doubt is said to consist of so many Thavazhis or lines of mothers. When a division takes place, it is generally split according to Thavazhi. That is, those descended from the same mother, or it may be from the same grandmother, while separating herself from the tharawad as a whole form themselves into a new group instead of leaving separately as individuals. So the daughters and their respective descendents began to reside separately. This marks the advent of Thavazhi system. A Thavazhi in relation to a female is "the group of persons consisting of that female, her children and all her

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[37] Kochuni v. State, A.I.R. 1960 SC 1080, at p. 1099.

[38] A. R. Kutty has described this on the basis of the branching away of different Thavazhies from the tharawad. Marriage and Kinship in an Island Society, National Publishing House, Delhi (1972), p. 117.

[39] A Lakshadweep Tharawad corresponds pretty close to what the Romans called a gens. But in Rome all members of the gens traced their descent in the male line from a common ancestor. In Lakshadweep the members of a Tharawad trace their descent, in the female line only, from a common ancestress. The Tharawad of the Marumakkattayam is equivalent to the Mithakshashara joint family. But with the basic difference that the Mithakshara joint family is based on patriarchal system. Another difference of Tharawad from the Mithakshara coparcenary is that, every member whether male or female has equal right in Tharawad by virtue of being born in that Tharawad. But in the Mithakshara joint family the son, grandson, the greater-grandson have the right by birth in the joint family property Supra n. 1, p 418-419. See also Paras Diwan, Family Law, Allahabad Law Agency (1991), pp. 418-419.

descendents in the female line". A Thavazhi in relation to a male is "The Thavazhi of the mother of that male"[40]. Thus Thavazhi is a segment descended from each woman of a tharawad. This term is flexible in the sense it is used to denote both an intermediary segment in the context of a larger group and a minimal segment of two generation's depth[41].

Marumakkathayam tharawad, a legal entity capable of holding properties[42], a family corporation and every member has equal rights in property by reason of his or her birth in the Tharawad[43]. A Tharawad or a Thavazhi comes into existence only by the operation of Marumakkathayam law. It can not be created by the acts of parties[44].

Karanavan

The expression Karanavan denotes the managing member of a Marumakkathayam tharawad or Thavazhi[45]. In Customary Law, the oldest male member of the family becomes the Karanavan. The oldest male in the group, irrespective of the kinship status of his mother, is known as Karnavan. The Karnavan is the person, in whom, actually, all the properties, movable and immovable, rest. Marumakkathayam Law vests in him exclusive right and duty to manage the property of the tharawad. He can in his own name acquire lands, invest tharawad funds and to devise tharawad properties to its advantage. Customary law recognizes him as the Guardian of the property. Property includes

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[40] Supra n. 24 at p. 973 and supra n. 3 at p.31.
[41] Supra n. 38 at pp. 87-88. See also Leela Dube, Conflict and Compromise, Devolution and Disposal of Property in a Matrilineal Muslim Society, Economic and political Weekly may 21, 1994, p.
[42] Parukutty Neithiaramma v. Kesava Menon 1962 KLJ 688, Kunhammad v. Narayanan Nambudiri, 1963 KLJ 1052 (F-B); Gopala Menon v. Kalliani Amma, 1964 KLJ 243.
[43] Kalyani Amma v. Govinda Menon 1912-35 Mad 648.
[44] Moideenkutty v. Ayassa 1928 – 51 Mad 574; Neelakandan Pillai v. Bhagavathi 1952 KLJ 140.
[45] Supra n 3, p. 36.

cultivable land, trees (mostly coconut trees), houses, house sites, stores and sheds, pits for soaking coconut husks, fishing boats or odoms fishing channels, fishing nets, ornaments and utensils. The Karanavan is the linchpin in the tharawad. The authority of the Karanavan was unquestionable. He was the manager of the family. The property was vested in the head of the family, not merely as agent or principal partner, but almost as an absolute ruler.

In all the islands of Lakshadweep it is the right of the Karanavan to possess all the properties of the tharawad and to pluck the fruits of the trees and also to cultivate on the tharawad properties in his possession. A junior member has no right to dispossess the Karanavan. If so, the Karanavan can recover possession with mensne profits. Customary law enables the Karanavan to grant lease of trees for a limited period to meet the exigencies of the tharawad. In the olden set up of Lakshadweep when poverty and difficulties were the rule of the period, this lease of coconut trees was very common and there were lots of disputes.

The rights and duties vested in Karanavan by Customary Law necessitate that the Karanavan should be a person having contractual capacity[46]. Karanavan is the person in whom the right of management vests. To succeed to the office of the Karanavan, is a

[46] Usage does not preclude a female member from managing the affairs of Tharawad when there is no male member of that family capable of taking up the management in earlier Kerala joint family setup also. There was a custom in some families of Kerala in Kovilagams of the Zamorins family that the oldest female member manages. See supra n. 2 at p. 33 and supra n. 3 at p. 36. Section 11 of The Indian Contract Act,1872 That prevents a minor becoming a Karanavan. So in such contingencies the senior most female member of the family has to assume management of the Tharawad. As per the Indian Contract Act, only a major can contract. Indian Contract Act, 1872 has been extended to Lakshadweep with effect from 1-11-1967. Whenever a woman succeeds to the Karnavanship, she does so in her own right and not in the right of any other member. This right of the senior female member operates only till the male member attains majority. Then the Karnavanship will go to him automatically.

birthright recognized by the customary law. His position is analogous to the position of Kartha in Joint Hindu Family. Karnavanship cannot be created by a contract and his position is not that of a mere trustee or office of a Corporation. He used to stand in a fiduciary relationship with members[47]. The property is in the name of tharawad or Thavazhi.

If for any good reason the Karanavan is not able to discharge his duties in respect of management of tharawad property, a delegation by way of power of attorney would be valid[48]. For example, when a Karanavan is leaving the island for a long period, during his absence from the Island, a Mukthiar [member of the family], can exercise the managerial powers As and when original Karanavan returns, he can resume the management of the tharawad. But the person to whom this delegated power has got would not be called as a Karanavan.

It is the duty of the Karanavan to look after the affairs of the tharawad. He has to repair the house and other properties. The Odam (mainland going boats) and other boats and properties of the tharawad will also be under his control and he has to maintain it. In all the transactions of the family, he alone can represent the family. The entire executive authority of the family is vested in the Karanavan and any restrictions on his powers in such matters will not be given affect to against stranger without a notice. In all the islands he is responsible for collecting income from the tharawad properties.

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[47] Supra n. 2 at pp. 34 -35, 38.

[48] Earlier Kerala system also permitted such delegation of powers to the members of the family case of urgency. Aappan Nair v. Assenkutty 1889 ILR 12 Mad 219

In the olden times avenues for individual earning were very limited in the islands. Except for those who engaged in certain individual activities such as carpentry, sowing, work on metals, fishing for sale and so on. Men do not have any established ways to make an earning which they would keep to themselves for personal use. The authority of Karanavan is maximum when the tharawad is a compact property group forming one single household. Conversely, it is minimal when the tharawad is having a number of households grouped into different property groups. If the number of generation is increasing the authority of Karanavan also is getting decreased. In tharawad which is having more Thavazhies with separate houses the authority of Karanavan is mostly limited to acting as formal head on ceremonial and religious occasions of the Tharawad, settling minor disputes arising in his tharawad or any of its Thavazhies.

In Kavaratti, if the Karanavan becomes bodily incapacitated to manage the affairs of the Tharawad due to illness, old age or other reasons, the next junior male member used to perform the functions of the Karanavan on the responsibility of such incapacitated Karanavan. But he can claim Karanavanship only on the demise of the original Karanavan. If the Karanavan finds it difficult to appear in court in suits conducted by himself, he can employ or he can engage a Mukthiar to conduct the civil suits.

Being the head of the family, Karanavan has to manage and conduct marriages, other customary and religious ceremonies and other festivals and functions of the

tharawad. It is his duty to manage the affairs of the tharawads for the common beneficial interest of all the members. The number of mosques in islands were quite disproportionate to the population and the physical space. The islanders were very particular about prayer and fasting, the giving of alms on specific occasions, and discourses by visiting religious dignitaries. Haj was considered difficult on account of expense, but those who had performed the pilgrimage were given special respect. Matrilineal groups undertook most important that activities related to religion. The practice of religion thus appears to have been a reaffirmation of the relationships and values of the existing social structure.

Customs Vary from Island to Island

In Androth and Kalpeni Islands, Karanavan is responsible for the upkeep of the trees in the land and planting of saplings. He is responsible for effecting improvements to the tharawad properties with the assistance of able-bodied members of the tharawad. If the Karanavan finds it difficult to look after the properties personally, he can entrust the management to any other elder member of the Tharawad.

In Amindivi group of Islands (Amini, Kadmat, Kiltan, Chetlat, and Bitra) the management of the tharawad properties vests with the Karanavan (the senior most male member of the family). If there is no male member in the tharawad, it is customary that the senior most female member can assume Karanavanship of the tharawad. This will remain in existence only till any of the male member-attaining majority. This change in Karanavanship will operate automatically. The authority of the Karanavan over the properties is supreme. The members or Marumakans have no right to manage the properties or to take the income out of them without the permission or consent of the

Karanavan. The members are supposed to work in the property in accordance with the directions of the Karanavan. If the Karanavan acts against the interests of the tharawad or there is any mismanagement, the members can sue him. It is the prime duty of any Karanavan to maintain each and every member of the tharawad having due regard to the status and capacity of the tharawad.

Suit against Tharawad

Only a Karanavan can institute any legal action by a tharawad. There is an exception to the above rule that the junior member's can to conserve property wrongly alienated when the Karanavan neglects to do so or where the Karanavan is incapable or behalf of the tharawad. A suit by the Karanavan so as to bind the other members need not be framed as a representative suit[49]. At this point two decisions of the Kerala High Court are very important. The first one is Gopala Menon v. Kalliani Amma[50]. Where in it has been held that a junior member can not sue for the redemption of the holding from the tenant, unless there are circumstances disabling the Karanavan from filing the suit and in such a suit, all the members are to be brought on record. The other decision was Velayudhan Nair v. Janaki,[51] which acknowledge the well-settled position of law that once a Marumakkathayam Tharawad has become divided, a divided member cannot institute a suit on behalf of the Tharawad in respect of properties that have been left undivided.

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[49] Venkateswara v. Daru, (1968) I Mys. L.J. 193.
[50] 1964 KLT 243
[51] 1957 KLT 241

This is very much important in the light of present Lakshadweep practice of effecting partition through the operation of common concept, which is termed as Sammathapathram.

The Karanavan is a necessary party in all-legal proceedings against the tharawad. In all the islands, any omission to bring tharawad Karanavan would entail the proceedings absolutely void. A decree obtained against the Karanavan representing the tharawad is ordinarily binding on the other members. In this regard, earlier the approach of Amin in the Laccadive group of islands and Monegar in the Amindivi group of islands were the same. Whether a decree was obtained against the Karanavan as representing the tharawad or not is an important question in such cases. The courts have not insisted upon any specific form of words in the frame of the suit but the importance is being given to the nature of the debt and the substance of the claim[52]. In Kerala and Madras when the Marumakkathayam statues drawn up, conditions have been laid down for a decree on the tharawad to be valid and binding[53].

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[52] Supra n. 21, p. 984 (Mayne p. 984,) Pappi Amma v. Rama Aiyer AIR 1937 Mad. 438; Ikkanda Variar v. Paramaswaran Elethu 38 CLR 379 (FB) Chacko v. Bhaskaran 1944 TLR 847 (FB); Govinda Pillai v. Narayanan Nair 1954 KLT 620 (FB)

[53] The requirements under the Cochin statutes in general are (1) all the members of the tharawad should be made parties. (2) The Karanavan should be on the party array and (3) the omission to implied any member other than the Karanavan should not invalidate the decree against the tharawad if it is proved that the omission is not on account of any negligence. Under the Kerala statutes major members alone are sufficient and the omission to implead any member other than Karanavan shall not invalidate the decree if it is shown to be other wise binding on the Tharawad see S. 36 Cochin Marumakkathayam Act, S 56 of Cochin Nair Act and Sec 12 of Cochin Namboodhiri Act and also see Sreedhara Variar, supra n. 3, Ch. II

CHAPTER – VIII

MARUMAKKATHAYAM AS CUSTOMARY LAW: MAINTENANCE ARRANGEMENT AND PARTITION

CHAPTER-VIII

MARUMAKKATHAYAM AS CUSTOMARY LAW: MAINTENANCE ARRANGEMENT AND PARTITION

In all the islands the Karanavan is responsible to maintain the members of the Tharawad. This is the prime duty of the Karanavan. Almost all complex issues of Tharawads related to maintenance arrangement, partition and Maranavakasam are all emanating from this right. This includes providing proper shelter, food, clothing and proper education to the children, proper medical care for the members in times of necessity. The quantum of maintenance would depend upon the income and circumstance of the Tharawad. The wants of the members are also criteria for determining quantum. The junior members of the Tharawad will aid and assist the Karanavan in his functions in the management of the Tharawad and its properties. As a matter of duty, Karanavan and all the members of the Tharawad will have to strive for the common interests of the Tharawad and its members. Karanavan is not entitled to any remuneration for the management of the properties belonging to the Tharawad. Like any other member, he is also entitled to meet his maintenance claims, out of the Tharawad funds. All these general principles are applicable in all Lakshadweep islands.

Evolution of Thavazhi, maintenance arrangement and absolute partition

The principle behind the liability of maintenance under Marumakkathayam law is the co-proprietorship of the junior members in the Tharawad[1]. As the Karanavan is in management of the Tharawad properties, he is collecting the income thereof. So he has a liability to support the other members of the Tharawad. Under customary law the duty to maintain the members of the Tharawad is the paramount duty of the Karanavan. In this capacity he is the protector of the members. Maintenance includes providing food, clothing, medical expenses and education of junior members. The expenses of various ceremonies in the family like the marriage of junior members, religious ceremony etc. are also to be met by Karanavan from the Tharawad income.

When the Tharawad grew in its membership with several daughters and descendents, it became difficult for all the members to live under one roof. So the daughters and their respective descendents began to reside separately. That marks the advent of Thavazhi system. As all the members of the Tharawad are entitled to be maintained from the common estate of the Tharawad, it is the duty of the Tharawad to maintain the separated Thavazhies. It is difficult to manage the affairs of the Thavazhies from the Tharawad house by the Karanavan of the Tharawad. So when different Thavazhies of the Tharawad started separate living, the Tharawad properties have been allotted among each Thavazhies for the purpose of maintenance. Thereby, the maintenance arrangement emerged.

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[1] Sreedhara Variar, Marummakkathayam and Allied Systems of Law in Kerala State(1969), p. 45

This latter evolved into a practice in Marumakkathayam Tharawad to allot specific immovable properties in lieu of maintenance arrangement. Irrespective of the allotment made to a branch or to an individual, the right of the allottee is to use the usufructs of the lands thus allotted for their maintenance. But they are not having any right to alienate that property.

In those days, in Lakshadweep, actually the criteria of wealth were the coconut trees. Thus allotting certain number of coconut trees to the Thavazhies makes maintenance arrangement. Such properties remain as the properties of the main Tharawad and the possession thereof by individual branch Tharawad was only for the purpose of convenient living.

The custom in the islands is that the holder of a maintenance allotment under the Marumakkathayam law has a right to the exclusive possession of the properties allotted. Even the Karanavan cannot disturb them from their possession and enjoyment of the allotted properties except under an alternative arrangement for maintenance or by giving their shares in absolute partition through Sammathapathram[2].

The major difference with the general law of the country and the Marumakkathayam is visible on the question of value of improvement. In Marumakkathayam maintenance allotted under a Tharawad cannot claim value of improvements effected in the property on legal grounds but only equitable

[2] In the old Malabar set up of Marumakkathayam, similar law was followed. This practice had been reiterated in the Madras High Court decision, Damodara Menon v. Ramakrishna Aiyer, AIR 1925 Mad. 624.

considerations[3]. Later the growing consciousness on their individual rights perfected the concept of partition, out of this maintenance arrangement

At first, the Thavazhi partition or partition per stripes slowly got its real hold in this remote island society. The changes crept in to this island society, later made the disputes between Thavazhies, on its maintenance arrangement a regular feature[4]. That called for absolute, out right partition of Tharawad properties between Thavazhies. As a natural corollary of this development from a simple community oriented society to an individual oriented society, the Thavazhi and Tharawad partition reached a stage of per-capita partition. In this regard, the changes that crept into the mainland Marumakkathayam due to the legislative intervention has also made its reflection. . Now due to the prevalence of absolute partition the question of maintenance claim is vanishing from the islands.

The liability of the Karanavan to maintain the members of the Tharawad arises out of the co-proprietorship of all the members of the Tharawad in the joint family property known as Friday swoth. This is a legal duty of the Karanavan. The liability imposed upon a person to maintain his dependents under Hindu law is a moral obligation. It is emerging from the relationship. Manu mentioned in Mithakshara that the aged mother and father, the chaste wife and an infant child must be maintained even by doing a hundred misdeeds[5].

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[3] The similarity in the Kerala practice can be traced out in Parvathi Amma v. Padmanabhan 1951 KLT 347 and Narayana Pillai v. Narayana Pillai 1954 |KLT 340 (FB)

[4] Most of the keenly contexted cases before Amin and monegar during the British period was based on this maintenance arrangement and the alienablility of the property allotted.

[5] Mayne-Treatise on Hindu Law and Usage, (1953), at p. 817.

Peculiarity of property system in Lakshadweep

At this juncture, the peculiarity of the property system of the island gathers importance. Until recently the islanders had no idea of property in the form of land, instead, the property consisted entirely of trees or houses upon the land. Any member could plant a coconut tree in any vacant space in the property, provided that he maintains certain minimum distance from any other person's coconut tree. Within that minimum distance the right of planting is exclusively reserved for the owner of that tree. After the inception of Survey and Boundary regulation and the extension of Registration Act, now, their property concept is akin to that of mainlanders. In the olden days, when the idea of property was fully based on coconut trees, all the trees bear the property mark of its owners. This practice continues today also. In those days the coconut trees were mortgaged with usufructory rights. There were no fences or walls in the island. Any body could walk through any plot. Now, after emergence of Survey and Boundary Regulation and also due to the increased awareness on the right of land, people started fencing and constructing compound walls. The acquisition of land for road and other developmental purposes has also contributed to the increasing scarcity of land in the islands. Now the land has become a precious commodity and is very expensive. The old system of planting trees in another's land has resulted in extraordinary mixing up of the properties. One's trees that used to stand in another's land or, got mixed up with another's trees were a fertile cause for disputes. In those days each Thavazhi maintenance arrangement used to be done by allotting a definite number of coconut trees to each. And for this purpose of allocation, fertility of the land and quality of coconut trees were taken in to account and each was compensated accordingly. Usually one high yielding coconut tree was equated

with two or three low yielding trees. Even now, this practice of allotting trees in another's land is common. Especially when a partition takes place for equalizing the number of coconut trees, one may be given or allotted coconut trees in another's land. This allotment of trees is until the death of the tree or until the death of the allottee. This is the peculiar system of islands.

Attaladukkam

The discussions above revealed that the properties in the islands are classified into Friday properties and Monday properties. In Friday property the Marumakkathayam law governs properties - the joint family properties -. The important distinction between these Friday property and Monday property lies in the power to dispose those properties. The owner can dispose of the Monday property as he wishes. That will devolve on the personal heirs of the owner according to Mohammedan law. So the Monday property will go to the wife and children of the owner. But no branch Tharawad or Thavazhi is competent to alienate or otherwise dispose of the Friday properties belonging to the Tharawad without the concurrence of the other members of the Tharawad. On a branch becoming extinct the properties there of would devolve on the members of the main Tharawad. If the last surviving member of the branch Tharawad has to alienate the Tharawad properties, he has to obtain the consent of the Maranavakasis (reversioners). This particular right in the Maranavakasis is known as Attaladukkam. While dealing with Malabar Marummakkathayam's partition and inheritance Herbert Wigram & in 1882 mentioned that "impartibility is the rule prescribed and community of interest can only be severed by voluntary separation and partition. He observed:

> "Those who are members of the same family are said to be connected by Mudal Sambandham (community of property), whilst those who were once of the same family and have separated from one another are said to be connected by Pula Sambandham (community of pollution). On failure of former class who is termed Anandravar, the latter inherit and are termed Attaladukkam heir".[6]

The reason for this is emanating from the distinction of the maintenance arrangements prevailing in Lakshadweep. This has to be differentiated from the mainland concept partition. The term Bhagam or partition in relation to the different Thavazhies is in the nature of maintenance arrangement. The divided branch is only having the right to enjoy the property. If the last surviving member of a branch Tharawad could not dispose of the Friday property without the consent of the reversioners, on his death the Friday property would devolve on the main Tharawad as Attaladukkam heirs.

This difference of passing of property on the death of a person is dependent upon the nature of the property. If it is Monday property, it would pass to a man's own children under the ordinary Mohammedan law. If it is a Friday property, if a male dies the property should devolve on his sisters or their children. This distinction of the devolution of the properties is tempting the last surviving member of the family or the male members who got the properties on maintenance arrangement to convert the nature of the property from the Friday to Monday so as to give him the right of disposal over that. Generally the reversionary heirs or the Attaladukkam avakasikal is objecting this. These questions form the major portion of the most keenly contested cases even during the English rule. That is still continuing.

The inalienability of the Tharawad property, the restriction to convert the nature of the property (from Friday to Monday and vice versa) and the need to obtain the

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[6] Herbert Wigram, P., Commentary on Malabar Law and Custom (1882), p.2

consent of the other members of the Tharawad are clear from the following decisions. In an Amini island case, Ummathumma, the last surviving member of Bappachi Nallala branch of Asaroda Tharawad wanted to settle her house and 50 coconut trees on Asaroda Beeyasha. The Attaladukkam avakasikal (maranavakasikal), the reversioners – Beredam Saina of Beredem – (another branch of Asaroda Tharawad) objected. The Monegar followed the opinion of the assessors and found that the custom of the island did not permit the petitioner to direct that the Friday properties of her Tharawad should devolve a particular persons but that she could dispose of those properties with the concurrence of the reversioners known as maranavakasikal. This decision also gives insight into the problem how the custom is to be followed. In this case the last surviving member of Bapachinallala also held. Their rights still remained vested in the Tharawad and they would be getting their rights when they return to the Tharawad[7].

In 1932 two brothers who were the last surviving members of Hellala family sought approval of the Monegar of Amindivi for a partition of their properties. The assessors have given a report stating that the object was to convert the Friday properties to Monday properties which they could not do without the consent of the reversioners (Maranvakasies) of the family. Monegar accepted the assors opinion and held accordingly[8].

The Consent document (Sammathapathram or Razi)

The consent for conversion of Friday properties in to that of Monday properties and vice versa is known as Sammathapathram or Razi. In the conflict of interests

[7] The objections of Asaroda and Kaniyam were upheld and with their concurrence, the petition was allowed to dispose of twenty five coconut trees.

between the Friday property and Monday property as a compromise they used to allow the conversion of a portion of Tharawad properties - Friday properties - into that of Belasha/Monday properties. This Razi is a method devised by the islanders to convert the nature of the property from Friday into that of Belasha/Monday and vice versa. By using Razi they used to give disposable rights to the male members of the Tharawad by mentioning that, the member who is getting the allotment of some property may use it as his Monday property.

The use of razi and its impact on the impartibility Friday properties is clear from the Revenue case No 24 of 1927. In this case the Petitioners Konikkam Kadeesabi, the wife of Konnikkam Buharikoya applied for registering the Beredam house and land and the trees appurtenant these to in her name, on the ground that Konnikkam Buharikoya and his mother had gifted the same to her. But before that there was an order in another case by which it was held that the Konnikkam Buharikoya had no exclusive title in the item and no alienation could be effected without the concurrence of the reversioners.

On that matter Konnikkam Buharikoya, Asaroda Kadirkoya and Kaniyam Belasha and others signed a Razi. It is to be noted that they belong to different Thavazhies. In that razi it was stated that the first defendant would not do any acts in respect of the Beredem properties which would prejudice the maranavakasikal and that he would not put forward any claim to the properties of the Asaroda Tharawad.

In another case[9] Ranakkal Kadirkoya and Ranakkal Kadisabi requested for the partition of their Friday properties. Subsequently they entered into a compromise and

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[8] Civil Case No. 100 of 1932 of Monegar Amindivi.
[9] Revenue Case No. 80 of 1928 of Amini.

they filed razi along with members of the Asaroda and Kaniyam houses for declaring the item as their Monday properties. The terms of the 'Razi' were not admitted by the members of the Asaroda house stating that they agreed to the conversion of 100 coconut trees alone as Monday properties. Another objection is filed by the Konica Buharikoya against the conversion on the ground that he was a reversioner of the petitioners.

The above cases indicate that how frequently in the very same Tharawad, the disputes are arising with regards to the nature of the property i.e. whether it is Friday or Belasha property. The effect of Razi or Sammathapathram on the conversion of the Friday property into that of Monday property and how it affects the reversionary right of marnavakasies is very important. To balance the interests of various parties the method of partial conversions i.e. just allowed to change some of the Friday properties into that as Monday properties, by keeping intact the nature of remaining properties as Friday is very important. We can identify this use of Sammathapathram as the first stage in the decline of Marumakkathayam.

As indicated by the above cases this has been started around 1900 A.D. During this period in island the importance was to the Tharawad properties. For this, a study conducted in the year 1967 has founded that at that period is the island about 67% of the total island property was impartible Tharawad property[10].

Thus the accepted custom of the island during British period and thereafter till the formation of proper judicial courts was that in the Tharawad properties the absolute partition with right to alienation was not existed in the islands. The Tharawad bhagom is

[10] A.R. Kutty, Marriage and Kinship in an Island Society, National Publishing Houise, Delhi, (1972), pp. 87-116.

only a maintenance arrangement. The member's right is to enjoy the property and its usufructs during their life. They cannot alienate the property without the consent of all the members. In the case female members the properties will devolve on their children. In the case of male members after their death the property will revert back to the Tharawad. The last surviving member cannot alienate the property without the consent of the reversioners. After the death of the last surviving member the property will revert back to the original Tharawad or to the reversioners. The law prevailing during this period was the Regulation of 1912. Section 21 of the Regulation directed that all questions relating to any rights claimed or set up in the civil courts of the island should be determined in accordance with any custom not manifestly unjust or immoral governing the parties or properties concerned, and in the absence of any such custom according to justice, equity and good conscience. So the society and the courts followed the custom of the community.

Partition of Friday property

A close inspection with Lakshadweep society reveals that much of the civil and criminal cases originated from disputes relating to the partition of Tharawad Velliyazcha. The disputes arose from the central issue, viz.: whether the property is absolutely partible or not? One view subscribes the idea that the property of the Tharawad is not partible in its absolute terms. Their contention is that, in the olden days there was no partition as known today. There was only maintenance arrangement and nobody could alienate his or her property. The word Bhagom (partition) previously meant living separately away from the original Tharawad house with control over some of the Tharawad properties. Thus the community of interest in the Tharawad properties does not come to an end and

the separate Thavazhi converts itself into a Tharawad. The other view, which is of a recent origin, stresses that once there is division of property, the allottee gets an alienable right. At this juncture it is useful to compare the concept of partition in mainland.

