Chapter V

Forms of Property and Relations: The Changing Legal Scenario

The focus of this chapter is the changes that occurred to the taravad as a result of the colonial interventions through the judicial site. The focus is mainly on the process of disintegration of the taravad. The individual members of the nair taravad consciously used the courts and its interpretations to restructure the taravad to suit the changing needs of the times. The chapter is divided into four sections. In the first section an attempt is made to understand the concepts of property and its relation to the family form. It also tries to look at the changing property relations of the taravad in the period. The second and third sections look at the judicial processes. In the second section an attempt is made to look at the establishment of the British system of justice - the making of the judicial code, the influence of the mitakshara law on the marumakkattayam law as a result of comparisons with it by the court and the difference between pre-colonial and colonial judiciary. The third section that forms the major part of this chapter looks at the actual changes that occurred in the taravad - its structure and power relations. For this, the positions occupied by its members - the karanavan, the anantaravan and the other members are analysed. The breaking up of the taravad into tavazhi-s is then analysed, as this was the first step in the dissolution of the taravad. To look at the emerging alternate family form, certain indicators are used like the changing topography of living arrangements of the marumakkattayee-s. Here an analysis is made to see if there was an increase in the tendency among the members to live with their husbands and if there was an increase in the suits for maintenance filed by the junior members of the taravad. The underlying emergence of the consciousness of a personal property or exclusive property is also embedded in this. The fourth section looks into the changes in the
position of women in the marumakkattayam system as a result of the decision of the courts.

Section 1

Property Relations in Taravad

Understanding Property

The term property has been defined as,

"any object of value that a person may lawfully acquire and hold; anything that may be owned; stocks, land, etc.; any possession." It is also "ownership or dominion; the legal right to the possession, use, enjoyment and disposal of a thing; a valuable legal right or interest in or to a particular things."

These two definitions highlight the meaning of property as a thing of economic value and as a right. It also points to the fact that property is mostly seen as ownership or control over sources of economic income or wealth. The stress often is on the economic or legal aspects. While the economists look at property from the point of view of the income it generates, for the anthropologists it is its social definitions, the basis on which the ownership of wealth may be sanctioned and the modes of ordaining the use of property that are of importance. As far as courts are concerned, it is a bundle of rights and the question is who wields its control and what rights accrue from it. For the sociologist, the implications of the institution of property are important. They look into the norms of inheritance, how property is inherited and tried to establish relative value for different types of property. Property also has attached to it, a psychological element like the emotional attachment people have for ancestral property.

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While dealing with property, it is difficult to define it without giving attention to the factor of variation in ownership. What is considered, as property is different in different societies and in different context. Factors and conditions of ownership may vary. According to Herskovists,

"...the ultimate determinant of what is property and what is not is to be sought in the attitude of the group from whose culture a given instance of ownership is taken... For only as an institution, in conjunction with all the other institutions, ...does it have the cultural reality that makes it a valid object."\(^3\)

Thus though property is universal, it is culture specific and any study of it will have to take into account specificities of the society it pertains to. This is because the control of property is, more or less, fully recognized and guaranteed in a society.\(^4\)

The nature of property rights is also dependent on family forms. According to scholars, in the initial phase of human society, property was held in common. The emergence of the concept of private property was a later development. According to Engles, who tried to trace the concept of private property, it was with the domestication of animals that a new source of wealth was created. Later, the introduction of cattle breeding, working of metals, weaving and finally cultivation changed the socio-economic relations existing in the society. With herds, a new category of property—slaves developed, as a result of the need to tend these flocks. The figure of the ‘father’ now became prominent. But in this initial stage inheritance was not through the father but through the mother. It took time for this change to happen which lead to the arrival of the patriarchal family. The essential feature of the patrilineal family was the incorporation of the bondsmen and the patrilineal power. The Roman family for him was the perfect

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\(^3\) Ibid., p. 326.

\(^4\) For Hallowell property is a social institution. Ibid., p. 319.
example of this. Thus the evolution of family forms and property relations are interlinked, with each family form having its own specific set of property relations.

**Property Rights in the Taravad**

The *taravad*, as seen through the definitions, was defined as a corporate body that owned property collectively. The courts followed the principle of the impartibility of the *taravad*. The members of the *taravad* could enjoy its property and then pass it on to the next generation. Thus, they had rights accruing out of the enjoyment of the property rather than rights to property. In the pre-colonial period, as far as the *taravad* was concerned, there was the joint family property which included the *putravakasam* property and property inherited as a result of being *attalatakkom* heir to an extinct *taravad* and sthanom property that was set apart for the person occupying the sthanom. Not all the *taravad*-s had sthanom property. But in the colonial period, a new category of property – self-acquired property comes. Earlier on the self-acquired property would become part of the *taravad* joint family property. In the case of North Malabar, wife and children seem to have got a part of the self acquired property through *putravakasam* after the death of the person (this must have been a nominal amount, or articles used by him, which was not of much value earlier on). His heirs gave this in earlier times, to the children of the dead man. In contrast to this was the trend in the colonial period, when there was been a tussle between the *taravad*, the *tavazhi* and the wife and children for the self acquired property (now the worth of land had gone up considerably). The courts then laid down that the debts that were incurred by the person had to be deducted from such property.

