CHAPTER III
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MARUMAKKATHAYAM AND THE LAW OF INHERITANCE

The system of law by which succession to property is traced through females is commonly known as the Marumakkathayam system of inheritance. The materinal system of kinship as well as rights to property are traced through females and not through males. Marumakkathayam literally means inheritance through sister’s children as opposed to sons and daughters.

How and when the system of inheritance in the female line came into existence is a matter of conjecture. Mclennan is of the opinion that descent through females indicate uncertain paternity. Mclennan, Morgan and Baschofen have shown that polyandry and kinship through females are phases in the evolution of human society and that some system of polyandry existed all round the globe. These writers are of the opinion that the matriarchal system preceded the patriarchal, and that the matriarchal system gradually giving place to the patriarchal. But Sir Henry Maine, thinks that the origin of society is in patriarchal families, that polyandry and kinship

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through females are of temporary duration liable to be brought about at stage in the progress of society by peculiar circumstances under which it may be placed.\textsuperscript{2} Laternau in his book "Evolution of Marriage" opines that polyandry and promiscuity were not general or universal as supposed. Westmark is not so dogmatic as the other writers and thinks that it cannot be positively asserted that all society passed through the matriarchal stage in its progress.\textsuperscript{3} But all the scholars are agreed that kinship and inheritance in the female line is the direct result of the same system that existed in ancient times.

The persons governed by the system, viz, the Nairs, the Thiyyas or Ezhavas and the Mappilahs of Malabar from the great bulk of the people who were governed by the \textit{Marumakkathayam} system. The Ezhavas of South Travancore, though followers of the \textit{Marumakkathayam} system generally, have adopted a dual system of inheritance in the case of self- acquired properties. They are said to be followers of the \textit{Misravazhy} or

\begin{itemize}
  \item \textsuperscript{2} \textit{Ibid.}
  \item \textsuperscript{3} Westmark's, \textit{History of Human Marriage}, Madras, 1943, p.83.
\end{itemize}
“Makkal and Marumakkal Vazhy”, a dual system of inheritance. It is not possible to exactly define the area where the “Misra” system prevailed.\(^4\) The double system is clearly an engraftment of the patriarchal system on the matriarchal. Strictly, Marumakkathayam system was adopted by the Nairs and the other castes had adopted it by long contact and residence among the Nairs. The Mappilahs and Christians who follow the system were converts from the people who follow the Marumakkathayam system.

The Tarawad is a Marumakkathayam family consisting of all the descendants in the female line of one common female ancestor.\(^5\) The Nair regulation, as well as the Malabar Marriage Act defines a Tarawad as a joint family with community of property, governed by the Marumakkathayam law of inheritance. K. Padbhanabha Menon in his able memorandum attached to the Marumakkathayam Committee’s Report speaks of a Marumakkathayam family “as a Tarwad and consists of a group of persons, male and female, all tracing descent from a common ancestress, living under


\[^5\] Ibid.
the control and management of the eldest male, who is called the Karnaven.\textsuperscript{6}

In Bailey’s Malayalam Dictionary the word \textit{Karnavan} is interpreted as “father” “maternal uncle,” “elder brother,” “lord” etc, and it also seems to mean as “senior” as \textit{Anandaravan} denotes “junior.” But the technical meaning of the word is similar to the word “\textit{Yajaman}” in the Alyasantana law and denotes one with power to represent and manage the \textit{Tarawad} of family.\textsuperscript{7}

It is difficult to give a definition of the word \textit{Karnavan} which would correctly describe all that is meant or included in the word \textit{Karnavan}. The Nair Regulation defines \textit{Karnavan} thus:

\textit{“Karnavan means the senior male member of the Tarwad on whom the headship of the Tarwad, the right of management of the eldest male, who is called the Karanavan”}. In its simplest form, a family would consist of a mother and her children living together with their maternal uncle, that is the mother’s brother as \textit{Karnavan}. In its complex form it would consist of a mother and her children both sons and daughters,

\begin{itemize}
\item \textit{Ibid.}
\end{itemize}
and their descendants in the female line however distant, all living together under the control of the common Karnavan who would be the one senior in age to all the male in the family". The Taraward is a single entity and the members of the Tarawad have vested interests in the property, though the management and control thereof is by law vested in the eldest male member for the time being called Karnavan, who however is liable to be ousted at any time from the office of Karnavan at the instance of junior members for misconduct or malfeasance by a decree of court or by a family compact. The junior member have always been accorded the right of seeing that Tarawad property is not wasted by the Karnavan of alienated by him even temporarily for other than proper family purposes, and they are interested in conserving the property for joint and beneficial enjoyment of the whole family to the same extent as the Karnavan.

Karnavan had the junior members of the Tarawad in his power, and he was not bound to provide for them if they left their Tarawad house. The junior members were not entitled to acquire property of their own and of possession of properties thereof, are vested in law, and in the absence of such male member the senior female member. The head and manager of the

8. Ibid.
corporation is the senior male member of Karnavan for the time being, and in him is vested the property of the Tarawad not however as absolute owner; but as agent or representative of the Tarawad. 9

He looks after the concerns of the family, and represents it to the world; but as regards substantial proprietorship in the corpus of Tarawad property, he has no greater interest in the joint property than any of his Seshakars. He is not the agent of the family to make permanent alienations but must have special authority in each case. “A Karnavan is the natural representative of the Tarawad in its dealing with the outside world, and right to represent the Tarawad is a birthright. His right to borrow on behalf of the Tarawad comes within the scope of what may be termed his natural agency.”