Defining Vibhaga or Partition Mithakshara states Vibhaga (partition) means the allotment to individuals of definite portions of aggregate of wealth on which many persons have joint ownership[11]. This definition of Vijnaneswara is in accordance with the modern concept of partition. This concept pre-supposes co-proprietorship of all the members over the property of the joint family. There is unity of ownership while the family remains joint and no member can say that he is the owner of any definite share in the property. It is fluctuating with the deaths and births in the family. Thus partition is a process through which joint ownership is reduced to individual ownership. In effect each co-owner gets specific property in lieu of his rights in the joint properties. Each co-sharer is actually renouncing his rights in the other common properties in consideration of his getting exclusive right to and possession of specific properties in which the other co-owners renounced their rights. So the partition is a process in which the renunciation of mutual rights is taking place. So it cannot involve any transfer by one co-owner of his right in the properties to others[12].

The important distinction between the ordinary Hindu Law of Mithakshara and the customary Marumakkathayam system prevalent in the Lakshadweep islands is the absence of a right to compulsory partition on the part of the members or joint owners. But

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[11] Yajanavalkya, 11, 114

[12] M. Rama Jois, Legal and Constitutional History of India, (1990), Vol. – I p. 230-235, supra n. 3, p. 136 – 141

law does not recognize any right in them to convert their joint ownership in parts of it. This was the state of affairs in the pristine Marumakkathayam[13] in Kerala also.

Women's consent was essential in property transactions. Men and Woman are having same usufractory right in the Tharawad property. At the level of inheritance it is ensured that woman's share devolve on her children; A man's share reverted to his close matrilineal kin on his death. The customs allow men to add his share of property during his lifetime with wife's property and enjoy the property till his death only.

Methods of partition

The act of partition consists of two methods. Partition by metes and bounds; in this after ascertaining the shares to which each individual coparcener is entitled, physical division of the family properties is made and the coparceners begin to enjoy their properties separately. Separation or severance in interest; In the case of partition by separation or severance of interest, the members of a coparcenary may after expressing their desire to separate continue to enjoy the family properties as tenants in common. In this behalf Vyavahara Mayukha states: "Even in the absence of joint family property, severance of interest takes place, by declaration by a coparcener to the effect that ' I am separate from you, because severance indicates the intention of the coparcener and a declaration as aforesaid clearly brings about such an intention." [14]. The Privy Council

[13] Supra n. 2, p. 132

[14] Saraswathi Vilasa lays down a similar rule, as cited in supra n. 1 at p. 138.

also upheld this view[15] But in Lakshadweep the second form of partition was not in practice.

Conceptual inconsistency

Islanders had understood Bhagom in the ancient times as the division of the Tharawad properties for enjoyment for life. A divided branch was having only the right to enjoy the properties allotted to it until the extinction of the branch. The other branches had no right to interfere with or question the enjoyment of the allottee branch. When the last member of the branch expires, the properties would go back to the original Tharawad. However, their may be people who have Maranavakasam – a right in reversionist in the branched out part of Tharawad, to inherit the property on the death of the last member of the particular branch. When one gives the term "Bhagom" its present meaning, prevailing in the main land legal system, this Bhagom and the Maranavakasam cannot co-exist. One of the major points to be resolved in such contingency is the inconsistency arising out of the "Bhagom" and the Maranavakasam. Therefore, the term Bhagom was used in those days to indicate a condition that each branch can manage and enjoy the properties allotted to it, without interference from other branches, so long as, last member of a branch is alive. The other branches are entitled to the rights in those properties only on the death of the last member of the branch. So the essence of these two terms as in ancient times can be summarized - Bhagom meaning, division of the Friday property to several branches with the right of enjoyment alone which is also known as maintenance arrangement . The other branches become entitled to claim

[15] Pandit Suraj Narain v. Pandit Ikbal Narain, 40 I.A., p.40 – 15, Bom. L.R. 456, Soundarajan v. Arunachalam – 39, Mad. 159 (FB), Musamat Girjabai v. Sadashiv – 43 I.A. 151 – 18, Bom. L.R. 621 See also H. D. Vol. III p. 562

possession of the properties only on the death of the last surviving member of that branch and that right to get back the properties in the other family is called Maranavakasam or Attaladukkam.

Island-mainland conceptual differences in partition

Maranavakasam arises only on the death of the last surviving member. Because of the presence of this Maranavakasam right vested in other branches, in order to preserve the property for this Maranavakasies or these reversioners, the branches that are enjoying the property at present have no right of alienation. This notion of Bhagom or maintenance arrangement is diametrically opposite to the notions on the partition prevailing in the main island, Kerala, for the last 60 years. It is to be noted here that Bhagom means partition in Malayalam. This is the language used in the island and also in Kerala though there are some variations. When one digs through the history of Marumakkathayam in Kerala, one sees a stage at pristine Marumakkathayam Law which is still remaining in this island. In the mainland also the impartibility of the Tharawad property was the rule earlier and by lapse of time the system of division of the property had emerged subject to the consent of all the members.[16]

Alienation

The influence, fame and fortune of the Tharawad are mainly depends on the economic stability of the Tharawad. It was the duty of the Karanavan to conserve the property both movable and immovable. So the Karanavans were tempted to acquire more

[16] 1,Sud.December 118.

and more rather than to sell out properties. Each member in the Tharawad is having a right to see that the Tharawad properties are to the extent possible, conserved for the benefit of the Tharawad. But there are occasions in which the Tharawad is trapped in financial stringency. In such circumstances as the manager of the Tharawad - the Karanavan - is having the moral obligation to maintain the members of the Tharawad as against their legal right to be maintained by Karanavan. In such situations the Karanavan was having no other option but to alienate the properties belonging to Tharawad. Alienation include mortgage, lease and every other form of encumbrance.

There were days during past when the islanders had to undergo a myriad of pain and difficulties, lack of food and non-availability of other necessities mark the past of islands. This made life very difficult. Financial crisis was common. The only way to tide over these difficulties was to mortgage or sell coconut trees, which form the whole wealth. In those days the Karanavan was forced to sell or mortgage for the benefit of the Tharawad. The Karanavan can mortgage portions of Tharawad property for debts incurred for the Tharawad and also to repay debts out of the income derived from Tharawad properties. The litigation's for and against Tharawad properties are to be conducted by the Karanavan and the expenses towards that have to be taken from the income of the Tharawad properties. The Karanavan in his capacity as manager did this action.

This right was to be exercised only at emergency, when there was a pressing need for a Tharawad. Otherwise, the whole transaction becomes void. If any member feels that the Karanavan has abused his right then he or she could file a suit for the recovery of possession on behalf of Tharawad. The member could also file a suit for injunction to

restrain Karanavan from the commission of any act, which is injurious to the interests of the Tharawad.

In the post-independence era where the economical and social set up has changed, one rarely sees these kinds of mortgage for necessity now. The credit facilities available in the co-operative societies and banks and the income from service sector also boosted this attitudinal change. The spread of knowledge about the fact that the joint rights of the Tharawad are not alienable has put an end to this practice.

In cases other than the above provision, alienation of Tharawad property could be affected only by consent of all members. Since there was no specific rights over any portion of the Tharawad property, neither the Karanavan nor any member could alienate or encumber his individual rights in the Tharawad swoth.

The fundamental principles relating to the law of alienation under the customary Marumakkathayam law of Lakshadweep are same as under Hindu Law [17]. That is when distress affects the entire family. Earlier in Hindu Law of Mithakshara this limitation on alienation was applicable the joint ancestral property of the family and even to the separate property of the father. The reason for that was the son was having birth right over father's property.

In Lakshadweep a distinction is identifiable between the absolute sales at one hand and the mortgages and the leases on the other hand. The consent of all or atleast the major members of the Tharawad was an inevitable necessity for absolute sale. This was

[17] There was total prohibition against alienation of immovable property without the junction of all its to owners. Vijnaneswara is pointing out an exception to this rule in Mithakshara. By which

very rarely done. The reason was basically the Tharawad Friday was a perpetual asset of the Tharawad even for the benefit of future members. To change the nature of the property from Friday to Monday the consent of all the members are necessary. That they used to obtain in the form of consent agreement, that is, Sammathapatram. But in the case of mortgages and leases the Karanavan could create that without the concurrence of other members. The condition is that it can be done only for the benefit of the Tharawad or for its necessity[18]. Here the development in the mainland will help one to assess where the Lakshadweep practice is differing. In mainland earlier the Karanavan could have sold the immovable property for the benefit or for the necessity of the Tharawad. In the next stage of development the consent of senior nephew, that is, Andandaravan was considered as supporting the requirements of benefit or necessity. Later statutes made it compulsory to get the written consent of other members also.[19] In all transactions, whether it is sale, mortgage or debt, the burden of proving necessity or benefit is on the allianee or creditor. The position under the Hindu law is very same[20]. The question whether alienation was for the benefit or necessity of the Tharawad depends upon the facts and circumstances of each case. Necessity to be the ground of alienation, the pressure of the necessity should be such that by acting prudently and reasonably there was no other source for the alienor to raise the amount to get over the crisis.

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any one proprietor is entitled to dispose of the immovable property by way of a gift, mortgage or sale in times of distress for family necessity and for the performance of the acts of Sharma.

[18] Earlier in Malabar Marumakkathayam also this position was upheld by the Madras High Court In Kutti Mannadiar v. Payanu Moothan, 3 Mad 288; Kombi Achan v. Lakshmi Amma, 5 Mad 201.

[19] Supra n. 2, pp. 78 – 79 supra n. 3, pp. 68 – 70 and S. 25 of Travancore Nair Act Sec. 33 of Travancore Kshatriya Act, Sec. 33 of Cochin Marumakkathayam Act, S. 33 of Madras Marumakkathayam Act as Amended 1958.

[20] K. Mudaliar v. R. Udayar, 1966 KLT 361 (FB).

One specialty of the Marumakkathayam Law is the absence of a right of inheritance to the father's or the husband's property. Under the customary law, the Marumakkathayee wife and children were not entitled to succeed even to the separate property of the husband or of the father. In Kerala, Statutes have modified this position in later period. A father, desiring that his Marumakkathayee wife and children should enjoy his property, had to give it to them in the form of gifts or wills[21].

Karanavans power to effect a partition

In this respect, the position of a Karanavan of a Marumakkathayam Tharawad cannot be equated with that of a father in Mithakshara Law. The father of a Mithakshara family has powers of father as provided under Hindu Law. This power entails him to bind the interests of his sons. This is in addition to his powers as the manager of the family. The Karanavan is not competent to represent the Thavazhi when the division is among the Thavazhies merely because the Karanavan is its head, manager and mouthpiece'. The fact that division is among the Thavazhies only and not among the individual members does not make any difference, as regards the power of representation is concerned because the integrity of the Tharawad is destroyed and the status and rights of individual members are affected in either case. As the power of management of the Karanavan does not extend to this, the Karanavan of different Thavazhies of an individual Tharawad by themselves cannot effect a division among the Thavazhies. A position similar to this custom has been laid down by the Kerala High Court also is Kuriakko v. Ouseph[22].

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[21] Supra n. 1 at p. 86.
[22] Kuriakko .v. Ouseph, 1963 KLT61.

Removal of Karanavan

The Karanavans position is his birthright. It is not derived from the other members of Tharawad. Though in some respects of his powers and duties resemble those of an agent, he is not an agent appointed by the members. Nor he is a mere trustee for them, himself having a proprietary interest in the family property. Here also Karanavans position towards other members in many respects analogous to that of a trustee. All the other members of the Tharawad joining together cannot remove him. If the other members have to remove him, they have to approach Civil Court. Only the Court can remove him that also on some specified grounds. The important cause for removal was gross and continued mismanagement of the affairs of the family[23]. Some of other grounds recognized for the removal of Karanavan under customary law are:

a. malafides in his act,

b. incompetency,

c. misappropriation of Tharawad funds,

d. conversion or ex-communication from the caste and

e. Mental or physical disabilities which prevents from performance of the function of Karanavan[24].

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[23] In Varanakot v. Varanakot 1880 ILR 2 mad 328 it is held that "even if the management of the Karanavan of one Tharawad was not as prudent or beneficial as that of another manager, unless he acts malafide or with recklessness or with utter incompetence, he cannot be removed from management".

[24] Sreedhar Wariar supra n. 1 at pp 63-64, see also Sundara Aiyer p. 25. some of the earlier decisions of Madras High Court throws some light on the customary "Marumakkathayam" is the main land are In Govindan Nair v. Narayanan 1912(23) MLJ 706 – it is held that if the Karanavan becomes a lunatic or idiot, he cannot function as the Karanavan and he will ipsofacto cease to be a Karanavan.In Kanaran v Kunjan 1888 ILR 12 Mad 307. Karanavan was removed due to blindness. In Ukkandan Nair v Unnikumaran Nair 1896(6) MLJ 139, the "Karanavan" was removed on the basis that he was convicted of murder of a member of "Tharawad". A passage from the judgement will reveal the inter relationship between members and the "Karanavan". "The position of the Karanavan requires him to be brought into intimate association with the

Fusion of Monday property with Friday property - an Andrott specificity

This is a unique custom prevailed in Andrott Island. By this custom the self-acquired property will merge with the Tharawad Friday property, if it's was not devised by writing during a person's life time. This natural death of such a custom was of recent issue. In 1971 the Committee Appointed for Unification of Customary Laws noticed the existence of such a custom in Andrott and Kalpeni Islands.[25] It should be assumed from the information given by the islanders that this custom had last breath in the early 90's or during the end of 80's. It was an important question in Andrott Island in the past and served as ground for so many litigations. After the communication facilities and the improved inter-island interaction the Androth Island is identified that this custom is peculiar to them alone. Later by the realization that this custom will cause too many difficulties they have stopped this custom by themselves. Earlier when this custom

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members of the Tharawad. He is the guardian of the minor children's and in other respects is in the position of the father of the family. It would be monstrous for the Court to compel the family to submit themselves to the authority of man who had been convicted of murder, especially, to a murder of a member of the Tharawad.

[25] A report of the committee appointed as per proceeding of the administrator F No 18/41/70 Gen. III dated 30-6-71 p.7. While discussing on the customary law of Islands. It is mentioned that "Originally the islanders acquired the properties for and on behalf of the members of his Tharawad only. It was never intended that such of those acquisitions should ever devolve on his wife and children. The question as to self-acquisition had for their nucleus the Tharawad properties never arose because family, as is now understood was known to the people at that time. All acquisitions were for the benefit of the Tharawad. That is why some of the preachers of the religion, who have spoken before us say, though the Islamic tenet in its strict interpretation does not permit the owning of the institution as wakf, in effect it has come to stay so, as the intention of the acquirer has been that the acquisitions shall be enjoyed by the descendants through the female line only. That, such has been the intention and that such has been the nature of acquisition are what some of whom, we examined also have given us to understand. They even oppose division of properties on this sole ground. When the original acquirer never intended his acquisition to be enjoyed, after him by else one other than his own sisters and their children, it is little wonder that even self-acquisition as in Andrott and Kalpeni should, on the acquirer dying, evolve on Tharawad and not on wife and children, irrespective of the question as to what formed the nucleus for such acquisition."

emerged, the society was giving importance to its community rights rather than individual rights. In those days this custom was harmonious with their social out look. When the Lakshadweep islands entered into modern era where the individual liberty and individual rights replaced the old community consciousness this particular custom caused lot of difficulties to make them feel that the custom is unreasonable in the present day context. Apart from that religion is also against this practice. In short for modification of custom and even to stop a custom the society has its own mechanism. That is based on the convenience of a society and the reasonableness or unreasonableness experienced by the society as a whole. Being a small island and the people having face to face relations the Andrott Islanders could effect this modification of the custom or repealing of custom in a short span of time.

Thavazhi partition and per capita partition

In Lakshadweep Islands there is no unanimity as regards the custom on the mode of division of property whether it is for maintenance arrangement or absolute partition. The custom, which followed in Andrott and Kalpeni Islands, are Thavazhi partition or Perstripes divisions. In all other Islands the custom followed is the per capita division. Only because of this divergence in the mode of division an earlier attempt to unification of a customary laws in 1971 met with the failure.[26] The Kalpeni and Andrott Islanders enmass objected vehemently any change in the existing Perstripes division in their islands. They were very much anxious to preserve the unity of Tharawad. When the

[26] Supra n. 101 p.16. "An examination of the evidence recorded by us bears out that an overwhelming majority of the people at Kalpeni and Andrott Islands are anxious to retain the existing mode of enjoyment and inheritance of the Tharawad properties. Even the younger generation, represented by members of Youth Club, have strenuously canvassed for the retention

(f.n.contd)

author conducted his interviews and public meetings in 1995 and 1996 it is found that the majority of Kalpeni and Andrott Islanders are even now supporting the persistence of joint family Tharawads and also the perstripes divisions.

The property belonging to the Tharawad is the property of all the males and females that compose it. Karanavan is the person who is the senior most male member entrusted with the administration of the affairs of the family. In the capacity as manager, the Karanavan cannot impose partition, unless there is consent of the members. Every one is proprietor and has equal rights for enjoyment. Whether all the members are entitled to equal right on partition or as maintenance depends on the mode of division, the family is adopting.

A Tharawad is, no doubt, that consists of so many Thavazhies, i.e., "lines of mothers". When a division takes place, it generally splits up according to Thavazhies i.e., those descended from the same mother or it may be from the same grand-mother, while separating themselves from the Tharawad as a whole, form themselves into a new group instead of living separately as individuals.

While separating from a joint family, how are the rights of the individuals calculated? Two methods are there. One, is taking per capita which insist each and every member in the Marumakkathyam family, how low so ever his position in the family, is entitled, to equal share, i.e., whether minor or major, whether male or female, each person is entitled to get one share each. This is otherwise called a per-capita division. In contrast to this there is yet another mode of division, which is popularly known as per

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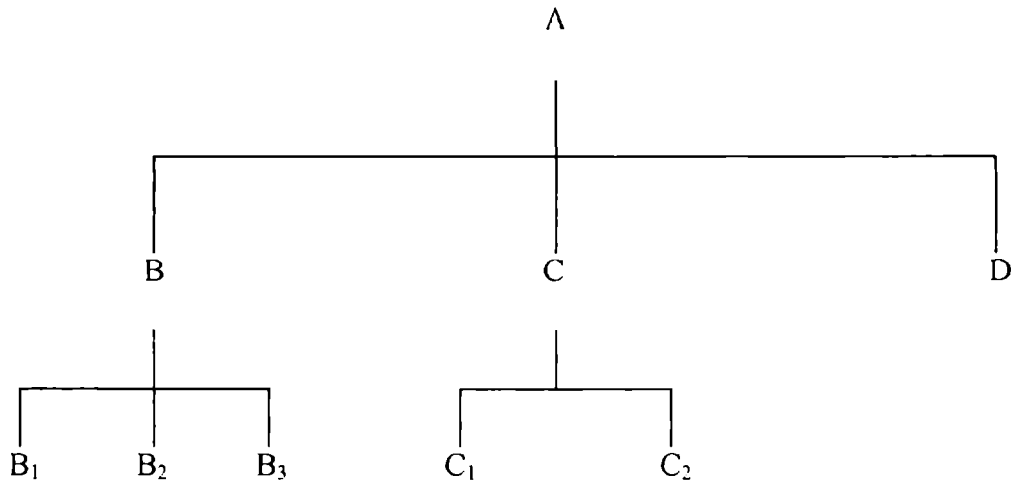
of the present system of inheritance as different and distinct from the system that, of late, being followed in the other islands."

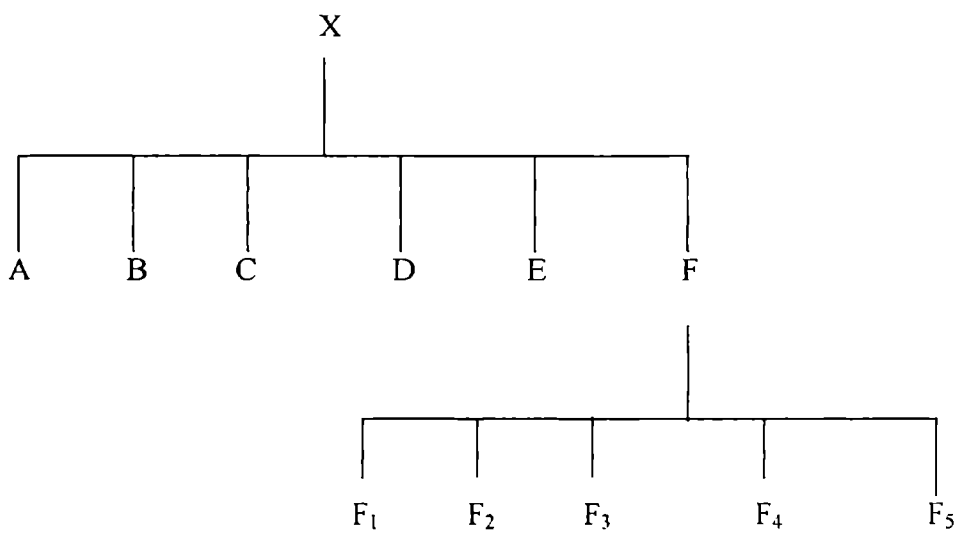
stripes division or Thavazhi partition. Each Thavazhi is entitled to get equal share irrespective of the number of persons in each Thavazhi. When we are discussing the Lakshadweep Marumakkathayam, it is to be noted that males also are entitled to get a share equal to that of female only with the condition that after his death, the property allotted to him should revert back to the Tharawad. Therefore for the purpose of partition of Friday swoth at Andrott and Kalpeni islands, the term Thavazhi also includes a male member entitled to get a share in the Tharawad swoth. So in Lakshadweep, we can differentiate a male Thavazhi from a female Thavazhi.

To explain the difference between the Thavazhi [per-stripes] partition and the per-capita partition, the following illustration will be useful: Suppose a family with a common ancestress A. B and C are her daughters and D is her son. This B is having three daughters B1, B2 and B3. C is having two daughters C1 and C2. If property is to be divided per-capita. A, B, C and D, B1, B2, B3, C1 and C2 all will get one share each. If the property is to be divided per-stripes A, B, C and D alone will get one share each. Their progenies B1, B2, B3, C1 and C2 will not get any share under this system. (See figure 1, below).



(Fig. No. 1)

Suppose a common ancestress X has six children A B C D E are sons and F is a daughter. This F has 5 children F1 F2 F3 are sons and F4 and F5 is daughter. This genealogical tree can be described as in Fig. 2 given below. If a division perspires is effected, X A B C D E and F are entitled to get one share each. If the division is per-capita all this A, B, C, D, E, F, F1, F2, F3, F4 and F5 will get one share each.



(Fig. No. 2)

If the division is a maintenance arrangement on the death of males' i.e., A, B, C, D and E, the entire property will devolve on the females who are to continue the family. Otherwise the female who is to continue the family will get only one share. The basis of per-capita partition is that, every individual born in the Tharawad are equal and that there is no difference in the extent or quality of beneficial enjoyment to which the individual members are entitled.

Earlier in Kerala also we could see this difference. In Travancore area the mode of division was per stripes where as in Malabar it was per capita. As far as Malabar is concerned law of the highest Court has laid down impartiality ever since 1814.

Inter-island differences

In Kalpeni and Androth islands, they are following per stripes division. In all other islands, they are following per capita division. A difference, identifiable in the Androth island alone is that, if the Monday swoth is not bequeathed that will devolve on the Tharawad members as Tharawad properties. Another difference noticed is with respect to the Karanavans additional share in case of partition. In the allocation of shares to an unborn child there was some divergence.

Effect of non-registration

In Lakshadweep, generally the maintenance arrangements or the partition used to be registered. Some of the specialties of the system of registration , which was prevailing there also has to be highlighted. The registration Act was extended to these Islands only with effect from 1/11/1967. Even before that, there was a system of recording the partition and maintenance just like the present system of registration. There was no stamp

duty or registration fee in that system. After the extension of the Registration Act, a partition of property valued at Rs.100/- or upwards may be effected orally, but, if a partition is effected, by way of deed, it must be registered. Oral evidence regarding partition on the strength of an unregistered deed is of no consequence. When a dispute arose there is nothing in law against an oral partition, but it is the duty of the person, who is canvassing such a position to prove from the attendant circumstances that actually there was a partition. Since maintenance arrangement or partition is not a conveyance of property, the Transfer of Property Act will not apply. There is no other provision in law requiring a partition to be evidenced by writing. As early as 1856, the Privy Council in Rewun Persad v Mst. Radha said that it is undisputed that a division of joint property might be effected without an instrument in writing. The rationale behind this is that the partition is only mutual renunciation of rights. Therefore it can be made orally.[27]

Deemed transfer

Partition is not a transfer inter-vivos. But, for the reason that through partitions, the property though not transferred, is "dealt with" by parties, for the purpose of attracting the doctrine of lis-pendens it is deemed to be a transfer

Partition of course of conduct

Very basis of the partition by course of conduct is the consent of the dividing branches. That consent has to be inferred from transactions which show that the branches agreed to become divided. There should be some definite act or transaction on the part of the representatives of the different branches indicating beyond doubt their settled intention to conduct themselves as members of divided branches. The common consent

[27] Girija v. Sadashiva, AIR 1916 PC 104 ; V.N.Sarin v. Ajit, AIR 1966 SC 432.

has to be traced out for this sort of transactions, it can be seen that concurrence or consent is obtained by a series of transactions by the units separately or joint transaction of all the units. For example there were two Thavazhies in a family and they have got separate properties by way of maintenance arrangement. Later when one branch alienated the property, the other branch did not make any protest. Subsequently, the remaining branch also alienated their property and the other group did not raise any objection. In such cases we can infer their consent for partition in the absolute terms. This is rarely occurring in Lakshadweep because, in Lakshadweep, the consent is usually obtained in writing, which is known as Sammathapathram or razi. This is prevalent there for more than 100 years. Though under "Marumakkathayam" oral partition has been recognized, in Lakshadweep, they used to write down the partition or maintenance arrangement in the form of a deed. One of the fundamentals of the "Marumakkathayam" law is that unless there is proof of partition, the presumption is that the Marumakkathayam Tharawad remained joint.

Partitions and Minors

Generally the partition entered on the consent of major members will be binding on the minors also. In Lakshadweep, generally mothers of the minor children are signing on behalf of minor. In some cases Karanavan also is seen to have signed on behalf of the minor. Now the trend of judicial decision is that, when there is participation of the natural guardian, mother, in the partition process, a special representation for minor is not insisted. So long as there was no fraud or collusion, and the partition was just and fair, it would be binding on the minors. On attaining majority if the minor can prove that he has been seriously prejudiced then the court will interfere in partition. In this regard it has to be mentioned that generally courts follow the presumption that the documents were

executed without fraud or prejudice to the minor. It is a refutable presumption. When it is proved that the partition was unjust and unfair and prejudicial to the minor, whatever be the time that has lapsed after the partition, the court would interfere.

But, if on attaining majority minor are able to show that they have been prejudiced, partition could be re-opened. So far as they consent they will be provided the share which have been set apart for them. But subject to this the partition is final as between those who are parties to it. The question, how is to determine the share is causing some problem. Because, there is no rule laying down the definite share of each individual and the partition depends entirely on mutual consent. Is it open to separate, intention to be divided from actual allotment of properties and to up-hold the one, while rejecting the other. The consent is to partition as arranged and not to a divided status and the particulars of arrangement, if possible, where it is not possible to arrive at such fair share or where the other parties are not willing to an allotment at variance with the original allotment, the result would be reversion to the original joint status. It has been held that persons who are not on the first instance consenting parties there to may ratify partition. In Lakshadweep, those who were not in island during partition used to ratify that through deeds at Registration office on their arrival.