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5 F Engels. *The origin and evolution of family, private property and the state*, p. 55. Among the Romans the word *familia* referred to slaves alone. And this expression was used by the Roman to describe a new social organism, the head of which, had under him, wife and children and a number of slaves under the Roman paternal power, with power of life and death over them. According to Marx, the modern family, contains in embryo not only slavery (servitus) but serfdom also, since from the very beginning it is connected with
a. Self-acquired Property and Self-earned Income

The members of the *taravad* through their own exertions acquired the property for the joint family. It could have been grants that were given by the higher authority for their valour or services rendered in the military sphere. It could also be additions that were added on by members in the course of their life. Ordinarily in the *nair taravad* acquisition by its members would go to the family corpus of property and would be treated as part of the joint family wealth. In the later half of the 18th century we see a new category of property emerging in the court cases. This was what was later on called as self acquired property or self earned income. The fact that this was now recognized as distinct from the corpus of family property shows that idea of personal property was slowly developing and along with it grew the reluctance to share it with the family as a whole.\(^6\) Thus the 'self' was emerging in the *nair taravad*. The 'other' now became the family members, many of whom were not closely related to the 'self'. Subtle distinction between 'next to kin' and 'distantly related kin' was emerging. The educated people were demanding that wife and children should have a share in such self-acquired property or self earned income. It was with this aim that the initial two acts were passed by the Madras legislature. Newspaper articles of the period, as shown in the previous chapter reflect this sentiment. Another indication of the growth of the concept of personal property can be seen when a person's self acquired property or self earned income is used to pay up personal debt of the earner or donee.\(^7\) The person who inherits such

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\(^6\) Article in *Kerala Patrika*, April 29, 1893, talks about how, formerly wealth acquired by the members of the *taravad* would become part of joint family property, whereas now, such acquisitions are considered to be private property. This also included properties derived from *anandaravan* or *karanavan* or even property given to women by husbands. This shows the development of such a notion among the people. *NWR* 1893.

\(^7\) Another aspect is the fact that now land belonged to the person in whose name it was. Where as earlier land would be purchased in the name of the family deity in case of big *taravad*-s. (cited in judgment *Kunhammad Haji Vs Kuttiath Haji*. 3 *ILR* M 169) Thus family and not individual were considered as the basic social unit in pre-colonial times. But the colonial period saw the emergence of the individual.
property or income can also alienate such property for the debts that he has incurred. The courts recognize the donee’s absolute interest in such property as also its disposal through gifts inter-vivos. Thus the court accepted the concept of personal property against that of the common taravad property. While self-earned income or self-acquired properties were alienated to pay debts, joint family property could not be alienated. But we do get two instances where the share of a member that constitutes a tavazhi was alienated for debts incurred.

b. Putravakasam Property

According to K R Krishna Menon,

"what a marmakkathayam man gives to his wife and children as a gift is often called Puthravakasam both in North and South Malabar. It is sometimes called kathil stanam in Palaghat and Temelapuram. Though styled as puthravakasam (son’s right) it does not impart any legal right on the part of the son to demand for it. A man lies under a moral obligation to support his wife and children and this moral duty creates a corresponding right in those to whom it is owing and this gift is intended to satisfy that right and the property so obtained is therefore called putravakasam in contradistinction to property obtained from the taravad."

But it was seen that this was a custom practiced in North Malabar where the heirs of the man would give to his wife and children after his death something when they leave the taravad and this as a practice started catching up during the colonial period in South Malabar also. According to M Gopala Menon,

"In South Malabar also husbands do gift away properties to their wife and children. But in North and South Malabar certain things used by the husbands, such as the blanket, brass vessels and co., are given by his relatives to his wife and children. The practice of giving puthravakasam is more frequent in North Malabar."

According to E K Krishnan,

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8 1 MLJ 395, 7 ILR 315.
9 38 ILR 791, 23 MLJ 496.
10 1938 MVN 330, 1939 MVN 478.
11 K R Krishna Menon, ATI, MMCR, p. 5.
12 M Gopala Menon, Ibid., p. 4.
"Puthravakasam is a meaningless word, and no son of a marumakathayam man has any right (avakasam) to his property that is not given to him in his lifetime or bequeathed by will. Property given by father is generally called puthravakasam property. The moral duty of providing for one's offspring is better understood and practiced in North Malabar. Hence the coinage of this word here. This practice is coming into vogue in South Malabar."\(^{13}\)

As far as the court cases are concerned, we see that putravakasam or what was given by the father to the wife and children helped them to live slightly better off than the rest of the taravad at times and these were kept separately from the joint family property. This property, as will be seen later, was used in the colonial period to form tavazhi-s.

c. Sthanom Property

The word sthanom is of Sanskrit origin and means 'position' or 'place' and secondarily in Malayalam, a position of dignity.\(^{14}\) The sthanom has along with it certain properties attached to it. They are earmarked for the enjoyment of the person holding the sthanom called sthani. The succession to the sthanom was generally determined by seniority of age and these sthanom-s were frequently known by the names Muppa Sthanom and Elama Sthanom. These generally descended to the eldest male member of a family (tavazhi-s) put together. But we also do find examples of sthanom-s for the eldest female member of the kovilakam or in certain prominent nair families.\(^{15}\) According to Hebert Wigram,

"the first step was the division of kovilagam property into Ann Vazhi and Penn Vazhi, (i.e.) male and female property, the former being under the management of the Senior Rajah and the latter under the management of the senior female in the kovilagam."\(^{16}\)

\(^{13}\) Ibid.


\(^{15}\) The document No. 37 of Section B of the Kootali Granthavari seems to point to the sthanom of a female member in talking about the property of Kotitarathile Koottil Padvil Amma's share.