A learned writer in the Travancore Law Journal describes the Karnavan as the “keystone of the Marumakkathayam arch.” 10

Dr. Omsby calls the Karnavan not merely its representative but “the head and mouthpiece” of the Tarawad. 11 His powers are said to be

11. Ibid.
essentially one of management, but he has greater powers than a Hindu manager. The position of a Karnavan has been by false analogy likened to a trustee, officer of a Corporation, agent of the family and principal partner in a firm. This error in the treatment of Karnavan arise out of misconception as to the position and status of a Karnavan.

Neither is he an agent or principal partner, and the property is vested in the Karnavan of the Tarawad not as agent but as head and ruler of the Tarawad. The Karnavan is not a partner but has almost unqualified powers over the Tarawad.

The question has often arisen whether a female member can be the Karnavan of a Malabar Tarawad. Both the Travancore and Madras High Courts have answered the question in the affirmative. C. Ramachandra Iyer in his “Book on Malabar Law” para 46 says: “On the death of a Karnavan, if the male member happen to be a minor, the management of the Tarawad would devolve on the senior female. para 47:- In the absence of male members, the right to management passes to the senior female who can exercise all the powers vested by law in the Karnavan.  

The eldest male member of the Tarawad is the Karnavan, and in him is vested actually (though in theory in the females) all the property, movable or immovable, belonging to the Tarawad. To take care of it, to invest it in his own name (if it be movable) either on loans on Kanom or other security or by purchasing in his own name lands and to receive the rents of lands. He can also grant the land on Kanom by his own act or on Otti mortagae. He is not accountable to any member of the Tarawad in respect of the income of it nor can a suit of the Tarawad property in the absence of fraud. He is entitled in his own name to sue for the purpose of recovering or protecting property of the Tarawad in his own name.

One of the most important rights of the Karnavan is the right to be in possession of the Tarawad property both movables and immovable to the exclusion of all the other members of the Tarawad. The junior members have no right to be in possession of any item of Tarawad property in antagonism to the Karnavan.

Karnavan is undoubtedly entitled to the possession of all and every item of Tarawad property and no Seshakaran can hold any Tarawad property against the Karnavan. The mere fact that the Seshakars have claims against Karnavan for maintenance etc, does not entitle the former to hold possession of any particular property contrary to the orders of the latter. As the Karnavan is entitled to the possession of all the Tarawad properties a junior members who trespasses upon the Tarawad property or dishonestly commit
theft is liable to be prosecuted.\textsuperscript{15} The \emph{Karnavan} is entitled to the return of all \emph{Tarawad} property to his management from any member who is in possession of it, either under a permission given by him or by his predecessor.\textsuperscript{16} But if \emph{Tarawad} property is in possession of a branch of \emph{Thavazhi} under a maintenance arrangement, the \emph{Karnvan} cannot arbitrarily evict that branch from the property without making other suitable arrangements for the support of that branch. The Junior members in possession under the arrangement, cannot resist delivery of possession of the property to the succeeding \emph{Karnavan}, if he so desires. Though the junior members are actually in possession, their possession will be deemed only the possession of the \emph{Karnavan}.

As the head of the family the \emph{Karnavan} manages the \emph{Tarawad} affairs, meets its expenditure and distributes its income to the various members of the family. His powers over the \emph{Tarawad} income is almost absolute and he is not legally liable to render accounts to the junior members, though in a suit for removal the \emph{Karnavan} may be called upon to prove how he spent the \emph{Tarawad} income.

\textsuperscript{15}High Court Proceedings, No.89, dated 24.4.1079.

"The power of the Karanavan has certain limitations. Though he has no greater interest in the Tarawad properties than any other member, yet a rich Karanavan can squander the bulk of the Tarawad income in profligacy, without his being liable to account, provided he gives a bare maintenance to the Tarawad members".\textsuperscript{17} From these decisions it follows that a \textit{Karnavan} is not liable to be sued for an account of the stewardship, but in a suit for his removal, misappropriation of the family income may be one of the grounds for his removal. The non liability to render accounts does not mean that the \textit{Karnavan} can squander the family income as he likes. The income is primarily intended for the maintenance of the \textit{Tarawad} members and the \textit{Karnavan} has not power to waste it. Of course, the \textit{Karnavan} has the liberty to distribute the family income as he likes, without being questioned by the junior members, but the distribution must be for \textit{Tarawad} purposes.

The office of \textit{Karnavan} is by law vested in the senior male member of the \textit{Tarawad}. His right to Karnavanship is a birth-right. But he may delegate his powers of management to the junior members of the \textit{Tarawad}, who will be presumed to be acting under the directions of the \textit{Karnavan}. The \textit{Karnavan} is also at liberty to resume management.

Tarawad property is principally and primarily intended for the maintenance of the family members. As the Tarawad property is vested in the senior male member and as he takes the Tarawad income, he is bound to maintain the others with the family income. One of the gravest breach of duty of a Karnavan, is his neglect to maintain the Tarawad members.

The Karnavan is bound to meet the funeral expenses of the deceased members and to meet the marriage expenses of the Sheshagaries. He is bound to bear the reasonable expenses for the defence of the Tarawad members against false and groundless prosecutions when the means of the family permit. The Karnavan is the manager of the Tarawad and the Tarawad property is in his possession not for his exclusive benefit, but for the benefit of all the Tarawad members.

Each member of a Tarawad has a right to be maintained in the Tarawad house, and this is a personal right. He has also a right if a male and not incompetent, to succeed the management in the order of seniority and this is also a personal right. The Tarawad property is not partible at the pleasure


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of any one member and he cannot maintain a suit to enforce partition because separate right to demand partition does not exist. The Tarawad property is however a common fund for subsistence and each member is entitled to see that the Karnavan uses the full share of the Tarawad property for the beneficial enjoyment of the joint fancy. The obvious effect of allowing one or more member to quit the family and live apart in a portion of the estate sufficient to support him.