Guardianship in respect of Tharawad properties

As regards Muslims the natural guardian is father. Mother is never recognized as a guardian, natural or otherwise, even after the death of the father. In Muslim law the mother is not a natural guardian even of her illegitimate children. Against this general principles, in Lakshadweep as regards the Tharawad properties when a family arrangement or partition takes place mother is the person who is signing on behalf of the

minor children and not the father. Very rarely, Tharawad Karanavan is seen to be representing for and on behalf of the minors. In Hindu Law also a natural guardian of a Hindu minor in respect of the minor person as well as his property excluding his or her undivided interest in joint family property is the Father and after him the Mother. In the case of a boy or unmarried girl Section-6 of the Hindu Minority and Guardianship Act. Generally, the courts are not appointing a Court guardian in respect of the undivided interest of minor in the joint family property because the interest of the minor is not in respect of the individual property. Therefore, the position is that with respect to Tharawad or Thavazhi properties the father is not the guardian. The Karanavan who is in management at Tharawad or Thavazhi properties will be the guardian of the minor also. But the custom that the mother is to act as the guardian in relation to the Tharawad or Thavazhi properties of her minor children lies only in theory. In actual practice she is signing in accordance with the wishes of her husband or the Karanavan.

High Court on Guardianship

On analysing the high court decisions in this aspect one can identify a perceivable shift in approach. In 1965 in Krishna Pillai v. Siva Rama Pillai, [28] it was strenuously contended that in so far as the first plaintiff 2 to 6 were represented by their natural guardians, they must be held to be parties to EXT III. But so long as the Tharawad is joint and undivided, its Karanavan is the guardian of minor members. (EXT III held as not binding on plaintiffs). But this 1965 stand of Kerala High Court has witnessed a shift in 1994[29]. In this case 'it is contended that the Karanavan who is in management of the

[28] 1965 KLT 160.
[29] LaxiAmma and others v Rajalakshmi, 1994(2) KLJ 149.

Tharawad or Thavazhi properties will be the guardian of the minor also. But there is nothing in the Madras Marumakkathayam Act preventing the mother from acting as the guardian in respect of the Tharawad or Thavazhi properties of the minor children. In respect of such properties the father is not the guardian It is held that in the partition deed the plaintiffs were properly represented by their mother.

Re-opening of partitions

Reopening of partition is very rare in the islands. If a partition is proved unfair unjust or detrimental to the interest of minors then it can be reopened. Yet another instance of the reopening of partition of a Tharawad property is on the ground of coercion, undue influence, misrepresentation or fraud.

Family arrangements

Family arrangements are an agreement between the members of the family intended generally and reasonably for the well being and harmony in the family. Thereby disputes are avoided, the honor of the family safeguarded, at the same time the morally binding obligations of the members are also taken care off. The factual existence of a dispute is not a sinquanon, for the validity of a family agreement.

Share of unborn child

In the olden days as regards the share of unborn child there was some inter island variations. Over the period of years now a consensus is seen arrived among all the islanders is that if any member is pregnant at the time of partition, an additional share will be allotted in the name of mother. If the child expired before six months after its birth, that share will go back to other members.

Additional share of Karanavan

This additional share allotted to the Karanavan while the division is effecting for maintenance arrangement or partition is also known as Mukthiar amsom in Amini Group of Islands. There is no unanimity in the practice of allotting additional share to the Karanavan. This practice was prevalent earlier, especially before land reforms. After the economic base of the society had shown a shift from land and coconut to service and other sectors the importance of Karanavan has reduced. The basis of additional shares is in a way a recognition of Karanavan's efforts to uplift the family. When that role has been reduced the system of allotting additional share to Karanavan is fading away from the island. Even now in some families they are giving additional shares to Karanavan. That share also vary as one share; half share and so on. So we can conclude that, the allotment of additional share to Karanavan is dependent on the consensus in that particular family. We can not ascribe any particular custom in that regard now or we can say that custom on that point is vanishing. The practice of keeping some property as Tharawad property and dividing the remaining property alone, among the individuals or the Thavazhies, as the case may be, is a custom from the inception of partition in islands.

Partial partition and incomplete partition

There is a general presumption that every partition is a total partition. The burden of proof that the partition is partial [30]or that there has been a prior partition is on the party who asserts that is so. There is nothing in law to prevent the members of a Marumakkathayam Tharawads from entering into partition of some items of the

[30] Nademmai v. Marippa, AIR1951 Mad 635.

properties, keeping apart another set of Tharawad properties. At this stage of disintegration of joint families the important question to be answered is about the impact of partial partition on the sustenance of the customary laws. It is to be deciphered from what happened to this custom when the new legal system was introduced. Order 11 Rule 2 of CPC is applicable only in cases where the claim is based on the same cause of action. That could apply only to joint tenancies where the cause of action is same and to tenancies in common where the cause of action is distinct and separate.

The rule of partial partition is one of prudence and convenience. The law does not compel any party suing for partition, to include all the property to which he is entitled. The question related to this gathers greater importance in the present day Lakshadweep. Lakshadweep has crossed the first phase of disintegration of Tharawad property. Presently there is not even a single Tharawad in Lakshadweep, which has not undergone any partition. My attempt to identify such a family in island met with absolute failure. The changing pattern of the society and its outlook is raising severe challenges to the basic institution of the society - Tharawad. The problems arising out of the gradual metamorphosis of joint family to nuclear family are of serious concern. Previously under the joint family system there was no homelessness in Lakshadweep. Anyone without a shelter was voluntarily given permission to build one in another person's property. The custom of impartiality and maintenance arrangement helped a lot to maintain such a healthy atmosphere. With the disappearance of taboo against alienation and sale of property that healthy custom also made its exit from this society. When the joint families are partitioned some of the properties allotted to parties are not having enough space to construct shelters. The law is preventing the non-islanders to hold landed properties in

islands. This could have save the island being divested to the hands of no islanders. In the wake of new purchasing capacity of the emerging business and service classes, is there any law or custom which can save the poor among the islanders. The answer is an emphatic "No" The severity of this problem can easily be identified at glance the on fact that the total land use area for the 51,707 people [as of 1991 census] is only 26.32 sq.km. The alarming proportion in which the population is increasing can be assimilated from the following tables.[31]

There is no scope for the expansion of the land area. The natural accretion also is not much there. In this static availability of land that we have to realize that the population has increased from 40,249 in 1981 to 51,707 in 1991, recording a percentage increase of 28.46. The number of houses, which were 6,326 in 1981, reached 8,124 in the year 1991.

To make things worse, the pattern of housing also recorded a remarkable change. Instead of coconut leaf thatched houses, after passing through an inter mediate stage ;of tiled roofs now the new houses are of RCC roofing. The size and amenities of the houses are inflated by the replacement of community living with that of individual liberty and privacy. In this no fenced islands, at first fences came, and now big boundary walls are coming up. This destroys not only the marvelous beauty of the islands, the long stretched sands with the shadows of coconut trees with small houses among it :but also the intimacy, love and affection among the people. They are moving towards the urban culture of alienation from neighbors.

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[31] See Infra Appendix B (1), (2) and (3).

This emergence of boundary walls around houses necessitates more land for road, pathway etc. Now after the arrival of motor vehicles in the islands, the two wheelers have become so common. It requires motorable roads. The result was that earlier pathways under the shadows of coconut trees, through coconut gardens and house plots have been replaced by motorable roads. This also snatched a major portion of the land. After this bike and scooter age, now the islanders are entering into auto rickshaw and car age. The result will be that the administration has to widen the roads. But the problem is scarcity of land.

To precipitate this difficulties further, now the islanders are bound to observe the coastal zone regulation which prohibits construction within hundred meters from the coast, which also bars construction of buildings more than nine meters high. In this circumstance is it possible to provide separate housing for each and every nuclear family? This factual impossibility which is leading to homelessness in the island will definitely confuse the peaceful and serene atmosphere of this island community without much delay, unless the society is carving out a permanent device or institution to guard the society from this disastrous impact. Sometimes, joint families may be a solution. The configuration may be changed. The working principles and the modalities may be changed. Ultimately there may emerge another type of community life. So now we are getting one more answer why the ancestors of Lakshadweep Island preserved the joint family and Marumakkathayam, which are against the social structure in Islam even after they embraced Islam. Those are future issues. But for the time being, to keep the Tharawad house intact and to divide other property among the members are the only

solution available in short run. More people and families are now moving in this direction of partial partition.

Customary shariat: conflict and compromise with Marummakkathayam as customary law

Lakshadweep islands property rights are governed by dual legal systems. Customary Marumakkathayam laws govern the Tharawad properties. Shariayat governs the Monday swoth (individual property). In such a mixing up of totally contradictory legal systems whether one system will keep its identity is a debatable issue. Leela Dube has highlighted the arguments projected by Benda Beekman in the context of the Minangakabu.[32] He canvassed, even then Islamic terms are used the legal reality may be different from what is found in Islamic law. An analysis of the interrelationship ancestral property (Tharawad – Friday property) and individual property (Monday property) the making of wills and gift deeds and their execution will unravel the complexities at that level.

Islamic law of property does not recognize the notion of ancestral property. Whether it is received from ascending generations or acquired by one own efforts individuals are having full control over their property. The heirs are no claim upon it during his lifetime. But in Lakshadweep islands the sanctity given to the matrilineal property is deep rooted in the customary law. This property has been created or acquired by the matrilineal ancestors for the benefit of all the matrilineage in perpetuity. It is for

[32] Benda Beekman & Keebet Vow, The Broken Stairways to Consensus: Village Justice and State Courts in Minanjkabau (1984). As cited in Leela Dube "Conflicts and Compromise Devolution and Disposal of Property in a Matrilineal Muslim Society", Economic and Political Weekly, May 21, 1994.

the benefit of the members of the Tharawad. They are all have equal right. This concept of property is beyond the purview of Islamic law. Some islands are trying to reconcile this contradiction by equating the Tharawad property as wakf property.

- The conflict between the two systems can be perceived when realizing the fact that the property allotted to a male member for his maintenance will not devolve on his wife and children. After his death that will revert back to his matrilineal family. But his Monday swoth (Monday property) will devolve on his wife and children on his death as heirs under Islamic law. The options of men to whom the property should go is the determinant in the Lakshadweep to convert the nature of property from Friday (Friday) to Monday (Monday) and vice versa. As discussed already the conversion of nature of property is a major ground for litigation from the very old days itself.

In Islamic law gift deeds can be executed during a persons lifetime. This is subject to he/ she is in full command of his/ her senses. If that be the condition he/ she can gift away even the whole of his/her property to any person or persons. But in the case of a bequest or will there are some limitations. (1) Only one-third of the property can be bequeathed, that also after the repayment of debts, which is the first charge on it. (2) It cannot be bequeathed to one's natural heirs, that is, those who are legally entitled to inherit. In Lakshadweep island wills are used to execute even bequeathing the testators entire Monday swoth (Monday property). This is against (1) above. They are also violating the Islamic law (2) above by bequeathing properties to his wife and children, who are the natural heirs according to Islamic law. These are being done by the persons who are well versed in Islamic law. So we have to come to the conclusion that the Shariat following in Lakshadweep is not the Shariat as such. That is why they are calling this as

customary Shariat. This deviation from the Shariat may be emerged due to their consciousness that religion permits children right over the Monday Swoth or Monday property of their fathers.

The question of natural heirs is important with relate to the nature of property and its devolution. In the case of the devolution of the matrilineal Tharawad property a man's children were not viewed as his natural heirs. That man's matrilineal kins like his sisters or sisters children are regarded as natural heirs for that property. In the case of the devolution of Monday property the wife and children are treated as natural heirs.

Generally on the allocation of matrilineal property to males, they used to look after this property along with his wife's property. His wife and children also get the usufructs of that property through the male. As per the custom, on the death of the male member that property has to revert back to his matrilineal kin. So to prevent the going back of such property to matrilineal kin, the males used to make gift/ will that property to his wife and children. The basic dispute on many of the matrilineal property cases is this illegal devising of matrilineal property to the wife and children by preventing the rightful claimants - the matrilineal kin. While writing will or gift deed the male will mention the matrilineal Friday swoth (Friday Property) as his Monday swoth Monday property. In islands the nature of the swoth can be converted from Friday to Monday by common consent. That also through written Sammathapathram.

Earlier in islands the Friday property was the rule and the Monday property was exception. In 1962-63 Kutty had identified only 9% of the coconut trees on the Kalpeni island coming under Monday property. Now the common property is less than the

individual property. The reasons are the dependence on the landed property was reduced when the service sector and the individual income gone too higher level. The concept of nuclear family also helped this shift in the nature of property.

Legalisation of customary laws

In the past the islands had only one form of property, namely the Tharawad swoth. The advent of Islam and property system of shariat, caused emergence of a new system of property based on the concept of individual possession of property as opposed to joint family property. But this individual property system never came into vogue in the island until the advent of nuclear family system and modern life, which is of a recent origin. This phenomenon has serious social problem, which has called for a basic structural adjustment in the social and legal framework. The naturally slow response of customary law could not handle this pressure. As a result, confusion over matters of property prevailed over litigation. The judicial decisions only added to this melee. This confusion coupled with the great cost of maintaining litigation caused rapid readjustment of the social fabric, which modified many customs. The modified customs were repeatedly questioned before authorities like Amin, Monegars, Inspecting Officers, and Collectors who had in-depth knowledge of these changes and the forces that caused it. They by their decisions have also added the dimension of the change.

But even the modified customs failed to completely redress the basic conflict posed by two systems of property, where one system believed in joint ownership and inalienability and the other believed in individual ownership and alienation. This conflict has echoed itself in various cases. They questioned whether Tharawad swoth are practicable at all?

After 1956, Deputy Tahsildar, Collector, Administrator and High Court had occasion to verify the legality of the changes emerged from the society. After 1967, the tedious duty to verify the legality of custom was given to professionally qualified judges. The fact is that in the eagerness to prove custom, the litigants who were confused produced hundreds of documents of which few were of no evidentiary value.

CHAPTER – IX

IMPACT OF MODERNIZATION ON CUSTOM

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IMPACT OF MODERNIZATION ON CUSTOM

Regular courts and administration of justice as found in the main land was introduced in the islands only by Regulation 9 of 1965. It was brought into force from 1.11.1967. During the same period Regulation 8 of 1965 which came into force on 1-10-1967 enabled the President of India to extend the application of some of the pre-constitutional statues of the main land to Lakshadweep. The Code of Civil Procedure and the Code of Criminal Procedure were made applicable to the Lakshadweep with effect from 1-11-1967. Till that time the 1912 Regulation was in force. Under that Regulation, the plaints were to be presented before the Amin having jurisdiction over the suit. No pleader was allowed in any court except with the special permission of the Collector. In the new courts the legally qualified lawyers are also entitled to appear for parties as a matter of right. The Judge is also a law graduate.

Effect upon Customary Laws

In 1966, Nallakoya v. Administrator, Laccadives,[1] the Kerala High Court had held that the custom of total prohibition against any alienation of Friday properties given on partition has become void after the advent of the Constitution of India. This invalidation of the very nucleus of customary law was really a shock to the islanders. The decision questioned the very existence of Tharawad as a unit of society.

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[1] 1967 KLT 395

In 1978, twelve years after the judgement of Nallakoya, the decision of Buharikoya v. Kasimkoya Haji[2] was pronounced by Justice P. Janaki Amma of the very same High Court. In this case, it was held that the custom of getting concurrence of the reversioners is intimately connected with the right of the reversioners to get the properties in case a branch becomes extinct. It was also held that the restriction on alienation imposed by customary law is not unreasonable and also not against any of the provisions of the Constitution. Thus after twelve years the customary laws got rejuvenation.

There after so many High Courts decisions have come out in the very area. The way in which these decisions are confused the customary laws and the islander is a matter to be examined in detail. How the people reacted to this? What was its impact upon the customary laws? These are the important aspects of study in this chapter.

This analysis is proceeding mainly by concentrating on two fundamental decisions with facts and it's diametrically opposite reasoning. Then the way in which the later decisions followed either of these divergent decisions. Finally to what extend the formal judicial system could confuse, spoil and destroy the customary law. For a clear picture on the disputes on property based on customary law, it is indispensable to know the facts of the case.

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[2] ILR (1979) 1 Ker. 730.

Nallakoya's Case

Nallakoya v. Administrator[3] was an application for quashing an order passed by the Administrator, Union Territory of Laccadives, Minicoy and Amindivi Islands. The facts of the case were as follows. Sheikriyammadath was an ancient family having its residence at Androth Island, forming part of the Lakshadweep Islands. The customary laws of the island governed the family. There were two Thavazhies in the family. One Saudabi represented one Thavazhi; the petitioner is her son, and represents the Thavazhi now. The other Thavazhi consisted of two brothers, Sheik Koya and Muthu Koya. He died in 1963 was representing the Thavazhi and respondents 2 to 7, the legal representatives or Sheik Koya now represents that Thavazhi. The two Thavazhies agreed to divide the properties of the Tharawad by a razi dated 8-12-1941 filed in the Amin's Katchery in the island.

As per the provisions of this razi, even after partition, the properties were to be managed by Sheik Koya and Muthu Koya, who agreed to give half the income from the properties to the Thavazhi represented by the petitioner. It was also provided in the razi that if default is made in the payment of the one-half income to the Thavazhi represented by the petitioner, metes and bounds should divide properties. Alleging that half the income was not paid Saudabi filed a suit for partition by metes and bounds of the properties of the Tharawad. The Collector of Malabar on 30-05-1947 ordered that petitioner thereafter moved for actual division of the properties.

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[3] 1967 KLT 395

The proceedings were transferred to the Administrator while ordering the division directed that in accordance with the custom of the island, the properties should not be alienated, sold, gifted or hypothecated even after the division. petitioner challenged the order in the Kerala High Court. While Sheik Koya filed another petition challenging the order as passed without jurisdiction. The High Court by a common judgment allowed the first petition and set aside the order of the Administrator prohibiting the alienation, gift etc. of the properties with a direction to the Administrator to consider the matter afresh.

Later, the petitioner put in a petition on 8-10-1964 before the Administrator praying for division of the properties into two shares and for handing over the share of the petitioner's Thavazhi to him. The Administrator passed an order[4] on 9-10-1964 directing execution. On 2-2-1965, Amin completed the division of the properties as directed by the Administrator. On 4-4-1965, the Administrator passed an order, which reads:

> "According to the evidence produced before the court, it is clear that Tharawad properties should not be alienated, gifted, sold or hypothecated. I, therefore, agree with the opinion expressed by the assessors.... In the result, I hereby order that the properties of

[4] As per the Laccadive Island & Minicoy Regulation 1 of 1912, the Court of Administrator is a regular court. S. 21 stipulates all questions relating civil claims shall be determined in accordance with custom. S. 22 says that the local Amin of each island on siting with four or more assessors shall be the civil court for the island, and shall have jurisdiction overall civil claims arising there under.

Shakriyammada Tharawad should not be alienated, sold, gifted, or hypothecated even after partition."[5]

Though the judge dismissed the petition[6], being a court of record the observations made by the judge in that case started governing the customary laws area of prohibition on alienation. It is fruitful in this context to verify the reasoning given by the judge in considering whether the custom offends the provisions of Article 19(1)(f)[7] of the Constitution. The judge relied on Art.

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[5] Supra n. 3 at p. 398.

[6] Though it was held that the custom offended Art. 19(1)(f) of the Constitution, the learned judge did not quash the order of the Administrator for the reason that powers under Articles 226 and 227 of the Constitution are not to be invoked for quashing the order of a competent court.

[7] Originally in India there were 'seven freedoms' in Art 19(1). But one of them, namely 'the right to acquire, hold and dispose of property' has been omitted by the Constitution (44th Amendment) Act, 1978, leaving six freedoms in that article. They are: 1. freedom of speech and expression, 2. freedom of assembly, 3. freedom of association, 4. freedom of movement, 5. freedom of residence and settlements, 6. freedom of profession, occupation, trade or business. In the statement of objects and reasons for the deleting of the fundamental right to property it is claimed that this fundamental right was only being converted into a legal right. In the original Constitution this fundamental right was operated as limitation on the legislature itself. After the amendment the legislature become the guardian of the individuals right to property, without any fetter on its goodwill and wisdom. This 44th Constitution amendment got the assent by President on 30-04-1979. Similarly the right to property under Article 31 also got amended by the 44th amendment. Instead Article 300 A has been inserted by the very same amendment. The amended Art.19(1) reads: " All citizens shall have the right (a) to freedom of speech and expression; (b). to assemble peaceably and without arms; (c) to form association or unions; (d) to move freely throughout the territory of India; (e) to reside and settle in any part of the territory of India; and (f).... (g) to practice any profession, or to carry on any occupation, trade or business.

(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the

(f.n. contd.)

19(1)(f) of the constitution which guarantees to every citizen the right to hold and dispose of property. The most fundamental element of ownership is the right to alienate. A person having no right to alienate cannot be termed as an owner. For this the judge quoted Sir Frederick Pollock:

> "Ownership may be described as the entirety of the powers of use and disposal allowed by law. This implies that there is some power of disposal, and in modern times we should hardly be disposed to call a person an owner who had no such power at all, though we are familiar with 'limited owners' in recent usage. If we found anywhere a system of law, which did not recognize alienation by acts of parties at all, we should be likely to say not that the power of an owner were very much restricted in that system, but that it did not recognize ownership. The term, however, is not strictly a technical one in the Common Law."[8]

The Court further held:

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exercise of the right conferred by the said sub-clause.
Nothing in sub-clause (d)-(e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.
Nothing in sub-clause (g) of the said clause shall affect the affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interest of
general public, reasonable restriction on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause, shall affect the operation of any existing law is so far as it relates to, or prevent the State from making any law relating to, -
The professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business or
The carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise".

[8] Frederick Pollock, "In Relation of Things", in Jurisprudence and Legal Essays, p.97.

"Here, we are concerned with a custom of total prohibition against any alienation of properties given on partition in the context of the fundamental rights conferred on the people of the country; and any amount of recognition given to that custom by the courts is the islands or the parties in their transactions cannot make it reasonable. If that were so, the custom has become void after the advent of the Constitution."[9]

The definition of 'law' in the Indian Constitution includes 'custom'. The court relied on the definition[10]. It was observed that the custom, which bans alienation, sale, gift or hypothecation even after partition, is against the constitutional provision 19(1)(f). However, Art 19(1)(f) gives a fundamental right to a citizen to acquire, hold and dispose of property. That is subject to clause (5) of the Article, which permits reasonable restrictions to be imposed by law on this right in the interests of general public.

It is submitted that considering the level of civilization of the community and the isolated position of the islands, it cannot be said that the custom of alienation of property is an unreasonable restraint upon the right to hold and dispose of property. This was projected upon the Madras District Gazetteers

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[9] Supra n. 3 at p. 403.

[10] For arriving at this decision, the judge also placed reliance on Art. 13(1) of the Constitution which read as follows: "All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provision of this part, shall to the extent of such inconsistency, be void'. The 'law' in this Article is having connection with Art 13(3)(a), which states: "In this Article, unless the context otherwise requires-'Law' includes any ordinance, order, by-law, rule, regulation, notification, custom or usage having in the territory of India the force of law."

statement[11] that the community in that island is small, that the main income for the people is from coconut trees, that if outsides are allowed to purchase properties that would disintegrate the community and open the door for exploitation, and that for the preservation of the community and to prevent the disintegration of joint families, it was necessary that such a custom should be perpetuated in the island. A custom which amount even to total prohibition of alienation can be sustained as reasonable under Art 19(5) if, the social interest requires such a total prohibition.

Buharikoya's Case Corrected Nallakoya

In Buharikoya v. Kassim Koya Haji,[12] the suit was for declaration of title and recovery of possession. There were five branches of the Tharawad. The branches were Asaroda, Ranakkal, Bapachinellala, Beredom and Kaniasam". The Bapachinellala and Ranakkal branches are now extinct. The thirty-eight plaintiffs in the case belonged to the asaroda branch. The Ist defendant in the suit now deceased was the sole surviving member of the beredem branch. Defendants 2 to 8 are his wife and children. The plaint schedule items are properties registered in the name of the Ist defendant as per the property register maintained in the island during the year 1935. Being Friday properties, they revert on the death of the first defendant to the members of the Tharawad. Contrary to the custom of the island, the first defendant executed a gift deed, transferring his rights in the properties to defendants 2 to 8. The suit was filed for declaration that the document did not convey any right to the transferee.

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[11] C.A.Innes, Madras District Gazetteers: Malabar and Anjengo(1908), pp.479- 487.
[12] Supra n. 2.

The Buharikoyas case reformed the Nallakoya case. According to Buharikoya, the Nallakoya's observation on the validity of custom banning alienation was only in the nature of obiter dicta. This was so because the court disposed of the case on the preliminary ground that an order of a court of competent jurisdiction is not to be interfered with by the High Court either under Article 226 or under Article 227 of the Constitution. This means that the Administrators order prohibiting alienation was not interfered with. In Buharikoya the custom of the Amini Island of obtaining concurrence of the reversioners before converting Friday properties into Monday properties of a branch was examined. This custom, the court said, had its origin in the concept that the properties belong to the common Tharawad and are in the possession of branches, the constituent units of the Tharawad. The custom of getting concurrence of the reversioners is deeply connected with the right of reversioners to get properties in case a branch becomes extinct. The right of a branch to deal with the properties is thus circumscribed by the right that the reversioners have in the items. A branch, which is in possession of the properties of the Tharawad, holds them only subject to the right of the reversioners to object to alienation made without their consent. That restriction is necessary to conserve the interests of the branches, which constitute the common Tharawad. So it is held that such a restriction on alienation in not unreasonable. i.e., the custom is not manifestly unjust or immoral and there is no violation of Art 19(1)(f). It is also mentioned that any change in the existing state of things is possible only by appropriate changes in the prevailing custom by legislation or otherwise. To borrow the words of the regulation 1912 the custom is not manifestly unjust or immoral.

Chamayath Nalakath Case

Chamayath Nalakath NallakoyaThangal & others v. Puthiyakath Syed Koya & others[13] is a case from Androth Island. The plaintiff, Chamayath Nalakath Nallakoya Thangal, prayed to set aside compromises on the basis a Razi entered into between defendants 1 and 2 on 24-9-1960 by which they disposed of certain properties.