\(^{16}\) The court decisions also recognized the right of the females of the kovilakam-s in managing these properties by themselves. This is discussed later on in detail.
There are different explanations given for the origin of sthanom-s, in the ruling families it was considered to be necessary for the maintenance of the dignity of the ruler that he should own properties in which the other members of his taravad had no right or interest and which would pass along with the crown to his successor. In the case of some of the chieftains and public offices, sthanom-s were created by the ruling king, who, when he appointed the head of a particular family to an office with hereditary succession would attach certain lands for the maintenance of the office holder. In certain families, it was created when the family became very opulent and influential as it was deemed necessary to keep its social position and influence. This was because it was felt that the head of the family should be able to maintain a certain state and for that purpose the members of the family agreed to set apart certain property for him.\(^{17}\)

In the colonial period, cases emerged as to whether certain properties were sthanom or taravad properties. The allegation that certain properties belonged to the sthanom and was not part of the joint property of the taravad, was the attempt to enjoy them in exclusion to the other members of the taravad. This was seen in O.S. No. 27 of 1892, where the first defendant Pukotta Thottathil Pounaroth Kunhikankan Nambiyar claimed that Pukotta Thottathil was the sthanom of the taravad, of which, he was the sthani. He also claimed that the family had three sthanom-s and that he was the Mutha Sthani. Cases like these brought into question whether a particular property was the sthanom or taravad properties. Initially the court tended to look at the nature of sthanom property as similar to that of the taravad property in that the sthani could not alienate the property but could only enjoy it and then pass it on to the next generation. In 3 ILR M 384(p.c) it was held by the judge that,

\(^{17}\) Kochuni Vs State of Madras and Kerala, AIR 1960 1088, para 44, p. 1100.
“the sthanomdar represents the corpus of his sthanom much in the same way as a Hindu widow represents the estates which have devolved upon her, and he may alienate the property for the benefit or proper expense of the sthanom.”\(^{18}\)

The question of the nature of these sthanom properties were brought into focus in the suit O S No. 46 of 1934 filed by the members of the Kavalapara taravad in the court of the Subordinate Judge of Ottapalam for the declaration that all the properties under the management of the sthani were taravad properties belonging equally and jointly to the sthani and the members of the taravad. On appeal, the High Court reversed the judgment and on further appeal to the Privy Council it was declared that all properties in the possession of the sthani were declared to be sthanom properties and the members of the taravad had no interest therein.\(^{19}\) This issue was resolved with the passage of The Madras Marumakkattayam (Removal of Doubts) Act 1955, according to which it was laid down that, every sthanom shall be deemed, to have always been properties belonging to the taravad. The result was that the sole title of the sthani was not recognized and the members of the taravad were given rights therein.\(^{20}\)

d. Attalatakkom Heir-ship to the Taravad Properties

Another right to taravad property was the attalatakkom right that was claimed by the customary heirs to whom the taravad property would lapse on the extinction of the taravad or lavazhi as the case may be. In Sekhara Variar Vs Kesavan Moosad (1920

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\(^{18}\) M Narayanan Nayar, Rtd. Sub Judge of Chalapuram when asked about his opinion to the bill wrote, “The term sthani is not so capable of easy definition. ... The holding of separate property without any community of proprietary interest with others and without any powers of testamentary deposition as set apart by ancient custom, for the maintenance and up keep of dignity are stated to bear from ancient times. The term ancient is one of an extremely vague import and the question of measure of time indicated thereby will prove a highly controversial one giving occasion for long and ruinous litigations in the civil court ... The assumption of titles, among others, of Valiya Nambyar, Valiya Kurup... by karanavans of certain taravads in Malabar, is in my personal knowledge, a recent growth, not hallowed by antiquity.” The Marumakkathayam Bills, Op. cit., p.150.

\(^{19}\) Kochunni Vs State of Madras and Kerala, AIR 1960 1088, para 44. p. 1100.

\(^{20}\) Ibid. p. 1089.
the difference between anantaravakasam and attalatakkom right were discussed.

It was held that,

"Under the customary law of Malabar where a person is appointed as anantharavakasam heir the natural relations of the appointed heirs are entitled to succeed to the appointee's properties as attalatakkom heirs."²¹

The attalatakkom heirs cannot question an alienation made by the karanavan of the tavazhi if other members of the taravad then living did not question it.²²

In pre-colonial Keralam contrary to what the British thought, the concept of private property was not absent as could be seen in the sale of land on nirattiper (a transfer of land including stones, stumps, thorns, hills, cobras etc. implying the inclusion of items both above and below the soil, as is seen in the land deeds).²³ When the land was transferred it was not just the land, the things in it or the rights on the land that were transferred, but also the tenants and other agristic labourers like Cheruman-s. Thus the agristic labourers were, in a sense, seen as property, unlike the tenants who had some rights. The Cheruman-s and others who were at the bottom of the social hierarchy often resided on the lands they cultivated in small huts. In fact they were part of the means of production. But their position was different from the serfs of medieval Europe, as they did not own any part of land nor their conditions were as miserable as that of the slaves. Unlike slaves, they had a family and could not be sold separately. Thus, they had an independent human existence. Though they had certain similarities with the serfs they cannot be called that on account of the difference we find.

²² Thayyil Mamad Vs Purayil Mamad, ILR 44 M 140.
²³ William Logan, Malabar. App XII, p. cxxii – cxxvi, Deed No. 17. This is very similar to the English law where land included (1) a determinate position of earth's surface (2) the ground beneath the surface down to the center of the earth (3) possibly the column of space above the surface and infinity.
Another form of property that we see in pre-colonial Keralam was the weapons or tools of work like the ladder, sickles etc., which are at times mortgaged for money. But this form of panayam could be redeemed on the repayment of the cash borrowed. Certain hereditary rights too can be seen as property and they too could be alienated.

In the colonial period, as the taravad-s came under increasing pressure, we see that vessels, household articles, furniture, jewels etc. started going out of the taravad-s as panayam or mortgage. These articles that were once symbols of aristocratic status when taken out of the taravad for being mortgaged, became symbols of decline of the taravad. They figure in court cases as 'movable property'. The movable property could be alienated by the karanavan at his discretion. In the later half of the 19th century when the court declared that in the case of alienation of land the consent of the chief anantaravan was needed. However, in the case of 'movables' it was not so, karanavan had full power over it. Often, it was only after these movables were alienated that land was touched upon. Earlier jewels of a taravad were kept in common and used by the women of the taravad. In the reply article of C P Kalyanikutti Amma to Puthedathu Raman Menon's article 'Anukaranabhramam' we can see this change. She talks of how the jewels kept in the family chest were sold off for pecuniary needs. "Only recently did we sell a poothali and pay off the debt our karanavan had incurred". In O S 412 of 1891, it was claimed by the daughter that the property which was bought by her deceased mother was by selling off her jewels. Here we can see the change in the nature of jewels that was becoming the personal property of the owner, and was used to relieve monetary pressures in hard times. In the colonial period we see that there occurred a change in the nature of property of the taravad.