1. A right of succession in the order of seniority to the management of the Tarawad on the death or retirement of the Karnavan.

2. To be maintained by the Karnavan

3. The right to object an improper administration of the Tarawad by the Karnavan and to see that the property is duly used for the benefit of the Tarawad.

To present the unity of the family as the only effective means of securing to all the members a full share of the benefits of the joint estate. According to Dr. Omsby and Kunjan Menon, a woman living under the protection of her husband and members not living in the Tarawad house are not entitled to maintainance from the Karnavan. No separate maintenance to a members of a Tarawad can be allowed except, when that member lives out of the Tarawad house owing to either misconduct or ill – treatment of the Karnavan. No separate maintenance can be awarded in the case of female members, who live with their husbands.
In 4 T.L.R 25 it was held that a female can only live in the *Tarawad* house\(^{22}\) "or in any other house set apart for that purpose". Here by the *Karnavan*, and failure to obey him would be a ground for withholding maintenance. The only occasion for a junior member to claim maintenance if he or she lives out of the *Tarawad* house, and then the rate of maintenance must be according to the means and status of the family "14 T.L.R.51 is nearly a reiteration of the principle that no one has a right to claim maintenance who lives out of the *Tarawad* house."\(^ {23}\)

As the *Anandaravan* is much interested in *Tarawad* property as the *Karnavan*, it is his interest, as well as that of the Tarawad as a whole, to see that the *Tarawad* property is duly administered, and conserved for the benefit of the *Tarawad*.\(^ {24}\) But as the *Karnavan* is the "head and mouth piece" of the *Tarawad*, the *Karnavan* is the proper person to deal with *Tarawad* property.\(^ {25}\) But for the interest of the *Tarawad* as a whole, certain rights must be of necessity to be conceded to the junior members. The right to redeem *Tarawad* mortgages when the interests of the *Tarawad* as a whole


demand such redemption, the right to sue for the removal of the 
Karnavan, to deal with Tarawad property in case of urgent necessity and to 
sue to recover a debt due to the Tarawad which the Karnavan had not taken 
steps to realize.  

There are at the present day two great factors which are sapping the 
Marumakkathayam system and gradually disintegrating it. One is the ever 
increasing natural love and affection between fathers and their own children 
in preference to those who by blood are not as so nearly related to them 
namely, their nephews and nieces. The other is the tendency of the 
Karnavans, who are bound by not such ties, not to educate the male 
members of their Tarawad to earn for themselves, because they are conscious 
that the Tarawad will have to bear all the burdens incidental to the progress of 
its individual members, with a remote chance of deriving any benefits from 
the expenses it may cause. The result is only a demoralizing one; a rich 
Tarawad endeavours to remaining status quo while the poor becomes poorer 
still, because of the multiplying months it has to feed; and the community, 
save in a few isolated instances, lags behind where it should advance. 

As the *Karnavan* is the manager of the *Tarawad*, and till he is not deposed from office, he is the agent of the *Tarawad* and money advanced to him must necessarily be presumed to be for *Tarawad* purposes. This is the principle on which the rule is based. When the feeling between the *Karnavan* and the *Anandravan* had been not previously bitter for some time before the debt was incurred, and the creditor is a neighbour who know the family circumstances, the junior members need only prove that the income which was being derived by the *Karnavan* from the family property as such that there could have been no necessity for a loan besides providing that there were no family marriages or festivals requiring unusual expense about that time.

The possession of the *Tarawad* property is with the *Karnavan* and he is the holder of the family money chest. The status of junior members being such, all presumption should be in favour of junior members in case of property found to be in their possession or acquired in their name.

*Marumakkathayam* of the Vellalars tied them to the system of the Nairs, wherein it was considered sacrosanct. Conservative pattern of the

system was found in the Nair community, whereas among the Vellalars it was a unwholesome combination of the two systems.²⁹ As a working family system the Marumakkathayam legalized inheritance rights of daughters,³⁰ and accepted the law of succession through nephews which was peculiar to Hindu law. The term Marumakkal (Nephew) was a combination of two word Maru and Makkal, Maru denotes integrated services rendered by persons who resided with the family of the owner of the property, while Makkal refers to the children of the family concerned. The traditional family created a hierarchy called Tarawad.³¹ To delve into the origin of the Marumakkathayam institutions it becomes necessary to go back to their early stages and to examine the conditions of the society which gave rise to them.³²

Finding only the eldest son of the Namboothiri family the right of wedlock with their women, the Junior Namboothiri turned towards the Nair women for Sambandan relation.³³ The practice of Polyandry was universal

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³⁰ English Records, Trivandrum, Judicial File No.430 of 1932, the Marumakkathayee, Marriage Bill, 31 August, 1931.
³¹ Report of the Marumakathayam Committee p.V.
³² Ibid, p.VII.
³³ Sambandam marriage, solemnized with giving cloth of Pudavakoda was a loose form of marriage prevailed among the Nairs of Travancore which had established polyandry. Census of India Travancore 1901, Vol. XXVI,p.330.
and its corollary kinship in the female line and the descent of property through women, had invariably proceeded kinship and decent of the property.\textsuperscript{34} It was for the advantage of the Brahmins\textsuperscript{35} that they compelled the Nairs to change the Law of Inheritance from patrilineal to matrilineal. Originally the system of inheritance in the ancient Kerala, (former Chera country) during the Sangam age was patrilineal.