One Pudiakath Kunhikoya, an maranavavakasi of the defendants' family, executed a document giving some properties to his wife and children. Defendants 1 and 2 and their two brothers also executed a document giving the properties to their wives and children. The plaintiff and others of the Tharawad came to know of this. The plaintiff filed suits against these persons and others in 1944, 1945 and 1950. The plaintiff and others compromised the suit filed against Kunhikoya and others on 25-10-1951. By the compromise, the wife and children of Kunhikoya were to get some of the properties given under the impugned document and Kunhikoya and others agreed that all the properties of Kunhikoya should, after the death of all the members of Pudiakam, go to the plaintiff's group who are the Tharawad Avakasikal of that Tharawad. The plaintiff suit against defendants 1 and 2 and their brothers was also compromised on 14-11-1951. As per the above

[13] A.S.No. 425 of 1974 of Kerala High Court. This is an appeal from the decision of O.S No. 31 of 1969 on the file of subordinate judge Lakshadweep. Originally this case was filed in the year 1960 before the Inspecting Officer of the Androth and Kalpeni. In the Inspecting Officers Court it was numbered as C.S No. 23 of 1960. In the Inspecting Officers Court the issues were framed and boths sides filed answer to the issues. Later when the formal judicial courts established this case as been transferred to the subcourt.

compromise, it was agreed that they could take some of the properties given to the wife and children of defendants 1 and 2. It was also agreed that Pudiakam people till their death will enjoy all the remaining properties of Pudiakam and thereafter the members of the Chamayam Tharawad including the plaintiff should inherit the properties. Except defendants 1 and 2, all the other members of Pudiakam Tharawad are no more and the properties of the Tharawad are in the possession of defendants 1 and 2. The 1st defendant filed a suit against the 2nd defendant on 29-8-1960 by which they disposed of the properties. The plaintiff's case is that this compromise of 25-10-1951 and 14-11-1951. Hence the plaintiff has filed this suit to set aside the above compromise of 24-9-1960. (All these compromises have been effected through Razi). The trial court dismissed the suit with the following reason:

> "Plaintiff's Nalakam and Puthiyakam of the defendants 1 and 2 and other families originally belonged to the Chamayath Tharawad. They got separated from the original Tharawad taking portions of the Tharawad properties with them. But by the custom of Island, the Thavazhies that got the properties could not alienate them. The defendant 1 and 2 had recognized this custom and had agreed not to alienate the Puthiyakam properties and had further agreed to keep them unencumbered to be inherited by the other Thavazhies including Nalakam on their death, but disregarding the custom and the agreements, the defendants 1 and 2 disposed of the Pudhiyakam properties by the execution of Ext.A3. Whether

Ext.A3 can be sustained in view of the custom and the agreement is the question. The restrain on alienation of the share obtained on partition by a Thavazhi cannot be enforced in a court of law, because the custom is illegal and opposed law, to the fundamental rights created by the Constitution. Thus Ext. A1 and A2, so to say, are family settlements, settling the disputes regarding rights in the properties. Normally Exts.A1 and A2 should be enforceable. But they were executed after the advent of the Constitution. It was under the compulsion of a conviction that the custom of restraint on the share obtained on partition is valid and enforceable, that the parties joined the execution of Ext.A1 and A2 and if that custom has become void and hence unenforceable after the advent of the constitution, the agreement in recognition to such a custom cannot be given effect to by the courts."[14]

However, the High Court took a view different from the above and decreed the suit. The reasoning was based on Buharikoya case discussed earlier[15]. As long

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[14] Id. at p. 4.

[15] Facts of the Case are as follows: "This litigation concerns an ancient family, Pallichapura Tharawad of Amini Island. Kuttipakki Haji had two sisters, Ayisha and Saida, who were acknowledged as the members of the Tharawad. The Tharawad dealt with the property under Ext.A2 of the year 1917. The document evidences the possession of Sheik as a senior member of Ayisha's branch and Koyakidavu of Saida's branch. There was yet another dealing of the property in 1935. By that time Kasmikoya was the Karanavan in place of Sheik. Lebbakoya and the first defendant became the surviving members of the branch, of which Sheik was the former Karanavan. Lebbakoya also died subsequently. That left the first defendant as the sole surveying member of his branch. The situation was conducive to a mental feeling in him for dealing with the properties of the branch in favor of those for whom he had the strongest emotional and sentimental attachment. His preference for his wife is understandable. The plaintiff's brought the suit. They contended that the earlier document were only a maintenance

(f.n.contd.)

as the custom gives a strong and valid basis for compromises, it cannot be said that the family settlement in Ext. A1 and A2 suffer from any infirmity. But custom is law under Art. 13 and then it become invalid if it is against Constitutional provisions. The execution of such agreement after Constitution came into being, is invalid.

Edanilam Cheriyakoya's Case

Later in another Amini Island case, Edanilam Cheriyakoya & others v. Pallichapura Pookoya & others[16] the Kerala High Court had verified the unconstitutionality of the custom. The Court after discussing the prior cases expressed its inability in the following words:

> "I am unable to accept the invitation of counsel for the appellant for a reconsideration of the above decisions. There is hardly any aspect that has not been subjected to careful consideration in the aforesaid decisions. The court was in entire agreement with the views taken Buharikoya[17] and Chamayat Nalakath[18] cases."[19]

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arrangement and not partitions outright. What was more, a custom as obtaining in the island prohibiting alienation without the consent of all members of the family was also set up. The courts below have accepted the custom so pleaded by the plaintiffs. The suit seeking a declaration about the nature of the property and its inalienablility and for having the gift deed of the 1st defendant in favor of the 2nd defendant set aside and other incidental relief, has been accordingly decreed."

[16] This is a second appeal to High Court of Kerala. The original suit was filed as O.S No. 15 of 1971 of the Munsiff's Court, Amini. On that decision the first appeal was filed as A.S No. 3 of 1979 of the Subordinate Court, Kavaratti. The High Court decision was pronounced on 16th December 1987.

[17] Supra n. 2 per Janaki Amma, J.

[18] Supra n. 13.

[19] Supra n. 16 at p. 8.

In this case relying on the Supreme Court decision, Munnala v. Rajkumar[20], the Kerala High Court held that in case custom has been found to exist, a repetitive, elaborate and excruciating exercise of marshalling self same evidence would be unnecessary in a latter suit. A stage is reached in following a precedent rather than establishing a custom. Highlighting the social changes and the need for new legislation by citing Bhuhari Koya's case the Court pointed out that any change in the existing state of things is possible only by appropriate changes in the prevailing custom by legislation or otherwise[21]. In concluding the judgement the Court observed that any timely change in Marumakkathayam can bring about only by legislature. But in the Lakshadweep islands peculiar circumstances like the affinity to Marumakkathayam with various modes of division makes the legislative intervention a delicate issue, nobody can predict in what way the people are going to react and in what way that will be used for political mileage. This risk involved is the reason, which kept the political will away from touching this burning issue. The single decision of 1978, followed by the Division Bench supported by a series of later Single Bench decisions cleared the confusion raised by Nallakoya of 1966. This series of decision gave importance to customary law prevailing in the islands even while it went against the mainland ethos, and this placed custom on concrete basement. However, this provision seemed to have not continued now.

[20] AIR 1962 S.C. 1493. See also Valliyamma v Velu & others 1983 KLJ 186 at paragraph 13 .
[21] He ordered a copy of the judgement would be forwarded to the Law Commission of India and Secretary to Government, Ministry of Home affairs, New Delhi on 16-12-1987.

In contrast to this line of decisions there is another group of decisions where in the High Court validated the disposal of such Friday properties in hands of the sole surviving member. In such contingency all these decisions are going against the spirit of Buharikoya's decision where in Justice Janaki Amma rejuvenated the customary law. In effect these group of decisions are following the spirit of Nallakoya's decision.

Moosappathoda Jameela's Case

Moosappathoda Jameela & others v. Moosappathoda Chakkikoya & others[22] is a case from Kiltan Island forming part of Amini group of Islands. The property in question belongs to Moosaphathoda Tharawad. The question was whether partition against customary law valid? The suit is filed for the declaration that plaint A and B schedule of properties is Friday properties of the Tharawad of the plaintiffs and defendants are entitled to alienate this property to strangers. The Moosaphathoda Tharawad was divided into two Thavazhi pursuant to a Razi and this compromise order passed by the Thasildar Amini[23]. Basing upon the custom, the court held the alienation of the Friday property without the concurrence of Maranavakasis is not valid in the islands. The trial court decreed this suit. But the lower appellate court reversed the finding of the trial court. In the second appeal the High Court confirmed that lower appellate court decision. The Kerala High Court stated the following reason for holding that the alienation is permissible:

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[22] This is a second appeal file before Kerala High Court on the decisions of the original suit number 6 of 1982 of Munsiff Court Amini on its first appeal AS3 of 1984 of Subordinate Judges Court, Kavaratti. High Court delivered this judgement on 14th June 1991 by Justice K.G.Balakrishnan.

[23] C.S. No.62 of 1959.

"The trial court found that the customs and practice in the island is not to have an absolute partition in the properties and the properties would be given only for enjoyment and on the extinction of any particular branch the property allotted to that branch would revert to the family."[24]

The Court further observed:

"The people of Amini group of islands of which Kiltan Island is a part, followed this practice. But even then the parties often enter into absolute partition deeds and that has also become a custom and practice among the islands. In the present case the parties on either side have not tried to produce any documents or evidence to prove the custom that is prevalent among the members of the community. Going by the oral evidence and the documents produced in this case, it cannot be said that it was never the practice in the island to have absolute partitions."[25]

Pallichapura Pookoya's Case

Pallichapura Pookoya & others v. Pallichapura HamsaKoya & others[26] is a case from Amini Island. This suit is for declaration that Ext.A5 document executed on 23-8-1975 by the first defendant who belongs to the Tharawad of the

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[24] Supra n. 22 at p. 8.

[25] Id. at p. 10

[26] This is a second appeal S.A. 837 of 1984. On the decision of trial court Judgement in O.S.6 of 1981 of Munsiff court Amini and the first appellate order in A.S. 10 of 1982 of Subordinate judges court, Kavaratti. This decision was delivered on 20th October1993.

plaintiffs alienating Tharawad property in favor of defendants 2 and 3 is void for the reason that under the pristine customary Marumakkathayam law" prevalent in the Amini Island, Tharawad property known as Friday property cannot be alienated by a member of the Tharawad without the consent of other members. On the basis that the allocation of a property was made in accordance with a previous decree of a court, it was held the party who had obtained that property without consent of all the members has absolute right over the property. Justice M. Pareed Pillai delivered this judgement. It is to be noted that the particular document in question in this case was executed on 23-8-1975. During that period the prevailing decision was that of Nallakoyas by which any clog on right to alienate a property obtained by the customary law was unconstitutional. So what the first defendant in executing that document does is a valid act at the time of execution. But in the year 1978 through Buharikoya case Janaki Amma held the custom as valid. This case was filed in the year 1981 after the Buharikoya case decision questioning the validity of the document.

Pathimmapur Kasim Koya's Case

In Pathimmapur Kasim Koya and others v. Kunnampalli Beefathumma[27] case also Justice Pareed Pillai gave a judgement without following the decision in Buharikoya case. That case was from Kiltan Island relating to Kunnanpalli Tharawad. The Court observed:

[27] S.A. No. 25 of 1987 of Kerala High Court. This judgement was pronounced on 23rd September 1993.

"There is considerable force in the contention of the appellants that Ext.A1 as a partition deed cannot be ignored merely because certain properties were left out from being partitioned. In Ext.A1, it is clearly stated that the properties were divided by showing description and separates measurements and allotted to different sharers giving them absolute rights. It is specifically sanctioned in Ext.A1 that no sharer shall have any claim over the properties allotted to the other sharers. It also mentions that the properties left out may be partitioned subsequently." [28]

Accordingly the learned judge held that the property allotted to Cheriyakoya could not revert back to other branch of his Tharawad on his death under the customary law of Kiltan Island.

Avvmmada Pathummabi's Case

In Avvmmada Pathummabi v Avvammada Sarommabi,[29] the Kerala High Court considered a position where a property was allotted in a partition to a member who transferred the same to his wife and children. The Court said:

"A contention is raised that the property allotted to Koya till his death. But he has purported to transfer the properties to his wife and children by means of Ext.B87, which had come into effect on

[28] Id. at p. 10.
[29] AIR 1992 of Ker56

his death. The transferees are admitted in possession since then. There cannot therefore be any; reversion of the properties to the Tharawad. The finding that the properties covered by Ext.B2 are not Tharawad properties is therefore justified and does not call for interference."[30]

It is also held that when possession of the property has passed from the hands of the allotted, the reversions cannot question the same or claim any right in it.

Ashiyoda Kasmikoya Case

Ashiyoda Kasmikoya & others v. Ashiyoda Kojankoya & others[31] is the latest case. This is from Chetlat Island. The suit was for setting aside and to declare void the two gifts deeds executed by first defendant to defendants 2 and 3. The very same question of reversionary right and the power to alienation of Friday properties came into question. After reviewing all the decisions mentioned above and relying on the second group of decisions Justice S. Krishnanunni held that:

"Reviewing the authorities on the point, there cannot be any doubt that this court has upheld and recognized the absolute right of an allottee in a partition to the properties allotted to his share during his life time and the same cannot be questioned during his life

[30] Id. at p 62.
[31] S.A.872 of 1990 of Kerala High Court. This second appeal is filed on the first appeal number AS6 of 1987 of the Subordinate Judge, Kavaratti on the original suit No.18 of 1981 of Munsiff Amini. This decision was rendered on 10th December 1997.

time. He is absolute owner with regard to those properties. I am not expressing any opinion as to what would happen if such a sole surviving member dies leaving any property behind him. For the purpose of this case 1st defendant had executed Ext.A4 and A5 during his lifetime transferring the entire properties over which he had right. I had already referred to provisions in Exts.A1 to A3 and found that it constitutes absolute partition, though in Ext.A3 it is wrongly stated that the suit was for maintenance. Ext.A3 application makes it abundantly clear that Sara was not satisfied with the maintenance arrangement and she requested the manager for absolute division of the properties. It is idle to contend that they would have entered into another maintenance arrangement. The terms reveal that not only the trees, but also land in which the trees stand were allotted to the sharers. Therefore Exts.A1 to A3 reveal an absolute partition allotting the plaint schedule properties."[32]

Other Cases

In one case[33] the Division Bench of Kerala High Court held:

"Even if the plaintiff's Thavazhi had an Attaladukkam rights in the assets of the defendants Thavazhi the plaintiff cannot question the alienation made by the first defendant because he had absolute

[32] Id. at p. 6.
[33] A.S. No. 511 of 1974.

rights to deal with the property. No malafides has also been made out in the case. Then the only point to be considered is how far the alleged custom in the island providing for Attaladukkam rights stand in the way of Ext.A1 transfer. On the evidence available on record we do not find that any such custom has been duly proved to exist in the Island."[34]

In another case[35] from Kavaratti Island Justice P. Subramonian Poti observed as follows:

"The cause of action on the documents would very well arise on the death of the last surviving among the defendants. At the same time I make it clear that in case the Tharawad is found to be divided in any future litigation naturally any arrangements reached by the members would not be challengeable at the instance of the plaintiffs".[36]

It is held in this case that other Thavazhi members would not succeed to any rights in the property by the death of a sole surviving member of a Thavazhi.

It is to be mentioned that some of the above decisions are appealed against. As mentioned earlier two drafts of codification of Customary Law could not be implemented because of difference of opinion among the people. This difference

[34] Id. at p. 8.
[35] A.S. No. 209 of 1977 decided on 30th November 1982.
[36] Id. at p. 6.

of opinion is due to many aspects. A portion of the population is interested in preserving Marumakkathayam. Among supporters themselves the reasons are different. Another group is for the abolition of Marumakkathayam. Among this group also the reason for abolition are different for different groups. They range from personal to religious. The shift from the pro "Marumakkathayam" group to anti-Marumakkathayam group do not want any reason other than a change in the family structure so as to make his position more prosperous than his earlier stage, if he shifts to other side. Apart from this, there are inter-island differences of opinion as per capita partition and Thavazhi-partition

After the pronunciation of Nallakoyas decision in 1966 the entire islanders rationalized their approach to life on line legally dictated by the High Court. To escape from the clutches of illegality, all the Tharawad started dividing their Friday properties with the absolute right for alienation. They discarded the reversionary right and more and more Friday properties converted into Monday property. After this 1966 decision we can witness a spree of registration in almost all registrar offices converting the Friday property into Monday property and also the absolute partition with right to alienation. Apart from that they began to treat all the maintenance arrangement made after the coming into force of Constitution as partitions with absolute right of alienation. On the basis of this so many sale of properties were also effected. In this flood of partition, almost all the Tharawads in the island faced disintegration. They adjusted their social relations in such a way as to follow the law in accordance with the new dimension presented by the High Court. The net result was the disintegration of the joint family set up in the

islands. By this the position and control of Karanavan has come down and the importance attached to customary law started vanishing from the society. It is to be mentioned that many of the families entered into new Sammathapathram and united again by converting the Monday property into Friday property.

The simple innocent islanders believed the decision of the High Court. Just to save themselves from being branded as non law-abiding people, with pain and sorrow, they were forced to smash their centuries old pure and serene joined families. On the ruins of that purity, they started moving to nuclear families. After 12 years, when Justice Janaki Amma rejuvenated the customary law, through Bhuharikoya's case, the people changed their attitude. This 12 years gap for revalidating the customary law was a misfortune. By that time the togetherness and the community orientation of the society started vanishing. People started thinking and acting only in terms with nuclear family. But that Buharikoya decision saved this society from further cosign their treasure—the matriliny based Tharawad. If we are following the Division Bench ruling and accepting Buharikoyas decision as true in this respect, one has to admit that the interpretation of Nallakoyas decision was a misfortune. The value given by this nation for that misfortunate event was the destruction of a most valuable culture and way of life, which would have a model for the whole world. Now it can be safely recorded that there is not even single island Tharawad that has not been partitioned. The researcher's attempt to trace out a non-partitioned Tharawad was in vain. It is clear from the above that only a decision from the supreme constitutional court alone can clear the confusion and to instill the minimum expectation of the islanders regarding the predictability of judicial

decisions. Thus we can conclude that in main land the Marumakkathayam got a legislative funeral and in Lakshadweep it has got a Judicial funeral.

CHAPTER – X

WOMEN STATUS AND CUSTOMARY LAW

CHAPTER-X

WOMEN STATUS AND CUSTOMARY LAWS

The status of women in a society is an indicator of the modernity of a society. It is to be analyzed from her position in family and in society. That is intertwined with the system of family and the ideology of the social group to which they belong. It is inherited through historical institutions and culture. The structure of the family and its relations with other institutions is critical in determining the role and status of a woman in any society.

The position of woman in Lakshadweep society is trying to be examined in the light of practice of matriliny, monogamy, non-dowry marriages, marriage and divorce related practices and custom regarding the guardianship of children. The rolling back of customary law by converting the Friday property into Monday property is also a subject with consideration in relation to woman's status. The really enviable is position of Lakshadweep woman in such a 100% Muslim society with a status different than their counter parts in other parts of the world is built up on three pillars, viz.:

1. Matriliny,
2. Monogamy and
3. Custom of no dowry

Matriliny

As discussed in Ch.VIII, under the Marumakhathayam (matrilineal) system of inheritance descent and succession to the property were traced through females. The mother formed the stock of descent and kinship Right to property also was traced through

females and not through males. In this system the child carries the house name of mother. The wives and children belonged to a different family and had no rights in the property left by husband or father.

Marumakkathayam Tharawad in Lakshadweep is indissoluble unit with no separate rights, living under one roof under one head. Partition can be made only through common consent. Otherwise all the divisions of properties are family arrangements only by which the males right is only the ususfructory right over the property. On his death that property would go back to the original Tharawad, not to his wife and children. The property of woman will go to her children.

The status of woman in a family and society is determined by their economic stability. No one can alienate her land without her consent. Apart from that till recently most of the property was inseparable common property, i.e., it could descent through female line only as common property of the family.

Another custom is linked with this concept of common property in Lakshadweep is that neither the husband nor wife dose leave their family on marriage. The husband was performing his martial duties through night visits[1]. The children of females are living with her in her Tharawad under the guidance of her Karnavan. The role of father was limited.

There were frequent divorces in Lakshadweep in the past. The children of divorced women were the children of her Tharawad. The Tharawad would take care of

[1] See for details, supra Ch. VIII

his maintenance. Under this security net of Tharawad, the position of divorced woman was safe. She was having property of her own to maintain herself and the children. This landed property, which she got through the customary law of Marummakkathayam made her position safe and she need not worry about her or her children's future. It is the duty of the Tharawad to maintain a divorced woman and her children. So unlike other Muslim societies there was no destitute or no waganacy in Lakshadweep. Impact of this has resulted in one notable phenomenon in the Lakshadweep that there was not even a single yatheem khana.[2] This unique character of Muslim society is the outcome of customary law from its strong and more efficient institution, the joint family, which made it imperative for the Tharawad, to look after the children of divorced.

Monogamy

Under Muslim law, marriage or (Nikah) is defined as a permanent, immediate and unconditional civil contract (which is not contingent) between two persons of opposite sexes for mutual enjoyment proclamation of children[3]. The Islamic reforms have limited the number of wife to four. This is subject to the condition that only one woman may be married if it is not possible to observe equality among wives[4]. This four wives rule was not in practice in Lakshadweep. In islands the monogamy is the rule accepted by custom[5]. Generally in islands the marriage is being performed within the Koya, Malmis

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[2] The house for destitute children who are a part and parcel of all other Muslim societies in the world.

[3] Bail I 4,10,16,18; head 25,33.

[4] Mst Zubaida v. Sardar shah AIR 193 Lah 310.

[5] During 1960's and 1970's, out of 670 married men only six were practicing bigamy. A.R. Kutty, Marriage and Kinship in an Island Society(1972), p. 175.

and Melacheri called endogamous groups. The cross-cousin marriage was rampant there the exchange marriages are rare.[6]

This strict adherence of monogamy is forming the very basis of the customs related to divorce also. The system exhibits so many divergences from general Islamic practice. Marriages between paternal parallel cousins are permitted by Islam. But this practice is not prevalent there in Lakshadweep. By general Islamic law the Muslim wife is duty bound to reside with the husband[7]. It is not open to her to refuse to reside with him[8]. But under Lakshadweep custom this was not followed Wife remained in her house alone. This is a practice going against the beliefs patriarchy based Muslim religion.

On analyzing marriage from the angle of rights and liabilities also some peculiarities can be identified. Earlier there was no change in residence, either for wife or husband. Marriage was not bringing any change in the existing conditions of wife or husband in terms of economic interests, domestic groupings and affiliation of children. The marriage gives a man exclusive rights of sexual access to his wife. This union is achieved through the night visits to wives house.[9] The peculiarities of the island marriage are coming out of customs they were following. So long as a man continues to visit his wife he is duty bound to pay customary payments. These were in the form of rice, cloths and coconuts. A husband is supposed to provide two or three bags of rice and twenty-five to fifty coconuts during Ramzan to the woman's Pira. The measure of cloths is two

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[6] Out of 670 marriages 2 were only exchanges. Id. at p. 178.
[7] Out of the 670 married males 515 visit their wives at their residence. In 124 cases the husbands settled down permanently in wives residence after few years of marriage. Only 8 cases have identified in this women settled with husband family. Id. at p. 178.
[8] B.R Verma, Muslim Marriage, Dissolution and Maintenance (2nd edn. 1988), p.89.
[9] See supra. Ch. VIII.

loincloths and few meters of cloth for blouses and headwear. He is also expected to present things like fancy cloths, ornaments cosmetics. This is to meet her personal needs. Husband has to send tea, sugar and spices also to the wife's house. Depending upon the status the economic capacity of the 'Tharawad', position of the man, his individual income and his personal affection for his wife there would be variation in the nature and number of gifts and payments[10].

In Muslim society wife does not have exclusive sexual right over her husband for the reason he can have four wives at a time. But in Lakshadweep there is equality among men and women in the respect. This plurality of wives allowed by the Islamic law has been downsized by the custom through matriliny and the system of night visits to the wife's house. In enforcing monogamy, the property rights of the wives have a fundamental role. This has enabled the wife and their in-laws to stop the husband's rights over her if he started visiting any other woman. Custom of monogamy is prevailing over the Islamic law of plurality of wives in the islands is a living example of how a local custom can enforce its supremacy over religion based laws. Thus the major disadvantage of Muslim law as against the dignity of woman has been safeguarded by the custom of monogamy in the islands.

In Lakshadweep, they have differentiated the first marriage and remarriages. The first marriage is known as Mangalam (Marriage). The remarriages, from the women's side it is known as Firiyan Vekkal (Literally keeping the husband). Men are calling it as Kanoth (local term for Nikah)[11]. In the earlier Lakshadweep set up the contributions and

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[10] A.R. Kutty, supra n. 5 at p.179.
[11] Id. at p. 184.

co-operation of the father and kin were obligatory in the first marriage. The Karanavans or the father generally is identifying the match. It was being celebrated in a way befitting to the status of the Tharawad. The subsequent marriages or remarriages known as Nikah is performed in a simple way. Guests were not invited except a very closest few. Generally besides the man, the kazi and the woman's wali – the father of the girl on his absence her brother or fathers father – were the only outsiders present. Thus they were celebrating in a way that may suit to the status of the Tharawad.

Earlier the Islands were known for child marriage. The first marriage used to be solemnized at the age of 12 or 13 for girls and 15 or 16 for boys. Pre-puberty marriages of girls were common[12].

Divorce

Baillie used the term 'divorce' for all separations originating from the husband and 'repudiation' for Talaq in the limited sense, of separation effected by appropriate use of words.[13] The practice prevailed there in Lakshadweep was broader in the implementation of these words.

In Lakshadweep it is seen that monogamy is the rule, that does not mean that there was no dissolution of marriage. The divorce in the islands was very easy and it was attached to remarriages and divorces. In one of the studies it was revealed that about 55 percent of the married males had married more than once. The number of marriages

[12] Leela Dube, Matriliny and Islam (1969), p.67.
[13] Bail I, 204

contracted by them ranged from 2 to 19. 51% of the total married woman were remarried more than once. Their number of marriages was ranging from 2 to 14.[14]

In those days of high incidence of child marriages the divorce was initiated and executed at the instance of elders like Karanavan, mother, grand mother and sometimes by father. Simple quarrels, insults, family ego would work as valid reasons for more frequent divorce. The in law's likes and dislikes are stigated divorces were working only till the age 20-25. There after the determinant factors were mal adjustment between couples or the attraction with other man or lady. In the beyond 25 age group extra – marital affairs were the one of the main reasons leading to divorce. Under estimating presents, neighbors rend remarks, rebuke towards a Tharawad or Pira, quarrel on trivial matters or insistence from old women or men were allscarom for divorce. [15]

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[14] For details of age-wise frequency of divorce and marriage of men and woman, see the Table's of Kutty, supra n. 5 at pp. 181-82.

[15] Kutty observed: "At the age of nine Ego was married to a boy (10) who was not in any way related to her. After about a month the ceremony of sending presents from the boy's to the girl's household took place. Ego's mother and mother's mother were not pleased with the clothes that were presented. They thought that the things were inferior in quality. These clothes were displayed deliberately in the presence of neighbors and rude remarks were passed. When the news reached the matrilineal group of the boy his people felt offended. His Karnavar again restricted the boy from visiting the girl. He and the father of the boy arranged another girl for the boy and shortly afterwards the marriage was performed. After a few days, Ego's people secured a divorce for her and afterwards she was married to another boy belonging to the same Tharawad as her former husband but from a separate Pira. The members of these two Piras though belonging to the same Tharawad, were on bad terms. The members of the Pira of the new husband of Ego and her karnavan found in this alliance a fitting rebuke to the Pira of the new husband of Ego and her karnavan found in this alliance a fitting rebuke to the Pira of her former husband. The relationship lasted, however, for only seven months. The member of the households of the boy and the girl quarreled over some trivial matter and the boy's mother insisted on and obtains a divorce for his son. After two months Ego was married to another manwho was about twenty years old. This marriage lasted hardly for ten days for the girl did not like her new husband who was politely asked by her mother not to visit the girl again. The man stopped visiting Ego but deliberately delayed the pronouncement of divorce.A few days later, through the mediation of some elders, he agreed to divorce her after taking back the ornament which he had given. By this time Ego had attained puberty which forbade her remarriage for three months after divorce. After about ten months she was married to another man who divorced after five months since he began to love another woman whom he later married." Id. at p. 187.