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Section 2

Juridical Process under Colonisation

The attempt in this section is to look at the establishment of the colonial judiciary that led to the marginalisation of pre-British judiciary in Malabar. By this process, the British tightened their hold over the people of Malabar. The codification of the law led to a change in the nature of laws. In the case of marumakkattayam law, such a change was inevitable as a result of equating it with the mitakshara law.

Judicial System in Pre-British Malabar

In pre-British times there was no uniform system of jurisprudence in Kerala except for the nambutiri Brahmins who were governed by the sastraic stipulations. The cases were disposed off and conflicts resolved locally on the basis of conventions and precedents specific to the caste and localities. There were caste-elders for every caste, which in the case of Brahmins formed a corporation called Sabha to begin with, which became the yogam subsequently. The yogam exercised jurisdiction over the Brahmins of its locality through unanimous decisions. The Vanjeri Granthavari Doc. No. 43-A, (1603) talks about the complaint lodged before the Trikkandiyur Yogam on the abduction of a person from the temple sanketam that was settled according to the sanketa-maryada. In case of lower castes, their headmen had jurisdiction over the respective caste people of the locality. The eminent persons of the locality called the natuvar settled disputes according to the maryadai prevalent. The functions of the natuvar was indicated in an 18th century document.

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"If any dispute is brought before the Mandapattumvatukkals, four panams each should be charged as nadukkanam for (appointing) four persons as naduvar and one panam be charged as nadukkanam for anaival (policeman) appointed from the Mandapattumvatukkal and the matter should be settled on the basis of the hearing by four persons."  

The artisans or craftsmen castes had a larger forum called the tara that combined several of their settlements and was headed by the eldest male. B Govinda Nambiar, talks of a council of elders or karanavan-s, the chief men of the locality who were the expositors and administrators of these customary laws. Recent researches show that there is no evidence for the existence of the system of corporation of headmen (caste-karanavar) in the case of non-Brahmin castes. However there was a practice of holding the people's assembly called kootam, which was more or less an unstructured gathering of settlers of the tara and it was this gathering that was taken by historians like Padhmanabha Menon, as being endowed with wide powers. But these forms of caste or community authority were subordinated by the hierarchy of political power structures that were super-imposed on it. The local chieftains of differently ranked status and authority such as ambalappati, desappati (desavali), natuvali and so on had jurisdiction accordingly. Certain taravad-s too had the jurisdiction to settle disputes among certain castes. The 'Mannar' was such a dignity conferred on the Muthedatha Aramanakkal Taravad by the Chirakkal Raja. The karanavan of the taravad used to decide disputes that arose among the tiyya caste. Thus the nature of pre-colonial disposition of justice was decentralised, dispersed in multiple figures generally among...
the castes higher to them. It, in a way, cemented the authority of the higher caste. With, the coming of the British these traditional sites of dispensation of justice and settlement of disputes soon, ceased to function. Court was one of the sites through which colonial power exercised authority over its subjects. In this exercise of power, at times the courts trampled on the already existing customs and practices of the people, introducing new concepts like equality before law. In fact, the organisation of the judicial structure in the colonial period was designed in such a way that it prevented local understandings any space, as is seen from the next section.

The British Judicial System and the Making of the Judicial Code

British took over the judicial jurisdiction of Malabar as the area came under their control. In December 1792, a temporary court of justice, presided over by one of the Joint Commissioners on a rotation basis, was established at Calicut. By July 1793, the Joint Commissioners prepared a code for civil and criminal law.29 Later the supervisor30 (initially Mr. Farmer) and his assistants were empowered to hear civil and criminal cases.31 In July 1793 seven Daroga-s were established one each at Cannore, Quilandi, Tanur, Tirurangadi, Ponnani, Chettuva~ and Palaghat. But the English magistrates and judges did not know the customs, language and religion of the people of Malabar leading to chaos.32 In 1802, the Cornwallis Code was extended to Madras establishing a hierarchy of courts, along with effecting the separation of revenue and judicial departments. A regular system of appeals from lower to the higher tribunals began. The

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ordeal was resorted to in pre-colonial Keralam to establish the truth. Kanakathidathil Krishnan Vazhuvavar of Gannavam arsmom, Witness No. 14, App. IV, MMCR, p. 10.
29 T K Ravindran, Institutions and Movements in Kerala History, Trivandrum, 1978, p. 84.
30 The British had divided the province into three districts which were placed under a Supervisor or General Magistrate of the court and two Superintendents.
31 Ibid., p. 85.
highest Civil and Criminal Courts were the Sudr Adalat and Foujdary Adalat. Below them were the Provincial Courts (civil) and Circuit Courts (criminal), then came the Zillah Courts. Provincial Courts were established at Tellichery and Calicut. Calicut also had a Registrar’s Court. But this system was doomed to be a failure as it failed to associate Indians in the administration of justice. With the appointment of Col. Munro as the First Commissioner, a more liberal policy was followed and British started associating the Indians with the administrative system. Under the Munro system, old Panchayats were revived to decide civil cases. Regulations of 1816 saw the village heads being appointed as Munsifs to hear cases for personal property not exceeding rupees hundred. It authorised them to assemble Village Panchayats. It established the institution of the District Munsif’s Court for trying cases for personal property, not exceeding rupees two hundred. It appointed Native Pleaders and Sudr Ameen-s with referee and appellate jurisdictions for the trial for cases referred to them. In 1845, a re-hauling of the system took place. In addition to the District Munsif’s Court, Civil and Sessions Court was established at Tellichery and Calicut, and a Subordinate Court was established in Calicut. In 1875 the names of these courts were changed. The Civil and Sessions Court now became the District and Sessions Court of North and South Malabar. The Principal Sudar Amin’s Court became the Subordinate Judge’s Court. Malabar was divided into two Districts with Calicut and Tellichery being the headquarters of Southern and Northern Malabar respectively. In the Northern districts, District Munsifs’ courts were established at Badagara, Cannore, Kuthuparamba, Nadapuram, Payyoli, Quilandi, Taliparamba and Tellichery. Tellichery also had a Subordinate Judges Court. In the south the District Munsifs Courts were established at Calicut, Palaghat, Ottapalam, Alattur, Chowghat, Manjeri, Parappanangadi, Pattambi, Ponnani, Tirur, Peritalmanna.