The Nairs of Travancore are said to be the earliest inhabitants and one of the leading communities of the caste – Hindus. In 1901, they were about 5,20,941, constituting 17.65 percent of the total population of the State. In the social hierarchy of the Travancore Society, they were only next to the Brahmins, especially the Namboothiris, an influential community. Agriculturists by profession, perhaps drawing comparison to the Sudras of the Chatturvarna system, they were given military training in the techniques of warfare. They turned themselves experts in Kalaris\textsuperscript{36} and organized offensive and defensive forces known as the Nair bridge which fought against the Portuguese in A.D.1510 and later against the British.\textsuperscript{37} As a privileged

\textsuperscript{34} Report of the Marumakkathayam Committee, p. 275.

\textsuperscript{35} Travancore Law Report, p.69.


\textsuperscript{37} P.K. Parameswaran Nair, \textit{Nair Service Society, Chairman}, (Malayalam) part I, Chaganachery, 1972, pp 1-2.
conventions, rites and rituals, ceremonies and festival and taboos and restrictions. Since they attended to the household affairs of the king and looked after the lands of the royal family members with their retainers, they were exempted from the payment of land tax. Due to their royal connection as soldiers and their priestly relation, their women were taken in Sambandham (marriage) by the Brahmins, and enjoyed special status in society. Whenever they walked along the road or street, people of other castes, especially the lower castes had to keep a distance or to run away from the place. As a privileged section of the society, they adopted a social practice i.e, matrilineal succession of inheritance which is called the marumakkattayam. Tracing its origin, one could easily find that it did not exist in Travancore prior to the twelfth century. After that it seems to have emerged as a direct outcome of certain peculiar social and political conditions that were brought to the country. Some of these peculiar situations were the Brahmin domination and the formation of the Nair military units. Since their ladies and children were to be looked after in their absence and to accept the overlordship of the Namboothiris, especially in the janmi land relations, and the Sambandham from of marriages the Brahmins had with the Nair ladies enhanced the power and prestige of the Nair ladies. These perhaps went a long way in the transition of the matrilineal system into a matrilineal society.38

38. A Sreedhara Menon, Social and Cultural History of Kerala, New Delhi, 1979, p.87.
A means of inheritance, the *Marumakkattaym* was widely prevailed among the Nairs, Vellalas and Ezhavas of Travancore. In this system, children born of any kind of relation were the members of their mother’s family and not of their father’s. Their local guardian was the *Karnavan* (managing members), the eldest male members of the mother’s family. In reality, the father neither had any legal connection with or right over his children or the family name. In this, all kinds of movable and immovable properties were inherited through the women of the family instead of through men.\(^3^9\) Any property acquired by a father of this kind of family went not to his own children; but to his sisters children who inherited the family income and property of their mother and maternal uncle too.\(^4^0\) The *Karanavan* had enormous powers and as a result exercised supreme authority over the members of the family. As a matter of fact, even the land settlement *pattah* (land register) was issued in his name only.\(^4^1\) He not only managed and controlled the *Tarawad* property but was responsible for the protection of several families of the *Tarawad*, living under the same roof.

\(^{39}\) *Travancore Administrative Report*, 1901 – 1902, p.3


\(^{41}\) *ibid.*

*Tarawad* is the Nair Joint family able the house in which the members of the family tired.
For the proper management of the household affairs, the Karnavan had to live in the same house. The junior members of the Tarawad practically had no voice or privilege in the family and therefore the Karnavan was not bound to provide for them beyond subsistence. Worse than this was their moral and intellectual decline and no measure was adopted to improve their moral and intellectual conditions. The Karnavan was arbitrary and absolutist, and it had its impact on the youngsters. Hence they naturally tended to foster a feeling of discontent among the other members of the family over the management of the Tarawad. Consequently, the junior members became disinterested in the affairs of the Tarawad, and turned into easy groups of pleasure lovers and earnings of other, and spending on ladies. They had no responsibility or say in the Tarawad and did not work for its improvement and mostly wasted its income.

Besides, this system was not conducive to the advancement of indigenous industries for want of capital among the junior members. Naturally, it led to disobedience among the younger generations which in course of time led to a series of bickering and ruinous litigations, and the management of the Tarawad became very difficult.\(^43\)

Added to this was the loose marriage contracts of the Nair women, which were temporary arrangements and did not bind both the parties. It was called \textit{Sambandham}, which was nothing but a sexual association regulated by certain conventions convenient to them. In consequence, divorce was very common among them and very frequent. To maintain and preserve the Nair \textit{Tarawad} in fact, two or more members of the same family had only one woman as their wife,\(^44\) which ultimately resulted in polygamy and polyandry. In this system, it is but natural that the Nair women very often jilted their husbands, and in their presence contracted matrimonial relations with men of higher castes. This readymade form of

\footnotesize{\textbf{43. Native Newspaper Report (NNPR), \textit{Kerala Patrika} (Confidential) March 1886, p.9.}}

\footnotesize{\textbf{44. A.P. Ibrahim Kunju, ‘\textit{Medieval Kerala Society}’ South Indian History Congress – Proceedings of the First Annual Conference 1980, Madurai, 1980, p.139.}}
marriage was considered as a boon for them. Moreover, the Nair women had no settled form of marriage, and they performed the religious rites without any definite marriage relationship with any married man. This amounted to a kind of moral turpitude practiced under the cloak of social and economic relations, and aimed at preserving the property intact and the supremacy of the Tarawad and Karnavan and the Janmi. This was certainly a social evil; but convenient for its adherents then. What is of prime importance is that it carried with it seeds of moral corruption and social decay, and at the behest of modernism, the demand for its abolition arose.