The islanders are following Islamic law and injunctions in divorce and remarriage. Divorces are effected through the pronouncement of the formula of Talaq, or repudiation, three times in immediate succession[16] by a man. By this the husband is giving up his rights over his wife. He is also repudiating his obligations towards wife. The formula may be pronounced in the presence of wife and or before Kazi for legal sanction, or the man may give his pronouncement in writing with attestation of two adult witnesses to the kazi. In Lakshadweep, earlier, on taking decision to divorce one's wife the man may pronounce the formula of Talaq immediately. Another method was that he might simply indicate his intention by discontinuing his visits to her. In the second case he informs her or her mother or Karanavan through somebody that he do not want to continue the relations with her. In this monogamous society a man marrying another woman also is regarded as an indication of his intention to divorce his previous wife. This is also known as Valakepokal (literally, going upon quarrel).

The divorces initiated by the wife's were common in Lakshadweep. When a woman wants a divorce she or her mother or her Karanavan informs her husband he need not visit her further. This is known as Valakevidal the literal meaning being sending upon quarrel. The security provided by the Tharawad is the strength, which helped this Muslim woman to attain the equality with men in affecting divorce. This gives an option to her to stop an unbearable living with husband. If the relation of the husband and wife is strained, generally the man waits for a few days to declare divorce before kazi. Since the

[16]This third pronouncement makes the Talaq irrevocable. As per Muslim law Talaq is revocable if the formula is pronounced only once or twice. In such cases the husband can take buck the wife before the expiry of ldda the period of compulsory waiting for the divorced woman which three menstrual periods.

pronouncement of divorce is men's exclusive privilege, the men used to delay the pronouncement for making a bargaining point for demanding cash. If the wife is keen on marrying some one else this tactics will work well. Earlier on divorce, all the matters of settlement like return of the ornaments given by the husband and the payment of the arrears of the customary annual expense known as chilao as done on mediation in presence of some elders or the Amin. The girls side was being represented by Karanavan of the girl, sometimes father of the girl also may join. The man repeats the formula of divorce three times before the mediators. The pronouncement is given in writing to the Kazi with the attestation of two witnesses[17]. In special circumstances a woman is having the legal right to sever a marital relationship. Under this procedure which is known as Fasaq, the woman utters the formula of divorce dictated by the Kazi[18].

The remarriage among the very same divorced couples was not uncommon in the old Lakshadweep society. Here they were following the Islamic law dictate that a man may remarry his divorced wife only after she has been married and divorced by another man. In such case a man is arranged who would marry the woman and then divorce her after sleeping with her for a single night. This procedure is known as 'voyyath'. The woman who agrees for a remarriage with her former husband may ask her current husband not to make any further advancement to her. In such an eventuality the current husband may refuse to divorce her and compensation in cash may be demanded[19].

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[17] Supra n. 5 at pp. 183-184.

[18] In one case of recorded Fasaq the husband was suffering from serious mental disorder. In another case the husband was unable to be present for the pronouncement of Talaq as he had been sent into exile by the administration. Ibid.

[19] Id. at p. 184

The marriage in Lakshadweep involves very limited rights and responsibilities. No new social units were created nor there any reshuffling of the units. Man and woman were having their permanent roots and base at their own respective Tharawad. So the easy and inexpensive system of Islamic divorce when coupled with the safety and security provided by the matrilineal Tharawad made divorce and marriage for this society a casual event. It is generally true that in all the known matrilineal societies marriages were unstable[20]. From 1962 onwards due to the initiatives of Administration with the help of Amin, elders of the society started imposing annual fine, which would go towards the maintenance[21].

Present Scenario

Apart from this the old custom of frequent divorce has got a major blow from the decision of the modern courts. This came from the decisions pronounced under the Muslim Women's (Protection of Rights on Divorce) Act of 1986[22]. The court has given

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[20] This was true in the case of early Kerala Nairs, Khasis and Gharus of Meghalaya also.

[21] Supra n. 5 at p.201

[22] The question of maintenance to Muslim divorced wife is a complex issue. S. 488 of Criminal Procedure Code 1898(as amended by Act XXVI of 1955) did not provide maintenance allowance a divorcee beyond iddat period. The Sections 125-125 was introduced in the code in 1973 provided maintenance to the Muslim woman even after the iddat period. This benefit of S. 125 of the Code was extended to a woman who has been divorced or who has been obtained divorce from her husband and has not remarried. The divorcees right to maintenance were restricted to the cases where she is unable to maintain herself. This Ss. 125-128 was applicable to all irrespective of religious distinction and has no relationship with the personal laws of the parties. When the Muslim community objected this on the ground that this is against the spirit of Islamic Law, Section 127(3)(b) was added to the Code.

This provision empowers the magistrate to cancel the order of maintenance passed under S. 125 of the Code if the divorcee has received whether before or after the date of said order; the whole of the sum (dower in case of Muslims) which was payable under customary or personal law applicable to the parties under Section 127(3)(b) of the Code. In Shah Bano Case (AIR 1985 SC 945) restored the Muslim woman's right to get maintenance as provided in S. 125 of Cr. P.C. When the Muslim community objected Muslim Women (Protection of Right on Divorce) Act 1986 was passed.

orders to pay Rupees seventy thousand, one lakh or like[23]. It is to be noted that in the customary law of island there is no mandatory provision for giving maintenance to woman. This may be due to the island custom that the Tharawad Friday property is supposed to be utilized for the maintenance of the members. Because of the new relief of getting lumpsum amount under section 3 of Muslim Women (Protection of Rights on Divorce) Act 1986 the earlier custom of settling matters relating to divorce before elders and Khasi is a vanishing tale from the island. Women are seeking the assistance of the courts, where they are getting lunpsum amount in a big way. Later development of the society through high literacy, individual income, new jobs and separate income for spouses, and their constant interaction with the mainland culture made the divorce a rare thing now. In short due to governmental jobs, constant interaction with mainlanders, and the inflow of mainland ideas, the frequency of divorce has reduced. This Muslim Women (Protection of Rights on Divorce) Act changed the easy and casual character of divorce into an expensive and serious one. The society is in the process of adjusting this. In this adjustment the male group is devising method to shift the burden of divorce to the girl by

[23] Section 3 of this Act provides:-
"(a) a reasonable and fair provision and maintenance to be made and paid to her with in iddat period by her former husband;
(b) where she herself maintains the children born to her before or after her divorce, a reasonable and fair provision and maintenance to be made and paid by her former husband for a period of two years from the respective dates of birth of such children.
(c) an amount equal to the sum of 'Mahr' or dower agreed to be paid to her at the time of her marriage or at any time of her marriage or at any time thereafter according to Muslim law; and
(d) all the properties given to her before or at the time of marriage or after her marriage by her relatives or friends or the husband or any relatives of the husband or his friends.
(e) Where a remarkable and fair provision and maintenance or the amount of 'mahr' or dower due has not been made or paid or the properties referred to in clause (d) of sub section(1) have not been delivered to a divorced woman on her divorce, she or any one duly authorized by her may on her behalf make an application to a magistrate for an order for payment of such provisions and maintenance, mahr or dower or the delivery of properties as the case may be.

demanding amount for payment of that money ordered by court from the newly remarrying woman.

The divorces are precipitating the difficulties of the divorced woman in all societies in the form of anxiety about the children born out of the divorced man. In this regard the practice of this island society is far more effective than any other Muslim society in the world which could even rule out even the existence of Yatheem khanas in the islands. This relief from the mental worries about the safety of children enabled the woman also to remarry as and when marriage bond is broken just after observing 'idda' period.

Divorces and Children

The island has shown a peculiarity in their approach to the children of the divorced wife. Since the children are members of the mothers matrilineal family, they used to stay there only. So the divorce between father and mother was not disturbing their residential set up. After the father divorced their mother they will continue to stay with mother. They will be under the protection of Karanavan and mother. There is no custom that maintenance to be given to children by the father[24]. But depending upon the family status, some are giving maintenance to children, some are not. But by the new enactment providing maintenance to the children is a must.

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[24]Under Muslim law the primary obligation of maintaining children is on the father. Any person maintaining children or incurring debt for maintaining them can recover the same from father. if father wilfully neglects or deserts his children or refuses to maintain them, when he has means to do so, then he can be punished. The fathers' obligation terminates on children attaining majority. Father is required to provide maintenance to children even when the are in the custody of the mother or any other person entitled to it. Even after divorce, the father's obligation exists. For details see Paras Diwan and Peeyushi Diwan, Law of Maintenance in India (1990), pp. I to XI.

Though there may be some hard feelings at the period of disruption of a marriage, in the island situation they are not going to continue forever. Generally, father will continue his relations with children. Depending on the personality of the father and his matrilineal group and on the diversions in his interest and affection, gradually the children may become less and less attached to him. In the island situation such severance of father children relationship is not inevitable. This is due to the fact that the responsibility of maintaining the children rests in the woman's matrilineal kin group. In their traditional set up in the islands, one can identify the supremacy of the matrilineal ties over marriage, paternity and affinity.

Father children relationship continue in respect of formal responsibilities of the father in the children's marriage, circumcision etc even after divorce. Similarly, the children's right on the death of the father are also the proof of this recognition. This is quite contrary to the mainland ethos of severance of father-child relationship on the divorce between father and mother, whether it is among Muslims or other religion.

Marriage

The first marriage consists of two ceremonies Kannoth and Mangalam. Generally they were performed separately with sometime gap between the two. Kannoth is the Islamic religious rite commonly known as Nikah. Mangalam is mainly a social ceremony. Both are being celebrated at the girl's home; only in very rare cases it is conducted in boy's home. The bridegroom and the bride are summoned to the Khatibs house on the

day prior to Nikah. The Khatib asks the bride whether she is prepared to marry the bridegroom. Then the khatib announces her willingness for a fixed amount of Mahr[25].

On Kannoth ceremony day, the brides father along with the people who assembled in the girl's home go to fetch bridegroom. Singers and dancers will accompany this. This is known as puyyapalaye the dippokal and entertained there with light refreshment. The bridegroom is then brought in a procession to the bride's home for Nikah. The brides father sits facing the groom. The Kazi makes the two holds each other's right hand. The bride's father and the groom repeat the formula of the Islamic marriage contract, the boy agreeing to give Mahr and the girls father in turn consenting to give his daughter in consideration of Mahr.

After marriage, the groom's household sends a few bags of rice and few other essentials items to the bride's household. This is to share the expenditure incurred during different feasts held at bride's residence. This is known as moodakodukkal/chilavukodukkal.

Mahr

Mahr or dower is a sum that becomes payable by the husband to the wife on marriage, either by agreement between the parties or by operation of law. It may be either 'prompt' or differed[26].

Earlier this Mahr was ranging from Rupees 21 to 101. That also conditioned by

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[25] N.S.Mannadiar(Ed), Gazetteer of India: Lakshadweep(1977), p.102.
[26] F.B.Tyabji, Muslim Law(4th edn. 1968), p.107

caste and islands. Now this Mahr amount is going Rs. 501, 1001, 5000 and even more. In this matter depending upon the status of the family and the island in which the marriage takes place the amount of Mahr varies. Mahr is the bridal price paid by the groom to the bride. It is decided between the parties before the alliance and is paid in cash on the day of Nikah or on a subsequent date. The Mahr amount once paid is never taken back. A person who has not paid Mahr cannot demand divorce. In such cases Khasi orders the Mahr to be paid before he grants divorce[27].

In Islam marriage being a civil contract, it exhibits traces of having developed out of the purchase of the bride; the bridegroom concludes the contract with the legal guardian (wali of bride) and he under takes to pay nuptial gift (Mahr, Sadaq) or dower not to the wali as was customary in the pre-Islamic period, but to the wife herself.[28]

Apart from Mahr the husbands are obliged to provide certain customary contributions like rice and dress, to the wife and children in the family. In accordance with the economic growth of the islanders this customary gifts have grown into a big thing. Due to the competition among the families the cost of those gifts has reached even up to Rs. 25000-50000 in some cases. Now the marriage has become a costly affair for males in the island. Actual marriage is an elaborate ritual extending from 4 to 7 days[29] depending upon the status of the family.Though the functions are taking place in brides residence, the bridegrooms family is supposed to make contributions towards the expenses. In the Laccadive group of islands it is known as Kalyanappanam. There it is to

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[27] Supra n. 25 at p.102

[28] Schacht Joseph, An Introduction to Islamic Law (1964), p.161.

[29] Supra n. 25 at p.100.

be given on the date of marriage. In Amindivis it is known as Bir. There it is to be given after one year. The amount varies from family to family depending on the capacity of the family. Earlier it was ranging from Rs 500 to Rs 5000[30] and now it has shooted up to Rs 50000 and even more in some cases.

No dowry land

Lakshadweep is a no dowry[31] land. In deciding the women status in Indian context, the first question emerging is how the system of dowry is operationalised in that society. The evils that has been distressing our Indian culture and civilization is dowry in cash and kind demanded by the boy's family[32]. Though Article 51-A of the Constitution provides for 'fundamental duties', that it shall be the duty of every citizen of India to renounce practices derogatory to the dignity of woman. Dowry, the deep-rooted social evil, lead to thousands of dowry death every year[33]. It is a vice, which has not been spared the rich, cultured and educated masses. The urban elite and the rural poor are torturing their wives for dowry. Various enactments and the amendments effected in various statutes itself indicates how deep noted this social evil are[34]. Even today, in the

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[30] Ibid.

[31] Section 2 of the Dowry Prohibition Act defines dowry as follows: "Definition of dowry :- In this Act "dowry" means any- (i) property, or (ii) valuable security, given, or agreed to be given, either directly or indirectly- (a) by one party to a marriage to the other party to the marriage, or (b) (i) by the parents of either party to a marriage or, by any other person, (ii) to either party to the marriage, or to any other person (iii) at, or before, or anytime after, the marriage;(iv) in connection, with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim personal law (Shariat) applies."

[32] R. Dayal, Law Relating to Dowry (1995), pp.1-4.

[33] According to Mr. M.M. Jacob, the Minister of State for Home, the number of dowry deaths had showed an increasing trend from 4,195 in 1989 to 4,837 in 1990 and 5,157 in 1991. For details see R.Dayal, ibid.

[34] In 1961, the Dowry Prohibition Act (Act No.28 of 1961) was passed, prohibiting the taking or giving dowry. By the Criminal Law (Second Amendment) Act, 1983 (Act No. 46 of 1983), Chapter XX-A was introduced in the Penal Code with Section 498-A creating a new offence of

(f.n.contd)

mainland, people could not even reduce the alarming inflation of dowry deaths and related offences.

In the backdrop of the above national picture, the islands system of no dowry for marriages is a relief to this society. The major reason for this is nothing but the matrilineal set up in which the women are holding the major portion of the economic assets of this society.

Women's religious rights

In Lakshadweep the women go to mosques for prayer[35]. This is a deviation from other Muslim societies. It shows the real equality between men and women in all spheres. The customary law of the society shows this, which provide that the women are not equal but superior to man. The foundation for this higher status may be traced in the law of Marumakkathayam. Only on comparing this status with women of other matrilineal groups alone can one identify the merits of this system which are more equitable and just

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cruelty. Section 174, Cr.P.C., was also amended to secure post-mortem in case of suicide or death of a woman within 7 years of her marriage. Section 113-A was introduced in the Evidence Act, 1872, raising presumption of cruelty as defined under Section 498-A, I.P.C., against the husband or his relative if the wife commits suicide within a period of 7 years from the date of her marriage. These provisions reflect the anxiety of the representatives of our people to deal firmly the menace of dowry deaths. Again, there were sweeping changes made in the Dowry Prohibition (Amendment) Act, 1984. Introducing Section 304-B in the Penal Code created a new offence called 'Dowry death'. It raises presumption of culpability against the husband or relative.

It is not enough if the legal order with sanction alone moves forward for protection of women and preservation of societal values. The criminal justice system must equally respond to the needs and notions of the society. The investigating agency must display a live concern and sharpen their wits. They must penetrate into every dark corner and collect all the evidence. The court must also display greater sensitivity to criminality and avoid on all counts 'soft justice'.

[35] In Kavaratti, Agatti, Amini and Kiltan there are separate Niskarapuras (prayer houses) for women, where the person leading the prayer is a women. See Mannadiar supra n. 25 at p.93.

to females. This is contrary to the system among Graos of Meghalaya where female owns an entire property of the matrilineal group[36].

Whether or not the enviable position of the women in the Lakshadweep islands will be sustainable one is the major issue to be addressed. The society has undergone lots of changes, some of which go against the interest of women in this society. They are:

1. the conversion of Belliazcha property into Belasha/Thingalazcha property through Sammathapathram,
2. disintegration of Tharawad,
3. new wave of Islamic fundamentalism and
4. growing male dominance.

Before sixties, most of the properties in the islands were Friday property, namely common property. Men do have only ususfructory rights during lifetime. On their death, the property has to revert back to Tharawad. In the case of females the property will go generation after generation through their females. After Nallakoyas decision and also due to the new individualistic pattern of social living now the impartibility of the Tharawads have bidden good bye to the islands except in Andrott and Kalpeni islands.

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[36] Indian Law Institute, Customary Law and Justice in the Tribal Areas of Meghalaya (1982), pp.133-134. Initially it is the mother who owned it. Later, it is the wife and thereafter the youngest daughter known as Nokna. The most important position in the scheme of inheritance is given to the Nokna. In a family, one of the daughters is selected by the parents to own her mothers property she is known as the Nokna (her husband is the Nokrom). The choice depends upon the parents. In the event of the father and mother disagreeing as to the choice, the mother has the right to insist upon her selection i.e. the one whom the mother chooses must be considered as Nokna. The importance of 'Nokna' is revealed from their inheritance system. No Garo male can inherit property in the matriarchal system which exists in Garo Hills whatever a Garo boy may earn or receive (whether he be of age or not) is really the property of his mother or sisters. If he marries, whatever properties he acquires will become his wife's property. After the wife's death that of her daughter. In the event of the death of his mother, wife, daughter or sister (as the case may be) the property will become that of nearest maternal relation.

The common trend is to convert the Friday property into Monday property. Its impact is very heavy on the women.

If the property is converted into Monday property then the law applicable is customary Shariat. This takes away the impartibility concept of the Friday property or the common consent required for the absolute partition away from this society. On the property becoming Monday property it is also subject to the gift and will. The Lakshadweep practice does not observe the limits imposed by Islamic law in giving away the property by will and gift. They are even bequeathing the entire property and even to the heirs. In such situation there is no guarantee that women will be getting proper share. Muslim society generally being a patriarchal society, the trends in Lakshadweep clearly move slowly towards religious fundamentalism. The male dominance in the inheritance of property is a growing trend in the islands. In some cases during the lifetime of a person he is giving the property as gift to males only, excluding all females. Under Lakshadweep practice nobody can question this. In the case of death, the properties are to follow Islamic law. In the present practice of Lakshadweep, the woman as mothers, wives, daughters and widows do not have equal rights, while the Khuran gives equality to them. This inequality is seen as that husbands always inherit half if there is no children and one fourth if there are children. Wife always inherits one-fourth if there are no children and one-eighth if there are children. Daughters always inherit half the property, which is getting to son.[37]

[37] How it effects cumulatively the women property right of the society will be coming out from the simple example. In X's family X is having a son A, and a girl B. when X's properties are dividing the girl B will be getting only half of what is getting to son A. Suppose B is having B1 and B2 sons and a girl C. then C will be getting only $1/5^{th}$ of what B got from X. In the next

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After the conversion of Friday property into Monday property, if no will or gift is made by the owner, then the property should follow Shariat. In that case on reaching the second or third generation the woman's property rights will be very negligible. If that happens in Lakshadweep the enviable position and status of woman vanish. The economic independence of women in the society will go. When the independent source of income is common, almost all islanders are moving to nuclear families. In nuclear family the woman does not have as much weight and voice in the decision making as in the Tharawad. If the divorce occurs that will spoil her entire life. In the absence of no Tharawads to take care of their children, there will be destitutes and vagrancy in the islands. Definitely that will pave the way for opening yatheemkhanas.

The present trend of island males marrying mainland woman is also a major threat to woman status. This is because of two reasons: (1) If a marriage is to be celebrated in island, with island lady, he has to spend a huge amount. If he is marrying from mainland he will get very good dowry. (2) The major reason for this new trend is that in island the woman's interest in the landed property is reaching to a negligible level. So if he is marrying an island lady the earlier safety net provided by the Tharawad will not be available in future.

The new marriage trends will be appearing with in short span of time. It is pertinent to note that generally the island woman does not marry mainlanders. The number of females per 1000 males as per 1991 census is 959. Monogamy also is very important in assessing its impact. It reveals that if mainland marriage becomes common

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generation suppose C is having two sons C1 and C2 and a daughter D. In this case D will be getting only $1/5^{th}$ share of what C has got from B.

and it crosses the 41 per thousand marriages, the ladies in the islands will find it difficult in getting husbands. Another development in the Lakshadweep society, i.e. high literacy and higher education proved in mainland for the islanders as doctors, engineers, master of computer application, engineering diploma and other various job oriented skills degrees and diplomas. No doubt, recoil to the disadvantage to the common woman in the island Lakshadweep society cannot fully absorb them. Being Scheduled Tribe people, due to reservation in government jobs, their chances for getting job at mainland is high. In this mainland migration girls are placed in the backyard. The general trend of Lakshadweep males marrying mainland woman will increase. Along with this trend is in the near future, the practice of dowry may also have an opening in the islands.

How has this gone unnoticed? On interviewing women in the island, the scholar has noticed that all women do not want nuclear families. But they want to live under Karanavan. However they were not fuse when they were interviewed in the island whether they should support and oppose in the conversion of Friday property into Monday property. But they enmasse opposed[38] this conversion of Friday property into Monday property when the Lakshadweep woman were asked about this, at mainland, in peculiar in an exclusively woman situation[39]. But till now there was no public resistance voiced from the side of woman in the islands. The interview in the mainland was conducted days after the first interview. The reason for the change of attitude may be that after the first interview they were enlightened on the implications of this property

[38] When the mahilasamajam, social workers and balawadi teachers of various islands reached Rajagiri Institute of Social Sciences, Kalamasseri, some of them were personally interviewed and they were also addressed as a group.

[39] First all these women were interviewed in their concerned islands during the researchers visit at each islands. Later they were examined as a group at Rajagiri Institute of Social Sciences.

conversion. Then they watched the changes coming around them in a critical manner. So they have mentioned that due to the conversion of Friday property into Monday property their landed property rights are decreasing in a geometric proportion. One more reason they have assigned for this change in the answers was that in islands all are not at liberty to speak against male interests. As far as the governmental jobs are concerned Lakshadweep has reached a saturation point. Till the present generation is retiring the scope for increase in governmental jobs for the island woman will be marginal. Apart from this due to the formation of nuclear family, many husbands do not like to send their wives for job. They want full time housewife. So the women in the Lakshadweep is progressively taking out of their economic assets and economic contributions. They are being cornered as mere housewives. This new change has to be assimilated in the century old situation where the women hold almost entire landed property rights. Mainly ladies were doing the manufacture of coir the major economic activity in the island. In the changed new world of nuclear families, man is the breadwinner. Islam is also basically a patriarchy oriented religion[40]. When the grip on the economic assets is losing from the woman's hands, the special rights which these woman flok enjoyed for centuries like special mosques and prayers, equality in divorce, obtaining woman consent for partition of property also will definitely be vanished from this society.

To accelerate this anti woman move of the society, the new trend of island males marrying mainland girls is to be viewed seriously. This has to be appreciated in the light

[40] According to Islamic law, the legal position of women in some respects considered inferior to man. She has less rights and duties from religions point of view. As regards blend money, evidence and inheritance, she is counted as half a man. In respect of marriage and divorce her position is less advantageous than that of man. For details, see Alka Singh, Women in Muslim Personal Law(1992), pp.165-166

of sex ratio[41]. At that point if the present trend of effecting her out of economic assets of the society is progressing in present phase; the Lakshadweep woman will be most harassed. To precipitate this there is one more factor. In order to protect the separate identity in a secular state, the Indian Muslim community – a minority community – is turning towards the revival of islamaisation. In this process the society has to follow rigid socio-religious code where woman are regarded to have a subordinate role to men. That is clearly visible in islands today. Till few years ago Purdha was alien to the island woman. They used to appear at all places. Now the Purdha is becoming common and women are not so active as their predecessors in their social roles. The status of woman in a society is dependent on the social, political and economic changes and religious moorings of a community. The Constitution of India, being a secular one, does not allow the state to interfere with any religious faith of the citizen. All citizens are free to profess their personal laws. When the islamisation is growing up the set up of the island society is identified with that of a male dominated social set up. By the decline of the customary law in the island women's landed property rights diminished progressively; the net result is that Lakshadweep women is becoming an "Indian Woman" supposed to suffer the oppressions. One cannot rule out the entry of dowry also in this society in the near future. There are ministries for the protection of social welfare and women welfare. There are so many schemes, which are specifically targeted to improve the lot of the women in this society. So far no woman's bodies or other voluntary organization or male group has

[41] Sex Ratio is defines as the number of females per 1000 males. Lakshadweep shows a declining trend in the islands though the ratio slightly fluctuating among the islands, male out number females in all the islands. Only in Minicoy Island the sex ratio is in favour of females i.e. 1049 females for 1000 males. For details see District Census Handbook, Part XII A & B Lakshadweep (1993), p.37 which is given as Table (3) in infra Appendix B.

taken up this issue seriously, not even government. Before the last pieces of a unique culture where women are having pivotal role in social organization are eroded completely, it is the duty of government of India, social organizations and men and woman all over the world to come forward to save this social set up that safeguards women and woman perspectives.

CHAPTER – XI

LEGAL PROFESSION , LEGAL AID AND CUSTOM

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LEGAL PROFESSION, LEGAL AID AND CUSTOM

The presence of Mukhtyars and unmodified customary laws makes the Lakshadweep legal system and legal profession unique. The delayed introduction of proper laws and legal institutions necessitates to analyse how Lakshadweep has got a separate system. In what way is it different from the mainland?

Judicial System in Madras Province

When the 1912 Act was introduced into the Lakshadweep, the judicial set up of Madras Province was having a very good hierarchical order both in civil and criminal side. On the civil side the Madras Province is having a well defined three tier Court system in the moffussil area right from 1873[1]. Before that also the Madras Provinces was having Courts like Zilla Court. The new hierarchical setup introduced in 1873 is having:

(1) District Court (2)The Court of Subordinate Judge (3)The District Munsiff

The District Judge and the Subordinate Judge had unlimited pecuniary jurisdiction. The munsiff was empowered to try all civil suits valued upto Rs.5000. First appeals from the original decisions of the District Courts lay to High Court[2]. The High Court is at Madras. Appeal from the decision of the Munsiffs and the Subordinate

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[1] For the full text of the Act, see Madras Code, VII edition(1952), pp.100-107.
[2] Id., S. 13.