34 Ibid., pp. 90 - 1.
The Subordinate Judges Courts were set up at Calicut, Palaghat and Ottapalam. Above them came the High court at Madras. The final authority rested with the Privy Council in Britain till 1935.

Along with the establishment of the judicial structure, a new judicial code was established. As the British were not familiar with the customs and practices they sought the help of religious leaders like Brahmin-s, mouavi-s or such men whom the British thought were knowledgeable about the scriptures of the respective castes and religion to explain the laws in court. In the case of Malabar they tried to get the opinion of the nambutiri-s and other higher castes. It was during the time of Warren Hastings, that a code of Hindu Law was prepared in Sanskrit language by ten learned pundits called Vivada Amava Sethu (Bridge over the ocean of litigation). This was completed between 1773 and 1775. Its English version was prepared by Halheid and came to be known as Halheid’s Gentoo Code. Sir William Jones in 1794 translated the Ordinances of Manu and under his direction, Jagannadha Tharaka Panchanam prepared a digest of Smriti writings called Vivada Bhangarnava (Ocean of solved problems), which was then translated into English by Colebrooke. These codifications were based on texts like the Smriti-s and their commentaries.

Out of the many schools of law that were prevalent in India, the British based their codified law in India on the mitakshara law. The Mitakshara law is based on the Smriti of Yajnavalkya. It is dated to the 2nd century A.D. Though Mr. Colebrooke

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36 Soon it acquired an alternative title Vivadamava-bhanjana or breakwater to the ocean of litigation. J.D.M. Derrett, Religion, Law And The State in India, OUP, New Delhi, 1999, p. 239.
37 It is Vignaneswara’s commentary on the Yajnavalkya Smriti known as Mithakshari meaning measured words that became the basis for the mitakshara law. This has four sub schools – Benaras School, Mithila School, Maharashtra School and Dravida School.
ascribes the text to Vyasya. Vivada Chintamani ascribes it to Prakasha but it is generally accepted that it's the work of Yanjnavalkya. It has 1010 sloka-s divided into three kanda-s viz. Achara (dealing with rituals), Vyavahara (Secular) and Prayaschitta (expiation). The Sacred Books of the East vol. xxxiii says that the reason why it became the guiding work for Hindu law was because of its concise but clear statement of principles, its breadth of vision and its comparative impartiality towards the claims of both sexes and the different varna-s. By 1864, the English judges felt that they could administer the law without the assistance of the pundits who gave their opinions on cases according to the Dharmasastra-s.

Soon the people of Malabar started approaching the colonial courts for redressal of their grievances. By the end of the first decade of the 19th century we find the first reported cases quoted as precedents in many of the judicial commentaries. After 1850's there was a tremendous increase in the court cases. The second half of the 19th century saw the setting of precedents by Holloway that streamlined the taravad. The increase in the number of cases might have been due to the fact that the people considered the courts as neutral and impartial. According to Derrett the people believed that the British courts combined the readiness and sureness of execution and attachment with a willingness to consult native opinion in technical matters and they, thus, became popular. It soon became evident that the power of the colonial rulers was at the disposal

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38 G C V Subba Rao, *Family Law in India*, Hyderabad Law Series, 6th edition, Asia Law House 1992 Reprint, p. 33. But the real reason for this selection could be the influence of Orientalist scholarship. 39 This could be seen in the case reported by Chandu Menon of the trial of the Brahmin at Guruvayoor in 1876. One of the issues in the case that came before the Sub-court at Calicut was to determine if the nambutiri had lost his caste. K P Padmanabha Menon has written about Chandu Menon's report of the matter. K P Padmanabha Menon, *History of Kerala*, p. 267.
or the successful litigants. As far as the Indian experts were concerned they saw the company as just a new 'monarch' to whom advice was to be tendered.

The process of codification saw changes in the nature of the customary laws of India. The reliance on written commentaries meant that the local customs and practices that had developed were not incorporated instead a highly brahmanical code came into being. It was the Orientalist scholarship that was responsible for the slant towards brahmanical codes of law. The early judgments thus based set precedents that were not so easy to change as was amply exemplified in the cases that came up before the courts in Malabar. These precedents were important to the European judges and it soon became a body of law by itself. Another factor was that the European judges were being influenced by their training in European and Roman law bringing in unconsciously some elements foreign to these laws. Though, the court tried to establish the authority of customs in Ramnad case, it was seldom put to practice. According to Henry Mayne, the effect of the British court in Malabar was that "under the hands of the judges of the said courts, the native rules hardened and contracted a rigidity which they never had in real native practice." This was best exemplified in the case of the marumakkattayam system in which once a precedent was established, it was difficult to change.