The nineteenth century witnessed a social awakening of far reaching importance. The spread of western education and rational thinking, brought about radical changes in the existing social practices and pattern of life. People began to question the validity of certain traditional customs and practices which were deeply rooted and sustained in their society. These Nairs, who came under the spell of western education and men of higher thinking, rational thought and radical social change, clamoured for abolishing a number of such evil customs that affected the Nair society. Western education helped Indians evaluate their age old traditions on moral grounds. Some of the Missionaries even attacked and criticized some of the socio-religious practices that prevailed in Travancore. Coming under the influence of western education, they pleaded for increasing facilities for western
education in Travancore. The desire tended to devalue ritual sanctity and demanded its substitution.\footnote{45}

It was in these phases of social ruin and economic distress, many farsighted men demanded the initiation of suitable remedies for wiping out these maladies. Highly distressed by these un-social practices, men of social value and rational thinking launched a campaign to educate and mobilize public opinion in favour of undoing this evil practice of the Marumakkattayam Tarawad system and the attendant evils. They also attempted to steer clear some of the problems through associations. It was in this line that P. Thanu Pillai founded a cultural association called the Malayali Social Union in 1870. It comprised men of the new wave who severely condemned the marriage customs and other social ills that afflicted the Nair society. Finding wider application, it was renamed in 1884 as the Malayali Sabha. It stood for the promotion of social values and welfare of

\footnote{45. Robin Jeffrey, The Decline of Nair Dominence in Travancore, New Delhi, 1976, p.155.}
the Malayali community. Due to the influence of western education and knowledge they encouraged female education to eradicate many evils including the marriage system.\textsuperscript{46} To give wide publicity to these objectives, the \textit{Sabha} brought out in 1886 a vernacular newspaper called \textit{‘The Malayali’}. It helped the \textit{Sabha} to become a popular organization. In the initial stages, it focused its attention on the Nair community, especially on the current politico-social problems that plagued Travancore. Slowly, it grew to the extent of exerting influence on the day to day affairs. Then, under its own auspicious, a memorial popularly known as the ‘Malayali Memorial’ was submitted on 11 January 1891 to the then \textit{Maharaja} Sri Mulam Tirunal (1885–1924). It urged to grant the Travancorians a fair share both in the government and in the higher grade services, besides abolishing the social evils. Thus, the \textit{Malayali Sabha} created a conducive atmosphere for social legislation and change of far reaching consequences.

One such area which it concentrated was the Travancore Will Act. In 1896 at the intervention of P.Thanu Pillai, a bill similar to the Malabar

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\item \textsuperscript{46} \textit{Madras Standard}, 21 December 1887, p.2.
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Marriage Bill was introduced in the Travancore Legislative Council. Although the bill was pushed off from the agenda of the Legislative Council, a piece of legislation. The Travancore will Act of 1899 was passed on 27 May 1899. It conferred on the Marumakkattayees the right to bequeath up to one half of their self acquired property on their wives and children. Thus, it recognized for the first time the right of the children over the property of their fathers in the Marumakkattayam communities. Though it was meant for the succession of self-acquired property, it helped the gradual bequeathing of Taraiwad property to their children by their Karnavans. As a result of the sharing of properties, disputes between the nephews and children became imminent. In 1909 it was found that there were nearly 300 such civil cases in the various courts of Travancore. These, of course, led to the


48. Travancore Govenment Gazettee (TGG), dated, 30.5.1699.

49. Travancore Legislative Council Proceedings, dated 27, May 1899, p.27.

50. English Records, File No.251 Legislature, Kerala Secretariat, Trivandrum, p.45.
agitation of the partition of the Tarawad properties. Anyhow, it was the will Act which sowed the seeds of individual partition of Travancore among the Marumakkattayees. However, the act did not make any mention of the degenerated marriage system that widely prevailed among the Nairs. Therefore, the Sabha demanded the reform of the Sambandham form of marriage contract, the desired “to make their marriage a binding tie”. 51

At these suggested reforms were received with mixed reactions, and there prevailed a gloomy atmosphere and the possibility of an imminent rift in the Nair community itself. Therefore, to maintain unity among the Nairs, C.K. Krishna Pillai founded 'The Travancore Nair Samajam' out of the old Malayali Sabha. This movement was well received with popular support from the prominent Nair leaders like V. Ramakrishna Pillai, Mannath Padmanabha Pillai and Changanachery K. Paramesvaran Pillai. But in 1905 it was renamed as Keraleeya Nair Samajam with the object of reforming the Marumakkattayam system, to prevent the mixing of sub-caste and the elimination of unwanted and worthless customs that were prevalent among the Nairs. Consequent to these demands, the Government of

51. NNPR, Kerala patrika, (cofidential) 14 September, 1889, p.192.
Travancore appointed a committee on 2nd February 1908 to make a detailed study and to report the problems that had emanated from the Marumakkattayam system of inheritance. The committee members toured the different parts of the state extensively, made elaborate enquiries by holding discussions and conferences and submitted a detailed report along with a draft bill on 23 December 1910. However, after a lapse of more than twenty-one months, the bill was passed in the Council on 17 October 1912 and became a law since then. It defined and clarified the law of marriage, succession and family management of the Nairs, and recognized a public Sambandham as a legal marriage. The husband was made the legal guardian of his wife and children as long as they lived with him. A man could dispose off all his self-acquired property by making a will. Simple

52. The committee consisted of five members, Justice A. Govenda Pillai, a High court Judge as the President; N. Raman pillai, Director of Registration and Secretary and M. Krishna pillai, a retired District Judge; \( \text{P. Padmanabha Monon, a High Court Lawyer of Ernakulam and K. Krishnan Pandalay, a High Court Lawyer of Quilon and} \)

procedures were laid down for divorce. Moreover, this regulation reduced the powers of the Karnavan substantially. However, the Legislative Council ignored one of their main demands, partition of the Tarawads in the Nair community while the bill was finally passed. Therefore, the Regulation of 1912 served as a catalistic agent and stimulated the Nair community seeking for a reformed regulation.