Judges upto value of Rs. 10000, lay to District Court and in other cases to High Court.[3] Section 16 of the Act made the personal law of Hindus and Muslims enforceable. In other cases the Court was required to decide cases according to the three celebrated principles, viz. justice, equity and good conscience, which constituted the basic principles governing the modern judicial system. The District Courts, Subordinate Courts and District Munsiff were in existence in the other part of Madras Province right from 1873. From year 1802 onwards the Madras Province, the office of Judge, Magistrate and the Collector of Revenue were held by distinct persons. But in the year 1912 by the new regulation in the islands the judicial powers and the revenue powers were vested on the Amin. Right from 1865 the mofussil courts were precluded from introducing any English or Foreign Law under the cover of the words "justice, equity and good conscience"[4]. There was no such ban in the 1912 island Regulation.

1680 witnessed another landmark by the recognition of English as the Court language in Madras[5]. Till that time Portuguese, Tamil and Malayalam were the Court languages. In 1802 based upon the humane and liberal plan of Lord Cornwally's Adalat system started in Madras. The significant feature of this plan was the offices of Judge and Magistrate and of the Collector of Revenue were to be held by distinct persons. In 1827 some more institutional changes appeared in the administration of justice. Indians were appointed as Native criminal judges. But they were having no jurisdiction over Europeans[6].

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[3] Ibid.
[4] Sanjiva Rao, The Advocates Act & The Legal Practitioners Act (5th edn.1991), p.7.
[5] Supra n.1 at p.42.
[6] Madras Regulation VII of 1827.

To implement Munro recommendation that the criminal cases ought to be tried by the Native Panchayat or jury as they would be fully conversant with the character and antecedents of the accused and witness; trial by jury was introduced in criminal trial[7]. By this Governor – in – Council could authorize any judge to conduct trial with the assistance of jury. Intelligent and respectable native resident between 25 and 65 year's age was to be nominated to serve as jury. If the judge disagreed with the jury the matter had to be referred to Sadar Nizamat Adalat, who had power to order denovo trial.

With Regulation V of 1816 recognition was given to the age-old system of Village Panchayats[8] in the determination of suits without any pecuniary limits, subject to the consent of parties concerned. The Village Munsiff was empowered to summon a Village Panchayat consisting of odd number of respectable residents. The minimum number was fixed at five and the maximum was eleven. The Panchayats was empowered to decide all cases with unlimited pecuniary jurisdiction. Provincial Council could set the decision of Panchayat aside if favoritism in deciding the case was proved. But if another Panchayat confirmed the decision taken by one Panchayat it becomes final. The District Munsiff was also authorized to call a Panchayat for deciding civil disputes of any amount in the same manner as Village Munsiff called a Village Panchayat[9]. The collectors were empowered to refer disputes relating to occupancy rights, cultivation or

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[7] Madras Regulation X of 1827.

[8] Ibid. Also see Sir Thomas Munro Commission Report of 1816. This Commission was constituted to inquire and report about the reforms required in the administration of justice. Munro was a favourite of panchayats. He encouraged greater use of panchayats for settling disputes.

[9] Madras Regulation VIII of 1806.

irrigation to Village or District Panchayats for decision[10]. By Regulation XI of 1816 the heads of villages and Tahsildars were authorized to punish for petty offences. The heads of villages were authorized to order imprisonment upto 12 hours and Tahsildars upto 24 hours or a fine of one rupee. In 1821 they were authorized to punish petty thefts[11].

Procedure

In order to regulate both the civil and criminal matters brought before it, the power to make rules and orders were given to the High Courts. An attempt was seen to bring uniformity to the rules of procedure, in the High Court and Subordinate Courts. This attempt to achieve uniformity in the rule making powers of the High Courts came out, when they were guided as far as possible by the Code of Civil Procedure 1859, in civil cases and the Code of Criminal Procedure 1861, in criminal matters[12].

Law Applicable

Clause 19 of the Letters of Patent of 1865 read with clause 18 of letters patent of 1862, ordained that in exercise of its original civil jurisdiction, the High Court should apply the same law or equity as would have been applied by Supreme Court which meant English Common Law and Rules of equity as modified by Indian legislation.

Clause 21 of the Letters of Patent of 1865 required that in the exercise of its appellate jurisdiction, the High Court should apply the law or equity and rule of good conscience, which the Court in which the proceedings were originally instituted ought to

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[10] Madras Regulation XII of 1816.
[11] Supra n. 1 at p. 183.

have applied to such proceedings. The Mofussil Courts were strictly precluded from introducing any English or foreign law under the cover of the words "justice, equity and good conscience."[13] In short, on the original side of the High Court, English Law and Rules of Equity continued to be administered as before and on the Appellate side local laws were applied.

Legal Profession

In every society legal profession is an important one. By profession 'we mean scholarship, as the profession of law'[14]. The importance of the legal profession can be identified from Law Commission's assessment as "a well organized system of judicial administration postulates a properly equipped and efficient Bar"[15]. States' administration of justice is directly related to the efficiency of the well-organized legal profession. That reflects the quality of marshalling the facts and law before a court with the legal arguments for and against the litigating parties. The quality of decisions is having a direct bearing on the quality of the pleading, which is resting only on the knowledge of the person who is conducting the case in the court. Goodie has described a community of the professionals is varying from other communities based on socialization and social control and client choice or the evaluation of the professional. The process of the professionalization is the "climax job pattern" of occupational environment and no occupation becomes a profession without antagonism and struggle[16]. Law as a

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[12] Clause 27 of the letters of Patent 1865.
[13] Sanjiva Rao, supra n. 4 at p. 7.
[14] Fernald, Synonyms and Antonyms (1947), p.102.
[15] Law Commission of India, 14th Report (1958), p. 556.
[16] Goode W. J., "Community within a Community - The Profession", 22 American Sociological Review 194 (April 1957).

profession existed therein ancient[17] and medieval India though its concept was quite different from what it is today.

The Right to Practice in Mainland

The right of practice in the present Indian Courts is governed by S. 29 of Advocates Act 1961[18]. In response to a demand by the legal profession for unification of the Bar, Section 29 of the Advocates Act has been enacted. As per that, from the appointed day, there shall be only one class of persons entitled to practice the profession of law; section mandates that class as Advocates. This date has later notified with effect from 1st June 1969[19].

Advocates Act

Section 24(3) of the Advocates Act prescribes who may be admitted as advocates and also in state roll. The conditions include: he should be an Indian citizen, who has completed the age of twenty-one years and who has obtained a degree in law. From

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[17] V.D. Kulasrestha, Landmarks in Indian Legal and Constitutional History(6th edn. 1989), p. 450. See also Ludo Rocher, "Lawyers in classical Hindu Law", XIII (3and 4) Indian Bar Review 353; Philip B. Calkins, "Lawyers in Muslim India", XIII (3and 4) Indian Bar Review 373.

[18] S. 29 of the Act reads as: "Advocate to be the only recognised class of persons entitled to practice law- subject to the provisions of this Act and any rules made thereunder, there shall, as from the appointed day, by only one class of persons entitled to practise the profession of law, namely, advocates".

[19] See Gazette of India 1969, Part II, See 3 (ii), Extraordinary, p. 569

1/6/1969 onwards no person other than an advocate enrolled under Advocates Act 1961 is entitled to practice in any court or before any authority[20].

Section 55(5) says that notwithstanding anything contained in the Advocates Act, vakils, pleaders, mukthars and revenue agents shall continue to enjoy the same rights in respect to practice as if the provisions of the Legal Practitioners Act, 1879 had not been repealed. Section 6 of Legal Practitioners Act 1879 empowers the High Courts to make rules as to qualifications etc. of pleaders and mukhtars[21]. All such rules should be published in the official gazette

and then alone it should have force of law. Section7 of the Legal Practioners Act 1879 mandates the High Court to issue a certificate authorising the pleader or mukhtar to practice up to the end of the year. Each year that has to be renewed [22]. Section 9 of the

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[20] S. 24 reads: "Persons who may be admitted as advocates on a state roll-(1). Subject to the provisions of this Act, and the rules made thereunder, a person shall be qualified to be admitted as an advocate on a state roll, if he fulfills the following conditions, namely:- (a) he is a citizen of India: provided that subject to other provisions contained in this Act, a national of any other country may be admitted as an advocate on a State roll, if citizens of India duly qualified, are permitted to practice law in that other country; (b) he has completed the age of twenty-one years; (c) he has obtained a degree in law.... (3)Notwithstanding anything contained in sub-section(1) person who-(a) has, for atleast three years, been a vakil or a pleader or a mukhtar, or was entitled at any time to be enrolled under any law as an advocate of a High Court(including High Court of a former Part B State) or of a Court of JudicialCommissioner in any Union territory ; or (aa) before the 1st day of December,1961, was entitled otherwise than as an advocate to practice the profession of law(whether by way of pleading or acting or both) by virtue of the provisions of any law, or who would have been so entitled had he not been in public service on the said date."

[21] This section has been repealed when Advocates Act 1961 came into force.

[22] S. 7 of Legal Practioners Act 1879. Its text is as follows: "Certificates to pleaders and mukthars:- on the administration, under section 6 of any person as a pleader or mukthar the High Court shall cause a certificate, signed by such officer as the court, from time to time appoints in this behalf, to be issued to such person, authorising him to practice up to the end of the current year in the courts and in the case of a pleader, also the revenue offices specified therein. At the expiration of such period, the holder of the certificate if he desires to continue practice, shall subject to any rules consistent within this Act which may from time to time, be made by the High Court in this behalf, be entitled to have his certificate renewed by the Judge of the District Court within the local limits of whose jurisidication he then ordinarily practices, or by such officer as the High Court, from time to time, appoints in this behalf. On every such renewal, the certificate

(f.n. Contd)

Act enables every pleader to practice in any Court or revenue office under that High Court. But section 9 empowers mukhtars on enrollment to appear in any civil courts and criminal courts.[23] S. 11 of the Act empowered the High Court to declare functions of Mukhtars[24]. Section 12 of the Legal Practitioners Act has empowered High Court to suspend or dismiss any Pleader or Mukthar who is convicted of any criminal offence implying a defect of character which unfits him to be the pleader or mukthar. Since Legal Practioners Act 1879 had not been extended to Lakshadweep these provisions of mukthars are not applicable to Lakshadweep.

The extension of various laws and establishment of various courts in Lakshadweep have been described[25]. From that discussion a picture is unfolded on the evolution of the administration of justice in Lakshadweep. Although part of the history of administration of justice, the growth of legal institutions and legal profession are discussed as a separate chapter here.

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then in possession of such pleader or mukthar shall be cancelled and retained by such Judge or officer. Every certificate so renewed shall be signed by such judge or officer, and shall continue in force up to the end of current year. Every judge or officer so renewing a certificate shall notify such renewal to the High Court: Provided that, on the admission as a pleader of any person who has been previously entered as a Vakil or Attorney on the roll of High Court established by Royal Charter, the High Court may in its discretion issue to such person a certificate authorising him to practice permanently in the courts and in the offices specified therein and a certificate so issued shall not require to be renewed."

[23] S. 9 of Legal Practioners Act 1879 states: "Mukhtars on enrollment may practice in courts:- Every Mukthar holding a certificate issued under S. 7 may apply to be enrolled in any civil and criminal court mentioned therein and situate within the same limits; and subject to such rules as the High Court may, from time to time, make in this behalf, the presiding judge shall enroll him accordingly; and thereupon he may practice as mukhtar in any such civil court and any court subordinate thereto, and may (subject to the provisions of the Code of Criminal Procedure)appear, plead and act in any such criminal court and any Court Subordinate thereto."

[24] S. 11 of the Act reads: "Power to declare functions of Mukhtars:- Notwithstanding anything contained in the code of Civil Procedure, the High Court may, from time to time, make rules declaring what shall be deemed to be the functions, powers and duties of mukthars practicing in the subordinate courts, and in the case of a High Court not established by Royal Charter, in such court."

[25] See for details, supra Chh. V and VI.

In 1912 when the Britishers took up the modernization of Lakshadweep legal system, they have not extended this set up to islanders willfully. The present system of civil judiciary in South India has been implemented through the Madras Civil Courts Act 1873. This Act provided for the constitution, organization, jurisdiction and powers of civil Courts in Madras Province. Though the Rajas of Cannanore, Portuguese and the Britishers ruled these islands only the Britishers could bring about any change in legal system or legal profession.

From the above, it could be seen that by the time this 1912 Regulation was implemented in Lakshadweep the mainland was having a well defined legal system, were qualified persons manned separate civil and criminal judiciary. It was separate from executive wing of the government. Separate procedures were prescribed for both civil and criminal courts. There were separate hierarchical system of courts. When 1912 Regulation was implemented the executive and judicial functionaries concentrated on one and the same persons in the islands.

For the first time legal profession – Mukhtyars - got recognition during the British period[26] in Lakshadweep. The absence of guidance and control from part of the government was a peculiarity as regards the entry and continuance as Muktiar in the island courts even today. No standard qualification has been prescribed nor any examinations are being required there even today. Anybody, who is appearing in front of any legal authority and claiming that he is a Muktiar, no legal authority can deny him opportunity to conduct or defend case of others. It is a peculiar situation. After 1972

nobody can practice legal profession in any other main land court without having legal degree and the necessary registration obtained from Bar Councils in the states.

This was the difference as regards legal profession. Similarly important variations exists as regards the dispute resolution institutions and the law which was applicable in these institutions in mainland and the island. The island legal system still lag behind the mainland with respect to legal institutions and legal profession when one approaches it from the angle of skills and technicalities.

During British period the Lakshadweep got institutionalised dispute resolution in the form of Amin Courts, Divisional Officers Court and Collectors Court. They have got chance to appeal in High Court and even in Governor General in Council. Islanders, first time experienced a written code and laws and also a well-defined procedure in courts. All these happened in the islands mostly through 1912 Regulation.[27] In 1969 islanders got courts manned by legally qualified persons. Just before that only in 1967 they got almost all the mainland laws extended to the islands. The District Court in the island was established in 1996 only[28].

When the Mukthyar system was introduced in Lakshadweep as per 1912 Regulation the term Mukthyar was not defined. Apart from that in the Legal Practitioners Act the term is Mukhtar where as in the 1912 Regulation the term used is Mukthyar. In the Bombay presidency, Mukthar means one who may with the permission

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[26] See for details, supra Ch. V.
[27] Ibid.
[28] For a detailed discussion, see supra Ch. VI.

of the court represent an accused in any proceeding[29]. The mukthars are not competent to sign documents such as plaints, written statements etc which the law requires to be signed by the pleader, though he may present such documents to the court[30]. In Lakshadweep plaint and written statement are usually signed by Mukthyars. They are doing all the legal jobs that are being done by the advocates in mainland. Till recently they were not having the power to attest documents. They were doing all these things not on the basis of any statutory background, but on the basis what they got through the custom of the island. But in the year 1995 Kerala High Court conferred that power. The only statutory provisions about their existence are Sections 18 and 25 of 1912 Regulation. The term Mukthyar is not defined there. No selection procedure or powers to control or register has been mentioned. No qualification has been prescribed. Even now the Mukthyars are practicing. Actually in practice they are subject to the control of the presiding officer. But that also only in a limited way because all these Mukthyars are the political leaders in the present system. They are using black coats in the court. The only provisions in the 1912 Regulation, which mentions about Mukhtyars are Sections 18 and 25. Section 18 reads as follows:

> "No pleader shall be allowed in any Court except with the special permission of he Collector. Parties may, however, be represented by their island Mukhtyars."

[29] In re Baji Rao Abaji, AIR 1928 Bom 33.
[30] Liakat Hussain v. Biseswar Sanyal, 16 Cr LJ 578.

This Section is applicable for criminal justice. On the civil justice side the section which enables the appearance of the Mukthyars in court is Section 25 of the Regulation 1912, which reads:

> "(1) The Collector or the Inspecting Officer may refer any case for disposal or report to two or more of the island assessors. When it is referred for disposal, the assessors shall report their decision to the court referring the case.
>
> (2) The parties may challenge any assessor, and on sufficient reason being given another assessor shall be selected in his place.
>
> (3) The parties shall be allowed to attend the hearing of the suit in person or by a Mukhtyar, and the evidence shall be taken in open court.
>
> (4) The officer trying the suit shall make a memorandum of evidence of each witness as it is given, and shall, after the conclusion of the hearing, pronounce judgment in open court either in the presence of parties or after notice to them. The judgment shall be in writing and shall contain the points for determination and the decision thereon."

After the coming into force of Advocates Act 1961, nobody is entitled to be enrolled for the practice of legal profession without law degree. But in Lakshadweep the different practice continued. So we have seen that the Advocates Act 1961 has not been extended to Lakshadweep. Old 1912 Regulations govern the mukthyars or the custom developed within the legal institutions. Just as mainland legal system, Lakshadweep legal system also has now become much technical. The unequipped mukthyars cannot cope with the needs of the society. One may say that it is high time the further entry of

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The isolated existence of these islands has contributed to the formation of particular mode of legal thought prevailing in the Lakshadweep. Long before the society reached a stage where law is created by the deliberate creation of legislation, the need for institutionalized means of resolution of the dispute were very much there in the Lakshadweep society. The Kootams during Rajas period, which continued even during the initial period of Britishers, exemplifies this.

In Lakshadweep, Kootam had been the method of settlement of disputes for a long time. In the early there was no police in the island. When the British rule and governmental agencies was enforced in the islands, the enforcement of law and order was a must. Since the Britishers motive here was to preserve the territory profitably to meet their colonial interest their requirement of the modernization of this society was just to preserve their rule in a peaceful manner. The better method in these remote islands was not to touch their simple life. So they have not imposed so much laws. And the customary law was allowed to prevail in important areas. The posting and maintaining a police force in this remote area would not be economical. The requirement of society also was not demanding police then.

Though the Britishers have not created police machinery, the governmental regulations were developed. They have identified some conflicts between the customary law and the newly imposed laws. Here the Lakshadweep situation was entirely different from mainland where through various enactment new authorities, forms of legal obligations and rights were created. Moreover they were highly technical and more or less a replica of western model. That necessitated English knowing people to identify the

working of English so as to communicate to the English officers. So, in that process did emerge in the mainland vakils and pleaders along with English Attorney and solicitors. Class of specialist advisers and experts who know their way around legal process who can interpret these processes to ordinary people affected by them. There the legal procedure developed into sophisticated legal institutions which were working on the basis of Evidence Act and Civil and Criminal Procedure Codes. The interpretation in such a situation requires mastery over the principles of English law. The real reason for the emergence of Vakils and pleaders in the mainland was that the few English people in India could not satisfy the needs of society. The Lakshadweep situation was different in the sense. The laws of Lakshadweep were not as technical as those of mainland. Being a Scheduled Area the laws extended in the mainland were not applicable there unless it was is specifically extended.

The Evidence Act, Civil Procedure Code and the Criminal Procedure Code were not as such applicable, though they were working following that system. The equity, good conscience and justice were the principle followed. That apart the customary law governs the major areas of selections. So the fundamental thing required in such a legal system is the mastery over the customary law and commonsense.

In mainland India, because of different systems of inheritance based on Dayabhaga, Mithakshara etc and because of the Hindu law higher level specialization is needed which resulted in the emergence of the Hindu pandits and Muslims Maulavis. But the Lakshadweep customary law was not codified, nor were there many tough interpretations. The local people can identify the customary law easily. It is for the

officers who decided cases to elaborate on that. That is, English people and the mainlanders who came there as Monegar, Amin, Inspecting officers, and Collectors' assistant. The requirement of simple legal knowledge in the islands was not that much sophisticated and technical as that of mainland. That is why the Britishers have created the institution of mukhtyars without prescribing any qualification or tests. Apart from that, getting any qualified person, in that isolated island was nearly impossible. That could be the reason that 1912 enactment extended upto 1965 without any modification in the institutional set up. As regards the legal profession is considered even in 1999, these 1912 Regulations' stipulations are following without any change.

Evolution of the Concept of Legal Aid - Climaxing in Legal Services Law

The Law Ministers' Conference held on September 18-19, 1957 recognized the necessity to establish Legal Aid Schemes. The state laid down the foundation for the movement to attain momentum in due course. The Law Commission of India took up the cause in 1958[31].

Krishna Iyer Committee

As an attempt to implement human rights[32] and the recommendations of Law Commission on October 27th, 1972, the Government of India constituted a Committee

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[31] See The Law Commission of India, 14th Report on "Reform of Judicial Administration" (1958).

[32] Universal Declaration on Human Rights and International Convenient on Civil and Politics Rights underlined norms that everyone has the right to an effective legal aid by the Constitution or by law. The right to defend oneself and legal assistance to him of his chosen Counsel, to be **(f.n. Contd)**

under the Chairmanship of Justice V.R. Krishna Iyer, the then Judge, Supreme Court of India, as Expert Committee, to consider the question of making available legal aid and advice to the weaker sections of the community and persons of limited means in general and social and educational backward classes in particular. In 1974, the said Committee submitted its report known as "Processual Justice to the People" and dealt therein in extenso with the need for legal aid and advice to the poor, to the dalits, tribes and backward classes etc. It also recommended numerous projects for implementation. Then Article 39A was brought in the Constitution under chapter IV[33]. It enjoins the state to promote the operation of legal system on the basis of equal opportunity and, in particular, shall provide free legal aid by suitable legislation or in any other way, to ensure that opportunities for securing justice or justice is not denied to any citizen by reason of economic or other disabilities[34].

Bhagwati Committee

Another Committee under the chairmanship of Justice P.N. Bhagwati elaborated the legal aid and advice scheme in its report entitled "Report on National Judicare Equal Justice Social Justice" on August 31, 1977. This ultimately formed a blue print for the legal aid schemes.

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informed of that right, if he has no legal assistance, is the duty of the state to assign legal assistance without payment of fee when he is an indigent person have clearly been specified.

[33] By 42nd Constitution (Amendment) Act (1976).

[34] The Legal Aid Newsletter published by CILAS in 1995.

CILAS

In implementation of the directives contained in Article 39-A[35] and the report, the Government of India in its Resolution dated September 26, 1980, constituted a committee know as the Committee for Implementing Legal Aid Schemes (CILAS). The Committee had been headed by Justice P. N. Bhagwati. The National Legal Services Authority (NALSA) succeeded the CILAS with effect from November 9, 1995 when Legal Service Authority Act 1987 amendment was brought in.

CILAS has been charged with responsibilities to formulate in detail and to implement comprehensive legal aid program, on a uniform basis, throughout the country[36]. The Legal Aid Program thus evolved by CILAS is judiciary-oriented and is of two-fold in character, namely:- court-oriented legal aid; and preventive or strategic legal aid.

Article 39A makes the duty of dispensation of legal aid and equal justice to all citizens by legislative or appropriate scheme to the needy and the poor. Dispensation in respect of legal aid relating to Court-oriented cases by way of providing free legal

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[35] Article 39-A reads: "Equal justice and free legal aid:- The State shall secure that the operation of the legal system promotes justice, on the basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation on schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities."

[36] To effectuate the policy, the CILAS evolved a model scheme laying down the infrastructure of the Legal Aid Boards in all the states and Union Territories and forwarded the same to the state Governments for adoption with such modifications as the local conditions deemed appropriate. As per the scheme, three-tier system, viz., state Legal Aid & Advice Board as an apex body at the state level and Legal Aid Committees at the District and Taluk level respectively were constituted. The state Legal Aid & Advice Board was made responsible to implement Legal Aid Programs in the states concerned; maintenance of true and proper accounts; and setting up of the Legal Aid Committees at each High Court, District and Taluk levels of the concerned state.

services in the form of aid in payment of Court fee, advocates' fee, expenses involved in preparation of paper books and summoning of witness etc. to the indigent person is an obligation on the part of the state. Therefore, the responsibility in that behalf was cast on the state Legal Aid & Advice Boards and the Legal Aid Committee funded by the respective State Government. The Central Government also had constituted, from time to time, the Supreme Court Legal Aid Committee, headed by a sitting Judge of the Supreme Court of India.

The concept 'welfare state' accepted by modern state made it mandatory that special protection should be provided to the persons incapable of protecting their rights and interests. This should be provided in such a way that thereby they can develop their personality. The plural hierarchical set up with the wide disparities existed in the Indian society when reaching the justice delivery system; it questions the very efficacy of the legal system.

Legal Aid in Lakshadweep

The legal aid and the related matters are highly important in Lakshadweep legal system. Its working will reveal how far burcaucratic delay can reach the standards of legislative passiveness, when there is a tilt in the equilibrium among the three legs of democracy – legislature, executive and judiciary. In the first approach the implementation of legal aid in the island society seems so simple. The very far-reaching change that has to be introduced in the Lakshadweep legal system is converting the implementation of the legal aid into a complex one. The issue is emerging out from the legislation to constitute legal services authorities to provide free and competent legal

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services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities and to organize Lok Adalats to ensure that the operation of the legal system promotes justice on a basis of equal opportunity[37]. The name of this statue is Legal Service Authorities Act, 1987[38]. This came into force on 11th October 1987. The impact of this Act on this island society is great. The Act entitles every indigenous – the whole is placed in the category of Scheduled Tribe. The entire native islanders belong to one group getting free legal services. They can file or defend a case, irrespective of their annual income[39]. A native furnishes an affidavit stating that he is a Scheduled Tribe before the concerned authority and satisfies him that he has a prima facie case to prosecute or to defend[40]. The case[41] includes a suit or any proceedings before court. The wide meaning provide by defining[42] the court means a civil, criminal or revenue Court and includes any tribunal or any other authority constituted under any law for the time being in force, to exercise judicial or quasi judicial functions. This is entitling each native Lakshadweep islander to get his cases or problems filed or defended before any Court or quasi judicial bodies by legally competent persons. The above situation has been further expanded by the definitions 'legal services'[43] by giving of advice on legal matter.

Are all the Lakshadweep people enjoying this service? If not, why? The reason for the non-implementation of the Legal Services Authorities Act can be due to the

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[37] Supra n. 35.
[38] Act No. 39 of 1987.
[39] S. 12 of the Legal Services Authorities Act 1987.
[40] Id., S.13.
[41] Id., S. 2 (a).
[42] Id., S. 2(aaa).
[43] Id., S. 2(c).

weakness of the legislation itself. There are three authorities. National Legal Service Authorities[44], State Authority[45] and the District Legal Services Authority[46]. Its functions also are detailed by the Act. The activities in the state have to be co-ordinated by State Authority and the activities in the District have to be co-ordinates by District Authority. In this grouping the National Authority is entrusted with the specific function of co-ordinating the work of union territories. The Union Territories are not coming under state. The District Authorities will not be having any separate existence without having any State Authority. So this uni district union territory is left without any legal service authority.

Another reason for the absence of popular initiative to use the Legal Authorities Service Act in the island is that section 1 (3) stipulates that the Act should come into force on the date on which Central government issue a notification. The Act was passed by the Parliament on 11th October 1987. The required central Government notification was issued with effect from 9-11-1995[47]. Interestingly the chapter III is the vital part of the enactment, which mentions the constitution[48] of the State Legal Services Authority, functions[49]of State Authority, High Court Legal Services Authority and District Legal Services Authority. Without this no function visualised by this Act can be operatianalised in a state territory. By withholding the operation of chapter III of the

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[44] Id., S. 4.
[45] Id., S. 7.
[46] Id., S. 10.
[47] Ministry of Law, Justice & Company Affairs (Department of Legal Affairs) New Delhi dated 9th November 1995.
[48] Supra n. 39, S. 6.
[49] Id., S. 7.

enactment in practice there was no such enactment for the service of the public. The power to fix the date for community functioning of chapter III is on the Central Government, but that can be done only after framing rules by the respective State Government in consultation[50] with the Chief Justice of that area. This notification was delayed due to various reasons is the states. One may be the differences of opinion between the judiciary and the law department or home department as regards the deputation of their staff in the newly created Legal Services Authority. This was particularly with respect to enhancing the promotional avenues for the staff. Secondly the reluctance on the part of state government was to shoulder the financial responsibilities emerging out of this. Thirdly the lack of importance attached to this cause by politicians and the bureaucrats alike. Through this legal services right is a constitutional one the central government is denying this valuable rights to the islanders by not taking any steps to frame rules under S. 28 of the Act. In the case of Union Territory of Lakshadweep, no state govt. can be blamed for absence of mal functioning of the legal services.