Though the courts stressed that customary practices were to be honoured, as said before it was not always the case. But the people tried to take advantage of the

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41 Ibid., p. 258.
42 The judgment delivered was, "The duty of European Judge who is under the obligation to administer the Hindu law, is not so much to inquire whether a disputed doctrine is fairly deducible from the earliest authorities as to ascertain whether it has been received by the particular school which governs the district with which he has to deal, and has there been sanctioned by usage. For under the Hindu system of law, clear proof of usage will outweigh the written text of the law." G C V Subba Rao, Op. cit., p. 36.
43 Cited in B Govinda Nambiar, Handbook of Malabar Law and Usage as Administered by the Courts, Madras, 1899, p. (b).
court's dictum that customs, if proved to be in existence in the family, would be accepted. This meant a whole host of claims of such customs. In the case of allowing the female members of the kovilakam to manage property allotted to them, court followed this principle. In O S 450 of 1896, the 'custom' that was claimed was that the property left by a member devolved on his death to his nearest anantaravan but the court's judgment was that for such claims to be established documentary proofs have to be produced in favour of such a custom. But it was not always possible to produce documentary evidences in the case of customs practiced. In Vellia Kaimal Vs Velluthadatha Shamu the plaintiff tried to establish a custom in the family by virtue of which the eldest member of the family retired into dignified retirement and the senior members of the two branches managed the affairs of their respective branches. On appeal Holloway did not allow it taking the view that no renunciation

"would have the effect of depriving the senior member for all future time, of the rights which the law of the country conferred upon him with the correlative duties upon his becoming senior."

But these customs in most cases were not allowed for want of proof or because it was contrary to established practices. In case of oral proofs, it had either to be supported by or established by documentary evidences or established precedents. Thus, though it prompted people to create customs, it did not at times offer the space to inculcate customs already existing.

The procedure of the colonial courts led to the alienation of the people from the juridical process due to the technicality of the legal language that was above the comprehension of the layman. The lengthy and expensive procedures of the court also contributed to this. Sometimes cases proceeded exparte, as is revealed by the files of the Malabar Collectorate Judicial Department of 1816-7. Many a times they could not
even remember the suit number of the cases. But the initial difficulties vanished after a period of time and the people started increasingly bringing their disputes to the courts. But it is not as if there was no resistance. Rolland E Miller talks of how the nair chiefs in the 20th century continued to exercise juridical authority attempting to prevent cases from their 'jurisdiction' going to court. But this resistance seems to have overcome and Malabar earned the dubious distinction of having become the District that had the highest percentage of litigation in the Madras Presidency. According to Innes and Evans,

"in the last 20 years Malabar contributed to 1/6th of the total litigation of the presidency and if the village courts were excluded, it was 1/6th. In the last 10 years an average of 1 in every 56 persons in North Malabar has been engaged in litigation and 1 in every 99 persons in South Malabar." 45

The following table (1) shows the suits disposed of by the District Munsif in the years 1871-72 and 1872-73 at Gudalur and Vythery. While the table 2 shows the work performed by the District Munsif in 1871-72. This is just one sample and it would not be much different in other Districts. If in a District the number of cases that came up was about 100 cases and was increasing each year, it can be imagined how large the number of cases was for the entire region of Malabar. The causes for such increased number of suits were complexities in land tenures, disputes regarding the value of improvement, eviction suits, suits against melchart-s, termination of kanom tenure, suits by marumakkattayee-s against their karavan-s, suits against land alienations, mortgages, debts contracted, for maintenance other, incidents of taravad managements, for partition and suits involving the self-earned income of the members of the taravad.

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45 cited in Praveena Kodoth, Op. cit., p. 132. This is in contrast to Muthedatha Aramanakkal Kuny Kelappan Mannar who said, "If my jurisdiction is invoked I exercise it but otherwise I do not do so. If one side appeals to me that is enough to give my jurisdiction throughout North Malabar." App. iv, MMCR, p. 26.
Table (1)

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<th>District Munsif – Vythery</th>
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<td>Regular Suits</td>
<td>Small Suits</td>
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Table (2)

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<th>Application for Execution of decrees</th>
<th>Civil Petitions</th>
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<td>Disposed-Contested</td>
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<tr>
<td>Total</td>
<td>83</td>
<td>37</td>
<td>23</td>
<td>23</td>
<td>83</td>
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</tbody>
</table>

Source: G O No. 77, Judicial Department 11th Sept 1874.

*Marumakkattayam Law and the Mitakshara Law*

The judicial code of the British in India was based on the Mitakshara as said before. Here an attempt is made to see how the British courts compared...
marumakkattayam law with it and the effect it had on the decisions it pronounced. According to the Mitakshara School, the joint family was based on the doctrine of right by birth (Janmana Eva Svatva Vada). The lineage was traced through the males and till the fourth degree of descent (great grandson) all members had an equal right in the ancestral property as that of the father. Thus the father’s power of alienation of family property was qualified by the son’s equal right by birth. Women could not be co-parceners but only had a right to maintenance. The co-parceners of the joint family property have a right of partition in that property. The partition could take place during the owner’s lifetime. Birth and death of co-parceners would lead to fluctuations of the individual’s share. In case of self-lived income, even sons have only an obstructed heritage, i.e. they can become heirs only on the death of the father. A widow only had limited right in the husband’s self-acquired property, which was alienable for legal and religious needs. In case of the ancestral property of her husband, her right being excluded by the right of survivorship of the husband’s brother, she had only a right to maintenance. But in the absence of male heir the widow and the daughters could inherit. In case of the property acquired by means of learning, it would be self-acquired property provided that learning was obtained without being detrimental to the ancestral property. Later the Privy Council drew a distinction between ordinary education and specialised training. In case of property acquired by the latter (where such a training was acquired with the help of family property), the income earned would become part of the joint family asset. But with the passage of the Hindu Gains of Learning Act of 1930 gains of learning was to be counted as part of self-acquired property.