The Nairs of Travancore continued their agitation in a more organized and identified form, focusing their entire attention on the question of individual partition of the Tarawad. In this venture, they used both the press and the platform as effective instruments for the popularization of their objectives and demands. In October 1914, Mannath Padmanabha Pillai founded the Nair Service Society. Under its umbrella, the agitation for the partition of the Tarawad continued within the Council and outside. Sensing the popular acclaim and popularity of the move, the Government granted permission to C. Raman Thampi, a non official member of the Legislative Council to amend the Regulation of 1913 on 7 April 1920. The bill was introduced with the object of revising the Regulation of 1912 in the light of experience gained so far and to meet the growing demand for

substantial reforms in the customs and usages prevailing among the Nairs regarding marriage, inheritance and succession; maintenance and guardianship; Tarawad management and to make provision for the partition of Tarawad.\textsuperscript{55} However, the bill was silent on the vital issue, namely the individual partition. Therefore the public rose against the bill. Realizing this, to buttress the move, K.P. Raman Pillai introduced the bill of 1912 in the Council. But due to his sudden demise, the Government granted permission to K.Parameswaram Pillai of Changanachery to take charge of the bill. Accordingly, the bill was introduced in the Council meetings held from 7 to 12 June 1924, and after a series of debates and discussions, it was passed on 11 February 1925 and published in the Gazettee dated 21 April 1925\textsuperscript{56} which became the Nair Regulation.

The Nair Regulation of 1925 had a number of outstanding features. For the first time, it granted the right of inheritance to the Non-Nairs marrying Nair women. Till this regulation, the Non-Nair marriages with Nair women were viewed as morganatic marriages. The children could not inherit properties on the Non – Nair fathers. But this regulation put an end

\textsuperscript{55} Ibid, dated 12.7.1921, pp 21-24.

\textsuperscript{56} Legislature, File No.346/25, dated 27 August 1925, pp, 1-6.
to all these tendencies and customs. By this regulation monogamy was enforced while polygamy was made unlawful. Provisions were suitably framed for the legal marriage and even dissolution of marriages. The Nair custom of presenting the wedding cloth to the bride by the bridegroom on the day of marriage was accepted as valid marriage for all legal purposes, which is still in vogue among the Nairs. Rules were also incorporated for the registration of marriages. Therefore, the Act prescribed eighteen years of age for males and sixteen for females for a valid marriage. It prohibited intercaste marriage by the Nair male members. For the dissolution of a valid marriage, a husband or wife was allowed to submit a petition before the district Munsiff within the local limit. Suitable legislations were made for determining the amount of compensation. If the compensation was low and insufficient, provision was made for an appeal to the High Court of Travancore. The wife was permitted to apply for the


dissolution of marriage, if she had completed sixty years of age. The regulation also provided permission to appoint delegates from the concerned village to look after the trial of divorce cases.\textsuperscript{59}

The Regulation of 1925 abolished the matrilineal joint family system and established an individualistic matrilineal system called \textit{makkattayam}. In this system, every adult member of the Tarawad became entitled to claim his or her share of the properties of the Tarawad.\textsuperscript{60} The regulation clearly laid down that the Tarawad property could be partitioned if the majority members agree to it. In addition, it helped to shatter the absolutism of the Karnavan who became one among the equals. The new regulation suddenly dismembered many Tarawads and thousands of Nairs took the assets of the Tarawad and left the joint family. The regulation also witnessed the litigation for the partition of Tarawad properties. In 1927, there were 920 civil cases filed in the various courts of Travancore praying for the partition of Tarawad. As a result, land holdings of the Nairs had been subdivided


\textsuperscript{60} \textit{The Regulations and Proclamations of Travancore, 1925 – 30}, Vol.VI, Trivandrum, 1930, p.661.
and fragmented and consequently many of the Nairs had mortgaged their lands. Many Nairs felt that the right to individual partition of the matrilineal joint family was the only ultimate solution to their problems. It made the younger generation more responsible who in turn became either industrialists or agriculturists. The regulation not only had its impact on Travancore but on the neighbouring states too. It encouraged the Ezhavas and the Vellalas of Travancore and the Nairs of the Cochin State to demand similar legislations. Besides, the sudden change in the law of inheritance created a lot of problems to the State. A number of Nair families in South Travancore had to sell their hereditary land rights and seek settlements in the Kerala State proper, which created problems of resettlement of the new comers. Within five years, more than 339933 Tarawads partitioned their property. Subsequently, many Nair families migrated to different parts of Kerala. The significant features of the consequence of this legislation is the social change and transformation it brought about in the caste and class structure of Kerala and the demolition of Janmi ownership of landed properties and the ushering in of the patrilineal succession. It gave a fillip to the suppressed communities to forge ahead and recapture their past glories. It had a telling effect on the politics of the State, since the power shifted and was shared by the hitherto oppressed communities.
With the triumph of Kothavarma 1102-1125 A.D. the founder of the Venad Royal House over Nanchilnad in 1116 A.D. the Nanchilnad Vellalas became the objects of the Royal House of Travancore and began to adopt the Marumakkathayam customs. In order to substantiate his supremacy over the place, the Venad ruler persuaded the Vellalas to swear a false declaration at Sriminashi temple in Madurai that they were Marumakkathayees like him. The Nanchilnad Vellalas at one stroke of allegiance renounced both the citizenship of Pandya kingdom, and the Marumakkathayam law of inheritance. Yet they were related to the right to Ukantuduma, Nankudama, Yappiankauntadama and some others social customs of their ancestors of Makkathayees. Every member of the Tarawad enjoyed equal rights and was entitled to maintenance from the common for property.