When the Legal Services Authority is to be implemented in the Lakshadweep most of these 62000 people are entitled to get the free legal services. For that large machinery, legal professionals are needed for filing and defending the cases and also for giving free legal advice. The major issue that confronts them are whether Mukhtyars or lawyers should be entrusted this work. Considering the higher technical and professional skill needed by the present legal system of the Lakshadweep, the people of Lakshadweep will never take the risk for an option to fall on Mukhtyars. The

[50] Id.,S. 28.

continuance of the new entrants as Mukhtyars and their continued appearance without any person bed qualification test etc. the case may be to obtain the control over the newly forming authorities. The Advocates Act also does not permit this. In short when this valuable right the people are enforced in the Lakshadweep it will be death knell of the system. In case of Union Territory of Lakshadweep earlier the Legal Aid activities in that territory were entrusted to the Kerala State Legal Aid and Advice Board in a limited way. This is only by a specific notification from the central government and also by a government order of state of Kerala.

A Critical view of Legal Aid

Legal aid implemented by the CILAs through Kerala State Legal Aid and Advice board also has many uniqueness in respect of the laws in Lakshadweep. They have given intensive training to the Mukhtyars on various laws. The High Court judges, the director of training High Court of Kerala, Eminent lawyers and law teachers have taken classes. The study materials boarding and lodging have been provided by the State including T. A. and D. A. The law books in Malayalam also have been given to them. Actually this was an attempt to equip the mukthyars with the legal system in the mainland system. The legal aid board has conducted legal literacy programs for the general public on various law touching civil and criminal justices. These camps wee conducted in islands. For the first time in the island history the Lakshadweep police personnel have been given intensive training on various laws the Legal Aid Board has made use of retired deputy director of prosecution, District Judges, training director of high Court Munsiffs. In collaboration with the science and technology department training was given to the entire wardens of all the islands.

Nothing has been done by the Kerala State Legal Aid and Advises Board on one major area. This is free litigational assistance. No district or State committees as envisaged under CILAS scheme was not formed in the earlier legal aid era. i.e. before the implementation of Legal Services Authority Act. The reason was that no amount has been earmarked for that. In effect the valuable rights provided under Articles 39A and 21 of the Constitution has been denied to these peoples for a long time. Even now it is denied i.e., chapter III of National Legal Service Authority Act has not yet been implemented.

Chapter III of the Act relates to constitution of State Legal Services Authority, High Court Legal Authorities, and District and Taluk Legal Service Committees in consultation with the Chief Justice of the High Court. This is the chapter, which directly gives life to legal service activities in the society. The initiative should come from Union Government, Lakshadweep administration, the Chief Justice of Kerala high Court, who are having jurisdictions over islands at various level. But so far nothing has been done and the Legal Services Authority Act is not implemented there in reality. The staff for the effective functioning of the act is required to be appointed. Adequate funds for the proper functioning of Lok Adalat Legal Literacy and litigational assistance are to be allotted. The more delayed are the steps, the larger will be the denial of human rights.

When the National Legal Services Authority Act is implemented the customary law and culture of the island society is going to be recognized fully in contrast with the western legal culture based on the advisory system. The Lakshadweep legal ethos is

basically conciliatory. In the National Legal Services Act the alternate dispute resolution methods have got statutory recognition. The decision of Lok Adalats has got a statutory recognition in the award and the decree under the Act. The court fees paid on suit is refundable under the Court Fees Act of the concerned states, private litigants could be encouraged to have their disputes negotiated, concealed, settled or arbitrated through Lok Adalats. One of the reasons of the success of this provision in other states of India is due to the scope for release of heavy pressure on judiciary by disposing of cases and also by relieving the parties from the delay in getting justice. However the higher authorities dismiss the proposal for Lok Adalats in the island on the ground that the mechanism is not economical in the islands. The number of cases that can be settled will be very few.

The authorities in the islands have the fear that if Lok Adalats settle the cases in large numbers the courts in the islands will have no more job to do, ultimately those courts may have to be wound up. This is an unnecessary fear. If the fear comes true, it will be good for the islanders and for the sole of law. The people would be saved from all the difficulties arising from the protracted trial and its expenses. In the days of alternative dispute resolution, the fear is to be ruled out. Further chances of wiping out the judicial system are also remote.

The administration of justice in a territory cannot be approached from an economic angle especially in the remote islands. The basic quality, which is trying to be achieved in all sorts of societies in the administration of justice, is access to justice. These islanders shall not be burdened to go for appeals at High Court and even to

Supreme Court by spending huge amount. It is the duty of the State to provide cheap legal services of better quality. So to avoid expenses and to rejuvenate the old concealatory based community oriented amicable dispute resolution process in this society Lok Adalats is a must. It is in identity with the specific legal culture of this society. This alternate dispute resolution process has to be taken at pre-litigational stage. That can totally wipe out the filing in the Courts. In a society like Lakshadweep it is a boon. Generally, that is not going to happen, only portion of the cases is going to be settled. But in the smallness of the islands and the face to face relationship existing there, then is immense potential to use alternate dispute mechanism to reach a stage of model legal system to the entire world. In this society it is the duty of the state to provide near total free litigation assistance and free legal literacy and legal advice. Shadows are on the other side of the picture. If this State sponsored lawyers scheme is not properly efficiently managed, this society will be living example of how bureaucracy can bring a total social destination in a backward region.

CHAPTER – XII

CONCLUSIONS AND SUGGESTIONS

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The scarce resource base in Lakshadweep made it necessary to evolve a community oriented economy and life pattern. The dependency on land and agriculture compelled the people to live together and use scarce resources economically. The joint family was a security net. Their interaction and techniques of linkages with the mainland were moulded on these premises.

As a society governed by customary laws without tyranny of enacted law, the people were ready to rewrite their legal relations and aspire for land reforms. In the history of democracy it is found that land reforms –social reform legislation– ignite a litigation explosion creating several phases of impact by statute amendments. The Indian comedy of errors in land legislation is a specific example. But the community orientation of a small society with in the larger Indian society, namely, the Lakshadweep stands different. Over the centuries islanders fruitfully chanalised and formulated the customary system. As a result the systematic customs went down in history as unprecedented social acceptance of land laws to govern themselves. This shows how a customary law can solve its own problems peacefully by modulating legal relations in a society, separate and independent.

The forms of punishment are always related to the need and purpose of the ruler or administrators. At present the fear psychosis created by Rajas is not existing. The form of transaction between the government and people decides the degree of

government control over the people. The new system of punishment falls in tune with that of the mainland. Thus the general penalty on the family of the guilty and the fine in kind were all things of the past.

When the administration of old society had gone out of the traditional assemblage of local people, called Kootom, corruption crept into the society under the cover of various new practices. The advent of British rule was a blessing in disguise in more ways than one. The British brought laws in the form of Regulation. But they did not touch the personal laws. Nor did they encroach upon customs that were particularly needed for the community life. Justice, equity and good conscience became the watchword of the island legal system in the absence of custom. The old offices that were fountain of corruption were done away with. The technicalities of mainland laws were kept away from the island system. Even now people who are not legally qualified but well versed in customary laws of the islands are allowed to pursue legal profession.

The post-independence period marks a notable change. Mainland law and legal institutions came to the island during this period. Legally qualified judicial officers from mainland started hearing and settling disputes. This has led to various problems of inconsistent and diverging interpretations on the customary law. Impartability and inalianability of the joint family property – called as Friday property – which tied the islanders together, are now in a fluid situation. Confusion clouds on the mode of partition of properties in Androth and Kalpeni islands. The question is whether the property be partitioned on per-stripe or thavazhi mode or should it be on per-capita pattern. Decisions are also conflicting on the validity of customs as such which are the

nuclei of the Lakshadweep society. An example is in the Nallakoya's case where the custom was declared void. Thinking the practice of following customary law is against the Constitution, the islanders entered into absolute partition with power to alienate. In this process a major portion of joint family property was converted into individual property by using the instrumentality of consent taking. The decision has uprooted the very basis of the strong community feeling. Twelve years later Buharikoya's case validated the custom on the ground that the Impartability was for the benefit of reversioners. A rejuvenation of the customary law is visible. But it was too late. By that time disintegration of major portion of joint families took place. Conflicting decisions continue even after the Buharikoya's case. This resulted in confounding confusions. Non-assimilation of the island cultural ethos seems to be the reason why this confusion on customs arises. The burden is now imposed on the islanders to prove custom again and again. The cases on all these aspects are pending still at the Supreme Court. No decision has come out yet.

Monogamy, non-existence of dowry system, enjoyment of right to divorce the husband and maintenance on their exclusive prayer halls keep the Lakshadweep women in an enviable position. This is so because basically the property rights of the society were concentrated on women and devolution of the joint family property in female line on the basis of custom.

After two or three generations the women's property right in the society will become negligible as far as partition is allowed by judicial pronouncements. Apart from this impact, the so-called progressive reformists in religion were responsible for

generating a trend towards conversion of joint family property into individual property. Another disturbing trend is visible as a bye-product of the decreasing property rights of the island women. The diminishing status of women pushes the island males to go over to mainland in search of female partners. This may ultimately end in cursed dowry system, which has not yet come to the islands. The vagrancy of women and children may not be ruled out in such eventuality.

The presence of legally non-qualified Mukthyars makes the islands' legal system to stand own its own. Now that island legal system is as technical as mainland with more laws and regulations, the practice of Mukthyars may turn out to be an anachronism. At present there is no rules governing Mukthyars. Anybody who claims as Mukthyars can appear in court. The non-implementation of the provisions of the Legal Services Authorities Act fully, has resulted in the denial of islanders' right to free litigational assistance. When this Act is implemented fully, the legal services are to be provided only through the state sponsored lawyers and not through Mukthyars. By the time the customary laws are codified, the system of Mukthyars has to wither away.

Suggestions

The study leads to some suggestions that can be summarised as follows: -

1. Customary law is to be codified urgently. Excessive emphasis on uniformity is unwarranted and undesirable. The emphasis should be to legislate the Code. No steps to undo matritiliny shall be taken.

2. Customary Marumakkathayam has to be saved to safeguard the women property rights in the society. This is to protect a very unique healthy system from extinction.

3. The Legal Services Authorities Act is to be implemented in full.

4. State machinery for free legal services is to be formulated utilising the community oriented attitude of the society for settling disputes amicably. Free legal services should be given only through lawyers.

5. Pre-litigation settlement of disputes in accordance with earlier Kootam concept of the society is to be implemented with necessary modifications utilising services of the vanishing group of Mukythars also.

6. Specific rules for Mukthyars are to be framed. The present Mukthyars are to be given certificate of registration after training in various new laws so as to equip them to meet the challenges of a new legal order.

7. Special courts and tribunals are to be established for the family dispute resolution taking into account the special position of the island system.

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APPENDICES

APPENDIX –A

ENGLISH TRANSLATION OF QUESTIONNAIRE

(a) Name

(b) Tharavad Whether Karananvan or not?

(c) Age

(d) Education

(e) Native Island

(f) Occupation

(g) Present place of work

(h) If government employee, name of the post

(i) Names of previous employment

(j) Any additional information on this

(k) Address

(l) Date

(Please Tick "(" correct answers given for each questions. If more space is required to answer any questions please attach separate sheets with the question number)

1. (a) Do you have two types of property namely Tharawad(Joint family) property or self acquired property ?

(Yes/ No)

(b) How you normally call tharawad property in your island ?

(c) Usually how you call self acquired property?

(d) Can the tharawad property be divided in your Island?

(Yes/ No/ Not known)

2. Whether at present partition of Tharwads are common ?

(Yes/ No/ Not known)

3. What was your islanders notion about "Bhagom"earlier ?

(a) Whether the division was coconut trees only

(Yes/ No/ Not known)

(b) Mention the names of the last two tharawads in your knowledge where division of coconut trees took place with year ?

Tharawad_Year in which division took place

(c) At present what is the mode of division ?

Division of coconut trees only__Division of the land by measurement with boundaries__

1. Do you have the system of allotting coconut trees for maintenance arrangement.

(Yes/ No/ Not known)

If so;

(a) To whom all are it is allotted (b) Under what circumstance

(c) Does the arrangement so as to take usufructs from the coconut tree only till the death of allottee exists today.

(Yes/ No/ Not known)

mention the name of few tharawads were such division of property took place recently.

Name of Tharavad Year of division

(d) If the division is by measuring land with boundaries how long had it been come into existence?

4. Whether of division of tharawad property is similar in all tharawads in your island ?

(Yes/ No/ Not known)

(a) Whether the earlier divisions were with full freedom for alienation in buying and selling.

(Yes/ No/ Not known)

(b) Name such tharawads with the year of division.

(c) Any additional information on this!

5. Does the present division takes place with the freedom of alientation?

(Yes/ No/ Not known)

6. (a) Earlier how was the tharawad property divided in your Island?

By Marumakkathayam/ By Makhathayam/ Not known

(b) At present how the tharawad property is divided!

By Marumakkathayam/ By Makhathayam/ Not known

7. (a) Do you feel any changes taking place in the system of tharawad ?

(Yes/ No/ Not known)

(b) If so, what are they ?

(c) What do you understand as reasons for this?

8. (a) Do you think the tharawad property under Karanavar should be maintained as undivided?

(Yes/ No/ Not known)

(b) What is the reason:

(c) What are the powers and privileges of Karanavan?

9. (a) Is the Tharavad system is suitable to peculiar conditions in Island?

(Yes/ No/ Not known)

(b) Reason

10. (a) Can tharawad be divided?

(Yes/ No/ Not known)

(b) Is there any documents to support the above?

If so, their number

Date

Where this document is?

(If possible provide copy of the document)

11. (a) What is the mode of dividing tharawad property in your Island?

Thavazhi/ Per capita/ Not known)

(b) Is there any documents to support the above. Please give number

Date

Where this document is?
(If possible provide copy of the document)

(c) Does 'Maranavakasan' exist in your island? If so, what is it?

i. (d) If the division is by Thavazhi how one's share is calculated?

ii If divided Per capita how the share is calculated under individual share how it is calculated?

iii Is there any practice of giving more share to Karanavan ?

(Yes/ No)

If so, the reason. How much.

iv Does the allottee gets full rights on the divided velliyazcha property?

v If tharawads of one island is having property in another island which is having a different practice, under the practice which of the island does inheritance takes place?

vi Do you have 'Attalodukkam' practice in your island?

(Yes/ No/ Not known)

If so, what is "Attalodukkam".

12. (a) In your Island can the Friday property be converted into Monday/ Thursday property?

(Yes/ No/ Not known)

(b) When ?

All consents/ for some other reasons

(c) What are other reasons?

(d) How much of Friday property was converted into self acquired property?

(e) In your knowledge which tharawads have converted Friday property to Monday property/ Thursday property?

1. Name of tharawad?

2. How much of tharawad swath was converted into self acquired property?

3. Year of conversion?

13. (a) Whether Monday/ Thursday properties are divided under practice of shariat?

(Yes/ No/ Not known)

(b) In your Island do you have the practice of giving Monday/ Thursday property to Tharavad and converting to Friday property?

(Yes/ No/ Not known)

(c) If happened

Tharawads	Year happened
1.	1.
2.	2.
3.	3.

14 (a) In your island if one dies without writing a 'will' on Monday/ Thursday property will it become Friday property?

(Yes/ No/ Not known)

(b) If so, what do you think the reason?

(c) Do you think any changes occur in that practice?

15. (a) Do you feel any particular advantages in Tharavad system in the existing condtions of islands existing conditions? They are

(b) Do you feel any drawbacks in joint family system there are bad aspects in Tharavad practice?

(Yes/ No)

(c) If so, what are they?

16 (a) Do you think Makkathayam is suitable to island's existing condition?

(Yes/ No/ Not known)

(b) Reason

(a) You like

Marumakkathayam/ Makkathayam/ Present Combinedone

(b) Reason

18. Any additional explanation?

19. (a) In your island whether marriage, divorce, held under Muslim sheriat law?

(Yes/ No/ Not known)

(b) After marriage does a woman leave her house and go to her husband's house?

(Yes/ No/ Not known)

(c) Does any chance occur now in the earlier practice?

(Yes/ No/ Not known)

(d) Whether, any changes are coming to the earlier practice?

(Yes/ No/ Not known)

If so,

What Change Reason

20. Whether shariat law is followed in your island in relation to will and gift ?

(Yes/ No)

21. Do you have anything more to explain?

(Signature)

APPENDIX -B

AREA AND POPULATION

TABLE - 1

ISLANDWISE AREA AND POPULATION (1991-CENSUS)

ISLAND	LAND USE AREA (Sq-KM)	MALE	FEMALE	POPULATION (Nos)	POPULATION Per Sq-Km
Minicoy	4.37	4060	4260	8320	1904
Kalpeni	2.28	2114	1970	4084	1791
Andrott	4.84	4563	4559	9122	1885
Agatti	2.71	3011	2659	5670	2092
Kavaratti	3.63	4743	3934	8677	2390
Amini	2.59	3274	3173	6447	2489
Kadmat	3.15	2032	1953	3985	1277
Kiltan	1.63	1544	1521	3065	1880
Chetlat	1.04	1081	970	2051	1972
Bitra	0.10	143	82	225	2250
Bangaram	0.58	53	8	61	105
Total	26.89	26618	25089	51707	1923

TABLE – 2

POPULATION IN LAKSHADWEEP - SINCE 1901

Census year	Male	Female	Total	Decade Variation	Percentage decade variation
1901	6728	7154	13882	-	-
1911	7325	7230	14555	+ 673	+ 4.85
1921	6727	6910	13637	- 913	- 6.31
1931	8045	7995	16040	+ 2403	+ 17.62
1941	9096	9259	18355	+ 2315	+ 14.43
1951	10295	10740	21035	+ 2680	+ 14.60
1961	11935	12173	24108	+ 3073	+ 14.61
1971	16078	15732	31810	+ 7702	+ 31.95
1981	20377	19872	40249	+ 8439	+ 26.53
1991	26618	25089	51707	+ 11458	+ 28.47

TABLE – 3

SEX RATIO 1901 - 1991 CENSUS

Census year	No. of females per 1000 males
1901	1063
1911	987
1921	1027
1931	994
1941	1018
1951	1043
1961	1020
1971	978
1981	975
1991	943

TABLE – 1

Some key Statistics on Judicial Administration as on 31.3.91

Pending at the Name of the Court	1987-88				1988-89					
	Pending beginning of the Period	Institu-ted duri-ng the Period	Total	Disposal during the Period	Pending at the end of the Period	Pending at the beginning of the Period	Institu-ted duri-ng the Period	Total during the Period		Disposal at the end of the Period
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Kavarati Sessions Court										
Civil Cases	120	221	341	251	90	90	275	365	236	129
Chief Judicial Magi-Strate Court										
Criminal Cases	3	15	18	1	1	17	18	15	3	3
Androtl (Munsiff Court)										
Civil Cases	15	44	59	37	22	22	43	65	45	20
Chief Judicial Magi-Strate Court										
Criminal Cases	3	60	63	55	8	120	128	108	20	
Amini (Munsiff Court)										
Civil Cases	49	149	198	147	51	51	152	203	155	48
Chief Judicial Magi-Strate Court										
Criminal Cases	10	—	1	9	9	106	115	97	18	
Total										

TABLE - 4
DENSITY OF POPULATION

Island	Persons per sq. km as per census									
	1951	Rank	1961	Rank	1971	Rank	1981	Rank	1991	Rank
Kavaratti	682	8	808	8	1228	4	1819	2	2390	2
Agatti	731	7	861	7	1169	7	1523	6	2092	4
Amini	1259	1	1406	1	1747	1	2072	1	2489	1
Kadmat	541	9	611	10	779	10	1005	10	1277	10
Kiltan	775	6	944	4	1279	3	1484	7	1880	8
Chetlat	911	3	916	5	1200	6	1484	8	1972	5
Bitra	460	10	800	9	1120	9	1810	3	2250	3
Androtт	810	5	966	3	1130	8	1419	9	1885	7
Kalpeni	1140	2	1313	2	1370	2	1540	4	1791	9
Minicoy	839	4	914	6	1214	5	1524	5	1904	6
Balgaram	-	-	-	-	-	-	-	-	105	11

TABLE – 5
LITERACY IN LAKSHADWEEP

Item	As per Population Census			
	1961	1971	1981	1991
Total Population	24100	31810	40249	51707
Litrates Male	4273	9081	13293	19605
Female	1337	4808	8872	14943
Literacy Percentage				
Male	55.8	56.48	65.24	73.65
Female	10.98	30.56	44.65	59.95
TOTAL	**23.27**	**43.66**	**50.07**	**66.81**

TABLE – 6
ISLANDWISE LITERACY AS PER 1971 TO 1991 CENSUS

Island	Percentage of Literates to Total Population		
	1971	1981	1991 (on all ages)
Kavaratti	44.37	60.22	72.00
Agatti	43.17	54.76	65.00
Amini	40.69	48.48	61.00
Kadmat	48.4	56.07	65.00
Kiltan	41.84	46.86	60.00
Chetlat	43.17	49.93	67.00
Bitra	42.86	46.96	64.00
Andrott	34.88	48.78	63.00
Kalpeni	47.56	55.88	66.00
Minicoy	51.03	65.29	75.00
Bangaram	-	-	97.00

TABLE - 7
PLAN OUTLAY AND EXPENDITURE

Plan Period	Outlay	Expdr.	Percentage to Outlay
Ist Five Year Plan	-	-	-
IInd Five Year Plan (1956-61)	73.85	40.28	54.54
IIIrd Five Year Plan (1961-65)	98.38	108.51	110.59
Annual Plan (1966-69)	156.14	116.87	74.84
IVth Five Year Plan (1969-74)	200.00	189.72	94.86
Vth Five Year Plan (1974-79)	622.73	380.05	61.17
Mid Term Plan (1978-80)	543.64	307.50	56.65
VIth Five Year Plan (1980-85)	2035.00	2814.11	138.28
VIIth Five Year Plan (1985-90)	4390.00	6753.98	153.62
Annual Plan (1985-86)	765.00	680.16	88.91
Annual Plan (1986-87)	840.00	760.99	90.59
Annual Plan (1987-88)	1640.00	1599.54	97.53
Annual Plan (1988-89)	1750.00	1762.24	100.69
Annual Plan (1989-90)	1935.00	1954.36	101.00
Annual Plan (1990-91)	2200.00	2086.41	94.83
Annual Plan (1991-92)	2246.00	1928.00	85.85
Annual Plan (1992-93)	2500.00	1932.39	73.30
Annual Plan (1993-94)	3200.00	2354.83	73.58
Annual Plan (1994-95)	3200.00	3102.74	96.96

TABLE – 8
CRIME IN LAKSHADWEEP

Crime	As on 31st March									
	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994
Murder	Nil	Nil	Nil	Nil	Nil	Nil	1	Nil	Nil	Nil
Burglary	4	3	9	2	8	3	10	3	10	4
Thefts	5	6	4	8	12	Nil	8	1	22	12
Criminal Branch of Trust	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	1	Nil
Riots	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	1	Nil
Under Local and Special Law	2	2	1	2	66	1	Nil	Nil	7	7
Other I.P.C Crime	19	11	17	20	71	5	19	5	21	27
TOTAL	**30**	**22**	**31**	**32**	**97**	**9**	**47**	**9**	**62**	**50**

TABLE – 9
SOME KEY STATISTICS ON JUDICIAL ADMINISTRATION AS ON 31/03/91

Name of the Court	1987 – 88					1988-89				
	Pending at the beginning of the period	Instituted during the period	Total	Disposal during the period	Pending at the end of the period	Pending at the beginning of the period	Instituted during the period	Total	Disposal during the period	Pending at the end of the period
1	2	3	4	5	6	7	8	9	10	11
Kavarati (Sub-Court) Civil Cases	120	221	341	251	90	90	275	365	236	129
Chief Judicial Magistrate Court Criminal Cases	3	15	18	17	1	1	17	18	15	3
Androtl (Munsiff Court) Civil Cases	15	44	59	37	22	22	43	65	45	20
Judicial First Class Magistrate Court Criminal Cases	3	60	63	55	8	8	120	128	108	20
Amini (Munsiff Court) Civil Cases	49	149	198	147	51	51	152	203	155	48
Judicial First Class Magistrate Court Criminal Cases	10	Nil	10	1	9	9	106	115	97	18
TOTAL	**200**	**489**	**689**	**508**	**181**	**181**	**713**	**894**	**656**	**238**

(TABLE - 9 Contd.)

TABLE - 9 (Contd.)

Name of the Court	1989 – 90					1990-91				
	Pending at the beginning of the period	Instituted during the period	Total	Disposal during the period	Pending at the end of the period	Pending at the beginning of the period	Instituted during the period	Total	Disposal during the period	Pending at the end of the period
11	12	13	14	15	16	17	18	19	20	21
Kavarati (Sub-Court) Civil Cases	129	259	388	228	160	160	40	200	64	136
Chief Judicial Magistrate Court Criminal Cases	3	34	37	36	1	1	149	150	142	8
Andrott (Munsiff Court) Civil Cases	20	40	60	43	17	17	36	53	44	9
Judicial First Class Magistrate Court Criminal Cases	20	393	413	396	17	17	363	380	360	20
Amini (Munsiff Court) Civil Cases	48	84	132	87	45	45	19	64	6	58
Judicial First Class Magistrate Court Criminal Cases	18	105	123	108	15	15	8	23	9	14
TOTAL	**238**	**915**	**1153**	**898**	**255**	**255**	**615**	**870**	**625**	**245**

(Table 9 contd)

TABLE - 9 (Contd.)

Name of the Court	1987 – 88					1988-89				
	Pending at the beginning of the period	Instituted during the period	Total	Disposal during the period	Pending at the end of the period	Pending at the beginning of the period	Instituted during the period	Total	Disposal during the period	Pending at the end of the period
21	22	23	24	25	26	27	28	29	30	31
Kavarati (Sub-Court) Civil Cases	136	262	398	246	152	152	320	472	275	197
Chief Judicial Magistrate Court Criminal Cases	8	152	160	142	18	18	168	186	167	19
Androtl (Munsiff Court) Civil Cases	9	36	45	25	20	13	5	18	6	12
Judicial First Class Magistrate Court Criminal Cases	20	361	381	357	24	24	28	52	32	20
Amini (Munsiff Court) Civil Cases	58	19	77	35	42	42	16	58	5	53
Judicial First Class Magistrate Court Criminal Cases	14	131	27	9	18	18	6	24	6	18

(TABLE – 9 Contd.)

TABLE - 9 (Contd.)