Though the law governing marumakkattayam was very different from the mitakshara law, the courts equated the two. The reason that the courts gave for this equation of two outwardly different set of law was,

"inhabitants of Malabar are as much Hindus as others are and in their religious and social life, they are governed by the same shastra-s that govern the rest. So far as the laws of joint family is concerned, barring impartibility, the law of nayar-s and the law of nambudiri-s differ but slightly from the Hindu law according to the mitakshara".48

Thus though marumakkattayam law was seen as an anomaly when compared to the mitakshara law, it was not recognised as a different school of law.49 In the Malabar Inheritance Bill of 1910 introduced by the Raja of Kollengode heirs next in line was drawn up in accordance with the principle of the Hindu law.50 The attempt was to say that marumakkattayam law was only different from the Hindu law or the mitakshara law, in the reckoning of inheritance and followed those principles of Hindu law when in doubt. The note to the G O admits that much "the genius and the spirit of that law are the same as those of the ordinary Hindu law."51

The courts equated the taravad family form with the Hindu joint family as being similar in structure and the point of difference being the reckoning of descent and inheritance. In Hajipeer Muhamrmed Isac Sait Vs Kunkan, 1938 AIRM 242, the judge held that

"A Malabar taravad or tavazhi is a corporate unit just like the mitakshara joint hindu family. The members are joint in food, worship and estate but the property held by them is impartible except with the consent of all the

48 According to Sundara Aiyar, the marumakkattayam law governed the indigenous inhabitants and on the migration of brahmin-s to Kerala, marumakkattayam law modified mitakshara law. This conclusion came from the fact that brahmans of Kerala had sambandham relation with nair women and only eldest son could marry within their own caste. Their customs were different from that of the brahmin-s of the rest of India. R. Sundara Aiyar, Malabar and Aliyasanthana Law, Madras Law Journal office, 1922, p. 1.
49 Though the usage of the term 'Malabar law' is very common in judicial discourses and was often used to indicate a different system of law that governed the matrilineal castes of Malabar these were very different from other parts of India and the rest of the Madras presidency. This must have gained weightage after the manuals like those of Lewis Moore entitled Malabar Law and Customs.
50 G O No. 69, Legislative, ct. 18-4-1910, p. 7.
51 Ibid., p. 7.
members... the right of management is vested in the senior male member called karavan who has got certain rights of alienation analogous to the powers possessed by a manager of a joint hindu family... neither the principle of the right of representation nor the principle of survivorship as known to mitakshara law exists but the birth or death of a member may affect the other members in the extent of beneficial enjoyment of the taravads property which lapses to the taravad may enable the other members to share in the enjoyment there of also with the rest of the taravad property. 52

Thus a matrilineal system was being equated with a patrilineal one by making two simple substitutions that of the descent being traced through the female line to common ancestress instead of the male and the karavan instead of the father being the head of the family. This led to the resolution of contradictions and working of the two systems were seen as similar.

Every member of a taravad, whether male or female, was compared with a co-parcener of the Hindu joint family with respect to the principal incidents of birthright and survivorship. In the case of the taravad birth alone is the reason by which the members acquired an interest in the taravad properties. On the death of a member his/her interest devolves upon the other members of the taravad. Thus interest of the members increases with death of other members and decreases with the birth of new members. While every member of a taravad living there has an interest in its properties its not so in the case of Hindu joint family as there are several classes of members all of whom were not necessarily a co-parcener. In the case of the Hindu joint family coparceners are only members within three generations next to the owner in unbroken male descent after which the holders only have lesser rights. Female members of a Hindu joint family or the male members beyond the 3rd degree next after the holder had only lesser rights.

But under marumakkattayam all persons belonging to the taravad (i.e. tracing the descent in the female line) has equal rights in the family property.\textsuperscript{53}

Linked to this were two other comparisons that emerged through the judicial discourse, with the Roman family called Gens and the nambutiri family in the context of Keralam. The comparison with the former could have arisen from the fact that for the European judges, the Roman gens with its patri potesta was the familiar ideal patriarchal family. Thus they drew a parallel with a family structure that they were familiar with. In the first case the karavan was compared with the patri potesta or the Roman patriarch whose position was very similar to the kartha of the Hindu joint family under the Mitakshara law and the karavan of the nambutiril ilom.\textsuperscript{54} And the powers attributed to the patri potesta were attributed to the karavan too. This comparison seemed to have been highlighted by the later jurist especially in commentaries written by them.\textsuperscript{55} The comparison also acknowledges difference between the two, while the members of the Roman genes trace their descent in the male line from a common ancestress, the marumakkattayam taravad traces its descent in the female line from a common

\textsuperscript{54} This comparison with the Roman family form came about not only in the case of familial structure and headship, but also in the position of the other members of the taravad and in divorce proceedings but the later did not gain much notice. In his memorandum, the President Muthuswami lyer compared the existence of free divorce in ancient Rome with the divorce seen in Malabar. "There divorce was permitted either by mutual consent or at the will of either spouses ... and divorce at the pleasure of either party was called Repudiation. Until the close of the Republic and the commencement of the Empire, social opinion was found to be sufficient check upon the abuse of the right of free divorce, and bright pictures of conjugal fidelity and devotion were not uncommon during that period of the Roman History." He then goes on to record Logan's observation on the female chastity in Malabar, which was high. It is as if the prevalence of the same in Rome seems to give it a cloak of respectability to the practice that was there in Malabar. Enclosure A, MMCR, p. 14. Such as similar equation was done in the case of land relations when they compared the Janmi with the European landlord and gave wide range of powers than was customarily given to the Janmi.

\textsuperscript{55} According to P V Balakrishnan, Justice Holloway's comparison with the Roman Family was condemned by Dr. Omsby in 'The outlines of Marumakkattayam law' Balakrishnan himself seems to agree with this comparison as he says "though there were marked differences between the Roman Family and the Malabar family in their constitution and features, one cannot ignore the basic idea behind both the system of common ownership of property and all powerful head of the family". This thread is seen in almost all the legal books where the taravad and karavan is being compared to the genes and patri potesta. P V Balakrishnan, Op. cit., pp. 34-36.
ancestress. The karana\textit{van} was supreme, no female could become the head of the Roman family and this exclusion was seen in the judgments, which will be dealt later on in the section dealing with the women of the taravad. The anantaravan-s were equated with the \textit{filius familias}\textsuperscript{56} as the legitimate heir of the karana\textit{van}.