62. Property set aside for the maintenance of Karnavan.
63. Ukantudama was the claim to the sons performing the obsequil ceremonies to the deceased father. Nankuda, right refers to the maintance of childless widows.
64. *Proceedings of the Travancore Legislative Council*, dated April 1926.
They necessarily belonged to different families and no rights and duties were attached to marital union. None could alienate any portion of the property to himself of lessee nor could lay claim to separate possession or enjoyment of any portion there under, unless otherwise secured the consent of all the members. The ground work of the system was that the Tarawad estate was held in the impartible trust for the support of the females and their descendants in the female line of indissoluble family structure. Yet the Nanchilnad Vellalas sought to practice the system without according any legal sanction thereof. A widow who had already been married by Thalikettu and had since become a widow was remarried by Sambandam. The husband arranged Istadhandam land (land given as gift) to his son which came to be known as Puthravakesan (sons right) The Ukantudama system admitted within the Tarawad out of love and affection in the early stage secured a good footing in the later days and even claimed court

protection.\textsuperscript{72} Nankudama was the right of the issueless widow for maintenance from her husband's family in the form of money allowance or properties till her death or remarriage.\textsuperscript{73} On the exceptional marriage of a woman and an old man, in addition to Ukandama right young bride enjoyed gethiruppu, an allotment of a sum of money paid by the husband for the future of the young women.\textsuperscript{74} As a preliminary step by the end of 19\textsuperscript{th} century they sent representatives to the government requesting their intervention to curb and autocratic rights of the Karnavan.\textsuperscript{75} Subsequently in a memorandum signed and submitted to the Government in 1921, the Nanchilnad Vellalas proposed specific measures of check over his right on financial and property management.\textsuperscript{76}

The system had offended against every principle of political economy, healthy family life and also destroyed all motives of prudence and fore

\begin{thebibliography}{99}
\bibitem{73} As a custom the childless young widows who had a prospect of remarriage neither claimed Nankudana nor removed the Tali of their first marriage, \textit{Ibid.}, pp. 37-39.
\bibitem{74} English Records, Trivandrum, \textit{Legislative File No.R. Dis.}, 241 of 1926, Vol.III.
\bibitem{76} \textit{Ibid}, pp. 38 – 39.
\end{thebibliography}
thought. The *Marumakkathayam* of inheritance, a mile stone around the neck of the Nanchilnad Vellala community gradually proved to be disruptive force as it led to fraternal disputes and economic deterioration. Finding no claim to any share in their income of the *Tarawad*, they could neither call for an account of modification of the sum of maintenance allotment. Consequently the impact to education and industry became lacking and litigation which arose out of these inconveniences and discomforts told heavily on the material position and the harmonious working of the community. The first signs of disintegration of joint property rights were evident when self acquired property was recognized and later on declared to develop the *Thavazhi*, instead of going to augment the common property of the joint family. The management of the house hold was with the wives, but they showed no interest as they had no right to the property, and consequently, the management of property suffered materially.

82. Ibid, Judicial File NO.461134 of 1916, the Nanchilnad Vellala committee office, p.4.
The civil courts referred cases without any idea on the mixed system of their inheritance. Their chief object was to rearrange the family group in such a way that a man, his wife and children formed a unit instead of a man and his wife. Cherishing a fond hope for individual partition and introduction of Marumakkathayam the Vellalas rejected. Kavimoni. S. Desigavinayagam Pillai from discerned the ruinous Tarawad system, made irresponsibility, female domination in the house management and all such attendant social evils connected with the Marumakkattayam.

In the third session of the Sri Mulam Popular Assembly, a representative of the Nanchilnad Vellala Association named P. Madhavan Pillai prayed for the right of the partition in the Nanchilnad Marumakkathayam families. It urged the appointment of a committee to enact legislation for regulating marriage, succession and inheritance on a social basis. Being unauthorized to examine witnesses, the committee held

public meetings to gather public opinion and submitted an evasive report on 22 June 1911. The Council accepted the recommendation of this committee and introduced on 5 June 1913, a bill declaring no change in the existing laws and powers of Karnavan. In several representation the members of the community declared the enactment of a more comprehensive legislative measure bearing provisions regarding partition, reduction of power of Karnavan, testamentary and intestate succession. The agitation in different parts of Nanchilnad for the introduction of revised comprehensive bill led to the appointment of Raja Rajavarma committee. Popularly known as the Vellala Committee, on 4 February 1921, it prepared the ground for the dissolution of Marumakkathayam. Towards enacting a comprehensive law the committee was entrusted to formulate definite proposals based on enquiry into the customs relating to divorce, partition, power of Karnavan and testamentary and intestate succession among the Nanchilnad Vellalas. They demanded the addition of four more members and replacement of

92. Orginally the committee consisted of M. Raja Raja Varma, Dewan Peishkar as President, T.M. Chidambarathanu Pillai and M.Subramonia Pillai two Vellala members. Ibid, p.4.
M.Subramaniya pillai.\textsuperscript{94} Thiru S.Subramaniya Pillai of Vaikkam and C. Ananthan Pillai of Andiyur became co-opted members, the representatives, of the Nanchilnad Vellalas settled in central and North Travancore.\textsuperscript{95} It postponed the commencement of the work and eventually the time was extended upto 29 December 1921 for the submission of the report.\textsuperscript{96} The committee with its headquarters at Kottarakkara held 23 sittings at 15 different places of Trivandrum, Quilon and Kottayam division for collecting evidence from as many as 319 witnesses including women and organized 4 meetings for deliberations.\textsuperscript{97} The committee studied the precise of issueless widowers and widows doing adoption with the payment of a fee to the Government called adiyara.\textsuperscript{98} As per the witnesses 224 wanted individual partition, 48 favoured thavazhi, 20 preferred equal division on both per capital and perships.\textsuperscript{99} The committee accepted Makathayam principle of alienation of property and recommended individual per capita partition of Marumakkathayam property equally among all male and female members.\textsuperscript{100} After the partition they should also have absolute power to