Name of the Court	1993 - 94				
26	27	28	29	30	31
Kavarati (Sub-Court) Civil Cases	197	178	375	162	213
Chief Judicial Magistrate Court Criminal Cases	19	136	155	144	11
Androtl (Munsiff Court) Civil Cases	53	7	60	16	44
Judicial First Class Magistrate Court Criminal Cases	18	8	26	9	17
Amini (Munsiff Court) Civil Cases	15	29	44	32	12
Judicial First Class Magistrate Court Criminal Cases	22	287	309	284	25
TOTAL	**324**	**645**	**969**	**647**	**322**

TABLE - 10 (a)
ADMINISTRATION OF JUSTICE – CIVIL
A. MALABAR ISLANDS. 1.DELAYS IN DISPOSAL.

Islands	Year of filling suits	Number of suits filed	Year in which suits were tried	Number tried each year	Balance left over.
Minicoy	1945	9	1945	8	..
			1946	1	Nil.
	1946	4	1946	Nil	..
			1947	3	1
	1947	2	1947	2	..
	1948	12	1948	10	2
	1949	12	1949	8	4
	1950	11	1950	7	4
	1951	5	1951	2	3
			Total pendency	..	**14**
Kalpeni	1945	61	1945	57	..
			1946	4	Nil
	1946	82	1946	27	..
			1947	30	..
			1948	16	..
			1949	5	..
			1950	4	Nil
	1947	63	1947	18	..
			1948	28	..
			1949	7	..
			1950	9	..
			1951	1	Nil
	1948	76	1948	33	..
			1949	12	..
			1950	24	7
	1949	55	1949	14	..
			1950	8	..
			1951	11	22
	1950	100	1950	43	57
	1951	62	1951	13	49
			Total pendency	..	**135**

TABLE- 10(a) (contd)

Islands	Year of filing suits.	Number of suits filed.	Year in which suits were tried	Number tried each year	Balance left over.
Androth	1945	76	1945	7	..
			1946	23	..
			1947	4	..
			1948	5	..
			1949	2	..
			1950	22	..
			1951	6	6
	1946	90	1946	17	..
			1947	14	..
			1948	11	..
			1949	7	..
			1950	25	..
			1951	4	21
	1947	42	1947	12	..
			1948	3	..
			1949	5	..
			1950	11	..
			1951	5	6
	1948	36	1948	3	..
			1949	1	..
			1950	10	..
			1951	8	14
	1949	28	1949	1	..
			1950	8	..
			1951	6	13
	1950	59	1950	2	..
			1951	18	38
	1951	36	1951	7	29
			Total pendency	..	**118**

TABLE- 10(a) (contd)

Agathi	1948	58	1948	50	..
			1949	5	..
			1950	..	..
			1951	1	2
	1949	85	1949	24	..
			1950	10	..
			1951	3	43
	1950	34	1950	5	29
	1951	25	1951	..	25
			Total pendency	..	99
Kavaratti	1948	124	1948	75	..
			1949	20	..
			1950	25	..
			1951	1	3

II. Nature of Suits

TABLE- 10(a) (contd)

Island	Annual average.	For partition	Encroachment	Cancellation of false documents	Recovery of dues	Enforcement of tenants service.
Minicoy	6*	1	1	..	4	..
Kalpeni	74*	15	8	9	42	..
Androth	52*	4	2	18	23	5
Agathi	51*	6	7	8	27	3
Kavarathi	167*	..	88	7	69	3

***As per combined statistics**

III. Nature of Disposal.

TABLE- 10(a) (contd)

	Year.	Number of suits.	Compromise.	Judgment.	Appeal (pending in 1951)	
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Minicoy	1945	8	1	7	1941	1
	1946	..	..	..	1946	1
	1947	2	..	2	1947	1
	1948	10	8	7	1948	1
	1949	8	..	8	1949	3
	1950	7	1	6	1950	4
	1951	2	..	2	..	..
Kalpeni	1945	61	39	22	1948	7
	1946	82	55	27	..	..
	1947	63	41	22	..	..
	1948	69	44	25	..	..
Androth	1945	69	48	21	1943	1
	1946	78	65	13	1945	3
	1947	36	21	15	1946	1
	1948	27	18	9	1947	1
	1949	15	11	4	1948	6
	1950	21	19	2	1949	2
	1951	7	6	1	..	..
Agathi	1945	32	17	15	1943	2
	1946	31	21	10	1944	4
	1947	7	5	2	1945	2
	1948	50	32	13	1946	6
	1949	24	13	11	1947	4
	1950	5	4	1	1948	3
	1951	9	6	3	..	..
Kavarathi	1948	122	20	99	1944	3
TABLE- 10(a) (contd)	..				1947	1
	1949	126	12	112	1948	3

1950	311	31	252	1949	2
1951	151	25	126	1950	4
				1951	4

B. SOUTH KANARA ISLANDS.

I. Delays in Disposal.

TABLE- 10(a) (contd)

Year of filling suits.	Number of suits filed	Number in which suits were filed.	Number tried.	Balance left over.
(1)	(2)	(3)	(5)	(6)
Amindivi groups	1945	121	1945	112	
			1946	5	
			1947	2	2
	1946	336	1946	215	
			1947	76	
			1948	14	
			1949	17	
			1950	..	
			1951	2	2
	1947	167	1947	58	
			1948	56	
			1949	47	
			1950	2	
			1951	2	2
	1948	108	1948	52	
			1949	46	
			1950	5	
			1951	3	
			1952	1	1

I. Delays in Disposal - contd.

TABLE- 10(a) (contd)

	Year of filling suits.	Number of suits filed.	Year in which suits were filed.	Number tried.	Balance left over.
Aminidivi group - cont.	1949	307	1949	245	
			1950	16	
			1951	19	
			1952	8	19
	1950	183	1950	112	
			1951	33	
			1952	5	33
	1951	272	1951	143	
			1952	26	103
				Total pendency ..	**162**

II. Nature of Suits.

Year.	Recovery of dues.	Un authorised possession.	Boundary disputes.	False documents.	Partition.	Tranfer of property.	Belisasha to Belsha etc.	Others.	Total number of cases.
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1945	43	6	24	15	12	5	16	..	121
1946	102	22	59	35	52	11	22	23*	326
1947	53	21	27	11	9	7	9	..	137
1948	38	22	33	6	4	5	..	..	108
1949	101	26	88	7	46	8	13	18*	307
1950	74	14	36	4	24	22	6	3*	183
1951	92	12	98	8	45	11	6	..	272
	72	18	53	12	28	10	9	6	208

*Suits for endforcement of terms of razi, settelment of disputes between husband and wife, enforcement of kudiyan nadappu, etc.

III. Nature of Disposal.

TABLE- 10(a) (contd)

Year.	Number of suits tried.	Compromise.	Judgment.	Appeal pending in 1951.
(1)	(2)	(3)	(4)	(5)
1945	119	17	102	
1946	324	76	248	
1947	165	34	131	
1948	107	48	59	
1949	288	77	211	
1950	150	33	117	
1951	169	53	116	20

TABLE- 10 (b)
ADMINISTRATION OF JUSTICE - CRIMINAL.
A. MALABAR ISLANDS.
I. Delays in Disposal.

Islands.	Year of filing suits.	Number of suits filed.	Year in which suits were tried.	Number tried each year.	Balance left over.
Minicoy	1945	14	1945	13	..
			1946	1	..
	1946	1	1946	1	..
	1947	6	1947	5	..
			1948	1	..
	1948	23	1948	21	2
	1949	14	1949	12	2
	1950	8	1950	6	2
	1951	3	1951	..	3
			Total pendency	..	9
Kalpeni	1945	37	1945	36	..
			1946	1	..
	1946	69	1946	44	..
			1947	8	..

TABLE- 10(b) (contd)

			1948	17	..
	1947	37	1947	17	..
			1948	17	..
			1949	1	..
			1950	2	..
	1948	52	1948	23	..
			1949	6	..
			1950	14	9
	1949	55	1949	15	..
			1950	20	..
			1951	11	9
	1950	77	1950	41	36
	1951	70	1951	15	55
			Total pendency	..	**10**
Androth.	1943	44	1943	10	..
			1944	10	..
			1945	2	..
			1946	11	..
			1947	11	2
	1944	24	1944	10	..
			1945	4	..
			1946	3	..
			1947	3	..
			1948	2	2
	1945	41	1945	12	..
			1946	5	..
			1947	14	..
			1948	5	..
			1949	..	..
			1950	1	..
			1951	2	2
	1946	60	1946	27	..
			1947	9	..
			1948	5	..
			1949	2	..
			1950	4	..
			1951	2	11

I. Delays in Disposal - contd.

TABLE- 10(b) (contd)

Islands.	Year of filling suit.	Number of suits filed.	Year in which suits were tried.	Number tried each year,.	Balance left over.
	1947	63	1947	16	..
			1948	15	..
			1949	..	..
			1950	2	..
			1951	8	22
	1948	78	1948	18	..
			1949	5	..
			1950	10	..
			1951	21	24
	1949	28	1949	11	..
			1950	5	..
			1951	3	9
	1950	22	1950	7	..
			1951	3	12
	1951	6	1951	2	4
			Total pendency	..	**88**
Agathi	1945	25	1945	25	..
	1946	50	1946	49	..
			1947	1	..
	1947	30	1947	16	..
			1948	14	..
	1948	38	1949	34	..
			1950	3	1
	1949	56	1949	31	..
			1950	10	15
	1950	26	1950	11	15
	1951	24	1951	9	25
			Total pendency	..	**56**
Kavarathi	1948	76	1948	68	..

TABLE- 10(b) (contd)

		1949	4	..
		1950	1	..
		1951	1	2
1949	88	1949	39	..
		1950	44	..
		1951	4	1
1950	129	1950	125	..
		1951	4	..
1951	124	1951	113	..
		1952	1	10
		Total pendency	..	**13**

II. Nature of Suits.

	Annual average.	Criminal trespass.	Theft.	Disobedience.	Breach of peace.	Defamation.	Criminal breach of trust.	Murder.	Simple hurt.	Contempt of court.
Minicoy	12	5	2.5	..	..	..	2	..	.5	2
Kalpeni	53	18	17	..	12	6	..	..	..	..
Androth	41	25	7	4	1.5	1.3	1.2	1	.	..
Agathi	39	22	12	..	1	3	1	..	..	..
Kavarathi	94	51	21	8	5	5	4	..	..	..

*As per combined statistics.

III. Nature of Disposal.

	Year.	Number of suits.	Compromise.	Judgment.	Appeal pending in 1951.
Minicoy	1945	13	2	13	1948 - 2.
	1946	1	..	1	1949 - 2.
	1947	5	..	5	..
	1948	21	3	18	..
	1949	13	1	12	..
	1950	6	..	6	..
	1951	..	..	..	..
Kalpeni	1945	37	9	28	1948 - 6.
	1946	69	16	53	1949 - 1.

TABLE- 10(b) (contd)					
	1947	37	15	22	..
	1948	43	10	33	..
Androth	1943	42	26	16	No appeals this year.
	1944	22	11	11	..
	1945	39	24	15	..
	1946	49	31	18	..
	1947	41	26	15	..
	1948	54	42	12	..
	1949	19	1	18	..
	1950	10	7	3	..
	1951	2	1	1	..
Agathi	1945	25	11	14	1948 - 1.
	1946	49	17	32	1949 - 4.
	1947	16	11	5	1950 - 1.
	1948	34	16	18	..
	1949	31	9	21	..
	1950	11	4	7	..
	1951	9	2	7	..
Kavarathi	1948	76	3	73	1946 - 1.
	1949	88	11	77	1950 - 4.
	1950	129	5	124	1951 - 1.
	1951	124	3	121	..

B. SOUTH KANARA ISLANDS.
I. Delays in Disposals.

	Year.	Number of suits filed.	Year in which suits were filed.	Number tried.	Balance left over.
Amindivi groups.	1947	18	1047	12	..
	..	..	1948	3	..
	..	..	1949	3	..
	1948	16	1948	15	..
	..	..	1949	1	..
	1949	39	1949	34	..
	..	..	1950	1	..

TABLE- 10(b) (contd)

..	..	1951	3	1
1950	20	1950	11	..
..	..	1951	4	..
..	..	1952	3	2
1951	26	1951	18	..
..	..	1952	2	6
		Total pendency	..	**9**

APPENDIX-C

(See CHAPTER-V - LEGAL SYSTEM: BRITISH PERIOD)

REGULATION NO.1 OF 1912.

[The Laccadive Islands And Minicoy Regulation, 1912.]

[*Recevied the assent of the Governor-General on the 22nd January 1912; published in the* Gazette of India *on the 3rd February 1912 and in the* Fort Saint George Gazette *Extraordinary on the Ist idem.*]

A Regulation to declare the Law applicable to the Laccadive Islands and Minicoy.

Whereas it is expedient to declare the law applicable to the Laccadive Islands and Minicoy; It is hereby enacted as follows: -

CHAPTER I.

PRELIMINARY.

1 (i) This Regulation may be called the Laccadive Islands and Minicoy Regulation, 1912; and

(ii) It extends to the Laccadive Islands and Minicoy.

2. In this Regulation, unless there is anything repugnant in the subject or context, --

(i) "The islands" mean the Laccadive Islands and Minicoy:

(ii) "The Inspecting officer" means any officer directed by the Local Government or Collector to inspect the islands or any of them: and

(iii) Words and expressions used herein and defined in the Indian Penal Code[1] have the same meaning respectively attributed to them in that Code.

CHAPTER II.

Law Applicable.

1. Notwithstanding anything in any enactments now in force, this Regulation, the[2] Madras state Prisoners Regulation, 1819, the [3]State Prisoners Act, 1858, and the[4]Scheduled Districts Act, 1874, shall be the only enactments in force in the islands.

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[1]General Acts, Vol. 1.
[2]General Acts, Vol. 1.
[3]supra.
[4]General Acts, Vol. II.

CHAPTER III.

CRIMINAL JUSTICE.

2. (i) Whoever commits any of the following offences shall be liable to the punishment mentioned below in respect of such offence :--

Rioting ..... Imprisonment which may extend to two years, or fine, or both.
Giving false evidence.....Imprisonment which may extend to seven years, and fine.
Murder ..... Death or transportation for life.
Culpable homicide not amounting to murder.....Transportation for life or imprisonment which may extend to ten years.
Causing death by rash or negligent act.....Imprisonment which may extend to two years or fine.
Grievous hurt..... Imprisonmet which may extend to seven years, and fine.
Wrongful confinement.....Imprisonment which may extend to one year, or fine.
Kidnapping.....Imprisonmet which may extend to seven years and fine.
Rape.....Transportation for life or imprisonmet which may extend to ten years, and fine.
Extortion ..... Imprisonment which may extend to three years, or fine, and or both
Robbery..... Rigorous imprisonmet which may extend to ten years, and fine.
Dacoity..... Transportion for life, or rigorous imprisonmet which may extend to ten years, and fine.
Criminal misappropriation.....Imprisonment which may extend to two years, or fine, or both.
Criminal breach of trust..... Imprisonment which may extend to three years, or fine, or both.
Dishonestly receiving stolen property..... Imprisonment which may extend to three years, or fine, or both.
Cheating ..... Imprisonment which may extend to one year, or fine, or both.
Mischief by fire..... Imprisonment which may extend to seven years, and fine.
Forgery..... Imprisonment which may extend to two years, or fine.

(2) When any offence specified in sub-section *(I)* has been committed, the local Amin shall hold an investigation, and, if a *prima facie* case is made out against any person, such person shall be charged and tried by the Inspecting officer or the Collector or any of the

Collector's assistants empowered by him by general or special order in this behalf.

(3) The Inspecting officer or the Collector or any assistants of the Collector empowered under sub-section (2), when trying a case in accordance with sub-section (2), shall, when the trial is held in the islands, sit with two or more islands assessors.

3. Whoever –

(a) commits any of the following offences, namely :-
theft, criminal force, assault, hurt, criminal trespass,

(b) uses abusive language to another,

(c) obstructs any person in seizing stray cattle,

(d) without reasonabe cause fails to attend the kachabri when ordered to do so,

(e) causes mischief to property otherwise than by fire,

(f) makes any imputation concerning any person knowing that such imputation is liable to harm the reputation of the person,

(g) being convicted or charged with an offence and being in lawful custody escapes from such custody,

conviction by the Amin shall be punishable with imprisonment for a term, which may extend to fifteen days, or with fine which may extend to fifteen rupees, or with both.

4. Subject to the control of the Governor-General in council, the Governor in Council may, by notification in the Fort St.George Gazette, add to the list of offences specified in section 4, sub-section *(l)*, and section 5, and prescribe the punishments for the offences so added.

5. Whoever fails to give information of a birth or death in his house shall be punishable with fine, which may extend to five rupees.

6. *(l)* Whoever, when ordered to do so by the Amin,--

(a) fails to assist in launching or drawing up a boat,

(b) fails to attend when called upon to assist in protecting coconut plantations from the ravages of rats,

All be punishable with fine, which may extend to tow rupees:

Provided that a fine imposed under clause *(b)* may be refunded if the offender within forty-eight hours makes reparation to the satisfaction of the Aminn and assessors.

(2) Whoever, in a case not provided for by sub-section (I), disobeys any reasonable order of an Amin or other public servany, shall be punishable

with imprisonment which may extend to fifteen days, or fine which may extend to fifteen rupees, or with both.

7. (1) The local Amin of each island shall have jurisdiction to try persons accused of offences specified in sections 5 to 8 in the islands and inflict on persons found guilty of any such offence the punishment prescibed therefore.

(2) The local Amin in the exercise of such jurisdiction shall sit with four or more assessors called karnavars in the islands. Such assessors shall be specially appointed by the Collector or Inspecting officer for life, subject to good behaviour.

(3) Whenever an Amin is of opinion that an accused person tried before him is guilty of an offence specified in section 5 or in section 8, sub-section (2), and ought to receive a more severe punishment than he is empowered to inflict, he shall submit his proceedings, and forward the accused, to the Inspecting officer or the Collector, and such officer may pass such order as he thinks fit: Provided that he shall not pass any sentence of imprisonment exceeding one year.

8. (1) The Amin may take cognizance of cases on complaint or on his own initiative.

(2) In every case the Amin shall make a memorandum of the evidence of the prosecution witness, the plea of the accused, and the evidence of the defence witness.

(3) The evidence shall be taken in the presence of the accused, and the accused and the complainant shall be allowed to cross-examine the witness for the other side.

(4) The Amin shall deliver a written judment, recording therein the opinions of the assessors sitting with him and the reasons for his own decision.

9. (1) The Collector may withdraw to his own file any case pending before the Inspecting officer or an Amin.

(2) The Collector may transfer any case pending before himself or before the Inspecting officer to any of his Divisional officers for trial.

(3) The Inspecting officer may withdraw to his own file any case pending before an Amin.

10. From any sentences or order passed by an Amin an appeal shall lie either to the Collector or the Inspecting officer in cases in which the Collector or the Inspecting officer grants special leave to appeal.

11. Any person convicted by the Inspecting officer or by a Divisional officer may appeal (a) to the High Court if the sentence is one of death or of imprisonment for five years or upwards, and (b) to the Collector in other cases if the sentences exceeds three months' imprisonment or one hundred rupees fine.

12. From any sentence or order passed by the Collector as a Court of original criminal jurisdiction an appeal shall lie to the High Court.

13. No second appeal shall lie in any case whatever.

14. Every appeal shall be stamped with an eight-anna stamp, and shall be accompanied by a copy on stamped copy paper of the judgment or order appealed against :

Provided that nothing in this section shall apply to an appeal by a prisoner.

15. Every appeal shall be filled within six months from the date of the judgment or order appealed aganist :

Provided that the months of June, July, August and September shall be excluded in reckonong such period.

16. No pleader shall be allowed in any Court except with the special permission of the Collector. Parties may, however, be represented by their island mukhtyars.

17. Every mukhtyars, appearing before a Court on the mainland on behalf of a party in the islands, must produce a stamped mukhtyarnama or power-of-attorney bearing a court-fee stamp of eight annas.

18. Any person convicted of a criminal offence and sentenced to a term of imprisonment exceeding two months by a Court on the islands, or to any term of imprisonment by a Court on the mainland, may be sent for imprisonment to the Cannanore Central Jail.

APPENDIX-D

(See CHAPTER-V- LEGAL SYSTEM: BRITISH PERIOD)

Case No.1

ORDER

Dis.No.982 D/Rev.21.

Proceedings of the Revenue Divisional officer, Mangalore Division, dated; 26th December 1921.

M. R. RY. K. C. Manavadan Raja, Avl., B.A.

Read Amindivi Appeal P.R.No.216/Rev:21 against the order of the Monegar in Civil Case No. 345/1920.

Applicant ---- Pudia Kulap Muhammed

Respondent ---- Kulap Muhammed.

O R D E R

The properties of the Kulap family has been the subject matter of a long and protracted litigation between the parties. This family had 4 kinds of properties: -- (i) Property, (ii) Old Kudian property, (iii) New Kudian property and (vi) two Kundras. It is clear from the records of the various litigations and the decisions there on that all these four properties had been divided already.

The present dispute is about the property called mangath property. The respondent contends that this mangath property is also included in the family property and that the present appellant who was a party to the Razi by which the family property also gave up all his rights by receiving fifty coconut trees for his share. The whole question therfore for decisions is that when the family properties were divided this Mangath properties were also divided.

Mr. Ellis last year inspected the island sand in his order, dated 24-11-1920 he directed the Monegar to take evidence as to whether the appellant was exercising powers of management over the properties. Evidence was let in before the Monegar. The appellant examined five witnessess. From their evidence it is clear that the property which is now in the actual possession of the 1st witness for the appellant is managed by the appellant. If it were not so, I do not believe the witness would have said so. The fact that the appellant when he cut two coconut trees was asked to do it only after getting the permission of Pakir, his 1st witness only shows that the appellant could not be allowed to cut the trees with out consulting the tenants in actual possession.

No where in the records of the various previous proceedings do I find any mention of the Mangath property having been included in the Kulap family properties. The presumption therefore is that it is a property quite different from the Kulap family property. It is for the respondent to

prove that it is included in the property of Kulap Tarward which had been divided already and for which the appellant raised his claim to getting 50 coconut trees. It seems to me that the witness examined by the appellant did prove the appellant's contention that the Razi does not mention Mangath property as such is not denied. I therefore hold that it is for the respondent to prove that it is not anything different from Kulap family property. So long as no mention of Mangath property is found in the Razi the presumption is that the Razi does not cover it. I therefore set aside the Monegar order and allow the appeal.

S/d K.C.Manavedan Raja,

24-12-1912

Revenue Divisional Officer.

Sd -

For Revenue Divisional Officer.

To the appellant with one encl. Thro' the Monegar

The Monegar with the records.

Appendix – D (contd.)

Case No. 2

Proceedings of the Monegar of the Monegar of the Amindivi islands.

Cannanore Khader of Kadmat – Plaintiff

1. Fatade Sara of Kadmat
2. Fatade ummabi of Kadmat Defendants
3. Fatade ummabori of Kadmat

Civil cases no 74/24. Dated 18th September 1924.

Read

Petition on filed by the Plaintiff on 28.3.1994.

Heard the plaintiff and the moktessars

Orders

The plaintiff suit is for the recovery of 4 muras of rice and Rs 7 being the amount due to him by the defendants deceased Karanavan Fatade Sulaman. The defendants did not turn up though they are summoned several times. The plaintiff has no witness to prove his contention. He is willing to take an oath. The marginally named moktessors are of opinion that the plaintiff may be allowed to take an oath according to his statement. As the man who had borrowed rice and the amount is dead, the mokthesouss opinion and order accordingly.

1. Madalpiri Kader
2. Yittiampiri Abdul Khader
3. Tedaumlam Nuraddu
4. Abchumade Abdul Khader Haji

Amin
18.9.24

Sd / M.Abdul Khader
Monegar

Sd-
M.a.k.
18.9.24

Appendix-D (contd.)
Case No. 3

Proceedings of the Monegar of the Amindvi Islands
Messors Jos V.Alvarres & co Manglore- Plaintiffs
Kundeyapure Khasim of Chethlet- Defendant

Civil case No. 13/19 **Dated: 24 March 1919**

Petition No.57/19, filed by the Plaintiffs praying that Rs 100 due to them may be decreed with interest and the cost of the suit.
Heard defendant and the Moktherssors

Order

The suit is for the recovery of Rs 100 due by the defendant under a Karar dated 27-4-08 excecuted by him in favour of the Plaintiffs. The defendant contends that he has paid the amount to law Jakarabba of Manglore. He has however no recipt for the amount paid. The Karar further says that if the account is not paid within 5 years from the date of excecution, the defendant should also pay Rs 500 as damages.

There are five names of Mukhtassers

The marginally named Mokthessors open that the amount borrowed by the defendant may be decreed with interest thereon at 12 percent and that the claim for damages may be disallowed as there in no custom to decree such damages. I accept their opinion and decree the following amount: -

	Rs	A	P
Principle	100.	0.	0
Interest at 12 p.c till the date	130.	14.	8
Cost of the suit	0.	8.	0
Total	231.	6.	8

I disallow the claim for damages for interest on amount decree should be paid at 6 p.c from the date. Till the date of realization.

Amin

Sd-
Monegar

24.3.19

Order pronounced in open court.

Sd-
24.3.19

Appendix-D (contd.)

The Deed in Support of the Case No. 3

Undersigned Kunderyapure Kasim Koya of Chethlath have this day received from Messrs Jos.V.Aluares & co Manglore the sum of Rs 100/- one hundred only to buy a native craft called Thekalaodam. In consideration of the help rendered to me I hereby agrees myself to handover, all the cargo I, my son Biraum Mahabw, or my agent may bring in this said Theklaodam for a period of 5 years from the date of this agreement, he said jos.V.Alvares & co Manglore to be sole on commission. The said loan of Rs 100/- one hundred will be turned to the said jos.V.Aluras & co with 12% interest per ### thereon. Should I, my son Biraumpore Mahabur. My agent give the cargo of the said Theklaodam to any person in manglore within the said period of 5 years hereby fine myself to pay the said jos.V.Alvares & co Manglore Rs 500/- five hundred by way of damages. In [redacted] I the said Kunderyapure Kasim Koya of Chethlath divi set my [redacted] 1908.

Witness

1. Thumb impression of Biraumpore Mahabud of Chethlath.
2. Signature of Shekanabir MuttuKoya of Androte.

Signature and thumb impression of Kudave japur
Kasim Koya of Chethlath
Manglore
27th April 08

Appendix-D (contd.)

The Deed in Support of the Case No. 3

Undersigned Kunderyapure Kasim Koya of Chethlath have this day received from Messrs Jos.V.Aluares & co Manglore the sum of Rs 100/- one hundred only to buy a native craft called Thekalaodam. In consideration of the help rendered to me I hereby agrees myself to handover, all the cargo I, my son Biraum Mahabw, or my agent may bring in this said Theklaodam for a period of 5 years from the date of this agreement, he said jos.V.Alvares & co Manglore to be sole on commission. The said loan of Rs 100/- one hundred will be turned to the said jos.V.Aluras & co with 12% interest per ### thereon. Should I, my son Biraumpore Mahabur. My agent give the cargo of the said Theklaodam to any person in manglore within the said period of 5 years hereby fine myself to pay the [redacted] Alvares & co Manglore Rs 500/- five hundred by way of damages. In [redacted] said Kunderyapure Kasim Koya of Chethlath divi set my [redacted] 1908.

Witness

1. Thumb impression of Biraumpore Mahabud of Chethlath.
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Kasim Koya of Chethlath
Manglore
27th April 08