\textsuperscript{94} Ibid, Vol. I, Telegram to Dewan of Travancore from Nagercoil.
\textsuperscript{95} Proceedings of the Government of His Highness the Maharaja of Travancore, pp.1-2.
\textsuperscript{96} Ibid, G.O. 14, June 1921 pp. 1-2.
\textsuperscript{97} Ibid, 9 p.2.
\textsuperscript{98} Travancore Government Gazette, Vol. IX, 1922, p.49.
\textsuperscript{100} The Regulations and Proclamations of Travancore, Vol.VI.p.1178.
dispose of their shares as they liked and empowered executing wills or testament.\textsuperscript{101} The committee recommended per-strips division of property among the reversioners.\textsuperscript{102} In the absence of any collateral heirs, the succession of property would ascend first to the parents and then to the other nearest collateral heirs.\textsuperscript{103}

Unfortunately the process the \textit{Marumakkathayam} met with a conspicuous silence of the community.\textsuperscript{104} In an abortive attempt, ten \textit{Marumakkathayees} of Vellala community members issued a notice to the \textit{Dewan} and the \textit{Maharaja} of the legislative body to change the personal law of the community without their concurrence. So the government moved the Bill to a Select Committee under the Presidentship of V.Subha Iyer. Yet the Bill gave weightage to the per-capital partition, considering their customary practices, gradeless treatment of all adult members in the \textit{Tarawad}, usage of appellation as \textit{Marumakkathayees}, unanimous nature of the Vellala Committee Report and the non objection thereon.\textsuperscript{105} A mother came to possess two kinds of properties – one her share according to \textit{Leakathayam} and the other forward property over which all her descendants including her grand children


\textsuperscript{102}. The reversionary heirs meant the lineage as the brothers, sister of the deceased and their issue and in their absence the mother. \textit{Ibid}, pp.34 – 44.

\textsuperscript{103}. \textit{Ibid}, pp. 32 – 34.

\textsuperscript{104}. \textit{Ibid}.

\textsuperscript{105}. \textit{Ibid}, Vol. III, 18\textsuperscript{th} October, 1924.
had a right. The opinion of the community was sharply divided into two, one advocating equal partition among individuals of all the members of the Tarawad and the other advocating equal participation only among brothers and sisters without considering the number of children they possessed. They recommend the principle of the right of division by equal strips among the members of the highest grade, both male and female (irrespective of the number of children) on the death the common ancestors of the Tarawad. They claimed that only per strip method discussions and deliberations, the committee concluded that the Vellalas should accept the general principles of the Marumakkathayam law applicable to the Ezhavas and the Nairs. The minute of P.K. Narayana Pillai, suggesting a via – media policy ie., division of one half of the property on per strips and the rest on per capita was unacceptable to the committee.

Finally the Select Committee accepted the per-capita partition and on 8 December 1924 forwarded its report to the Secretary of the Legislative

Council for discussion and passage. In the mean time P.S. Subramaniaya Pillai the President of NanchilNad Vellalas Conference held a meeting at Padmanabhapuram and presented a memorial to the Government on 31st October 1925 for the withdrawal of the Bill in order to enable a non–official to introduce a Bill according to the wishes of the people.\textsuperscript{111} On the other hand people of Putheri questioned the authority of the three Nanchilnad Vellala members of the same family, M. Subramoniya Pillai, S.Maruthananyam Pillai and M.Sivathanu Pillai to decide communal customs and demanded per–capita division.\textsuperscript{112} However after careful consideration at the last meeting of the council in April 1926, the Nancilnad Vellala Bill was placed in the council with the under lying principle of granting the right to individual partition, the introduction of \textit{Makkathayam} system and the enforcement of monogamy with a strict regulation of marriage.\textsuperscript{113} The Bill was passed by the council and was forwarded to Maharani Sethu Lakshmi the Regent on 14 June 1926,\textsuperscript{114} for her assent which she gave on 20 June 1926. One half of the properties was divided through the application of per capita principle among the male children then living of the common ancestress and their sisters.\textsuperscript{115} Further if any daughter.

\begin{itemize}
\item 111. \textit{Ibid}, Vol III Select Committee Report, 3 November 1925.
\item 112. \textit{Ibid}, 4 November 1925.
\end{itemize}
of the common ancestress was dead, the *Thavazhi* of such daughter would get a share to which she was entitled.\textsuperscript{116} Yet it changed the *Ukantudama* right of a person to receive a share of his father’s property.\textsuperscript{117} It allows the “widow remarriage and divorce on merit in certain extreme cases and equal inheritance to male and female children.” \textsuperscript{118}

\begin{itemize}
\item \textsuperscript{116} *Ibid*, The Nanjilnad Vellala Bill as settled by the Council, Chapter VII, p.5.
\item \textsuperscript{117} *Ibid*, Judicial File NO.46/134 Report read by P.S. Sivan Pillai – regulation of 106.
\item \textsuperscript{118} *Proceedings of the Travancore Legislative Council*, Vol XIX, pp. 79 -80.
\end{itemize}