The \textit{marumakkattayam} law and the Mitakshara law also differed in the case of marriage and partition. The \textit{marumakkattayee} women retained the membership of her natal family even after marriage; while in \textit{mitakshara} law a woman on marriage ceased to be a member of her natal family and became a member of her husband's family.\textsuperscript{57} In the case of partition, Mitakshara law allowed division of joint family property. Mayne traces the growth of partition law through the various commentators. He feels that initially sons could not have compelled the father to give them their share or more than what the father gave them. And it may have been possible that a member who insisted on partition must have got only a nominal share or what the other members were willing to give. Son was seen as a mere appendage to his father and had no rights of property as opposed to the father. The Malabar taravad according to Mayne was in this condition. The property was vested in the head of the family, who was almost an absolute ruler; members only had a right to be maintained in the family house, so long as the house was capable of holding them. In case of expenditure, the head of the family and no one else had any say in it. Neither could the members demand partition or a share in the property. According to Manu, partition occurs only on the death of the father and says expressly that the sons have no power over the property while the parents are alive. Boudhayana, Gautama and Devala talks of father's consent as

\textsuperscript{56} It is a Latin term meaning the natural or legitimate child or heir to the \textit{patri potesta} in legal terminology now. Among the Romans initially it meant slaves. \textit{Familus} meaning a household slave and \textit{familia} signifying the totality of slaves belonging to one individual. F Engels, \textit{Op. cit.}, p. 58.

\textsuperscript{57} In North India, there is a custom of women being given new name on marriage by the husband's family. This must have symbolized her birth in the new family.
indispensable to the partition of ancestral property. But the consent of the father, who was disturbed in intellect or diseased or if the father was old and was no longer fit to exercise his paternal authority, was not needed. Later on it was acknowledged that with father, sons had equal right of ownership in the ancestral property. This he says was the stage when patriarchal family changed into the joint family. The next stage is when the joint family ceased to be a corporation with perpetual succession and became a mere partnership terminable at will. When it was laid down that the sons could ask for a division of ancestral property but not of the acquired property. Thus, while the Hindu joint family could be partitioned, the marumakkattayam family had not reached that stage. It was in the initial stage of impartibility, once again reinforcing the idea of marumakkattayam as being primitive through legal interpretations. This is seen in Muhammad Haji Vs Kuliath Haji, where the Judges Muthuswami Iyer and Turner ruled,

"The law governing the property of a tarawad has not reached the same stage of development as the law regulating the joint property of a Hindu family. Not only in the former case is succession traced through females but the property is indissoluble. So that the member of the family may be said rather to have rights out of the property than rights to the property."\(^58\)

The courts finally resolved the issue of marumakkattayam law being a different school of law in Kochunni Vs State.\(^59\) The judgment was that "it is a body of custom and usage which have received judicial recognition." It reiterated that the "fundamental difference between Hindu Law and Marumakkathayam system (is) that the former is founded on agnatic family and the later is based on matriarchate."\(^60\) This decision replaced the earlier decision of judge Sundara Aiyyar in Krishnan Nair Vs Damodaran Nair (ILR 38, Mad 48) that Malabar Law is really only a school of Hindu Law. Thus

\(^{58}\) 3 ILR M, 169, cited in Madhavan Nair, Op. cit., p. 198. It is interesting to note that Muthuswami Iyer who was the president of the Malabar Marriage Commission was one of the judges in his case.

\(^{59}\) AIR 1960, S.C 1080, p. 1099.

\(^{60}\) Idem.
marumakkattayam law became just a body of customs and usages that had received judicial recognition.

Section 3

The Changing Structure of the Taravad and the Colonial Jurisprudence

In the earlier chapter, we had looked at construction of the taravad during the colonial period and how these had influenced the colonial and even post-colonial perceptions about the taravad. The features that were stressed on are its matrilineal descent, its status as an indissoluble unit, exogamous relations and a joint family with community of property being managed by the karanavan who is the eldest male member. The definitions bring forth certain elements that characterises the taravad as a loosely structured, impartible, matrilineal descent group headed by the karanavan, who manages the land holdings of this corporate body. The corporate nature of this body made it easier for changes to be affected in the taravad.

This section tries to look at the changes effected in the structure of the taravad from the point of view of the power relations among the members of the taravad. Looking at the taravad during this period we can discern two processes - building up of the taravad and dismantling it. There are many reasons why the British initially tried to preserve the taravad. The taravad karanavan in the eyes of the British was the person through whom they could control of a large number of people who lived in the taravad and the various retainer groups like the verumpattakar-s and the other agristic slaves.

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The term 'karanavan' though used commonly to denote the head of the nair taravad, it is also used to refer to an elderly person in respect. In this sense every senior member of a taravad was a karanavan to his anandaravan-s. P V Balakrishnan, Op. cit., p. 39. But for the court it was not so, only the eldest male member was designated as karanavan. The court judgment underlines the importance of seniority as the only criteria for karanavan-ship. Once this was emphasized many a times, it may not have been the...
and the artists and craftsmen group. Thus through the tara-chiefs who were invariably the karanavan-s of the prominent family they could control the locality. Another factor could be that the need for tapping the resources of Malabar in the form of teak and plantation crops. To get en blocks of land for plantation purpose dealing with one person was easy than having to deal with so many different persons. Thus they only had to deal with the janmi who was the landlord. To facilitate the cultivation of cash crops, British recognised the wastelands of the region as the Jenmom.62

**Strengthening the Position of the Karanavan**

The court in the initial period had strengthened the power and position of the karanavan. The karanavan was seen as the head of the taravad in charge of managing its properties and the legal guardian of all its members. In this, his position was equated to that of the kartha of the Hindu family. In Eravanni Ravi Varman Vs Ittappu Ravi Varman, Justice Morgan and Holloway held that

"the person to whom the karavan has the closest resemblance is the father of a Hindu joint family. Like him his situation as head of the family comes to him by birth ... the office is not conferred by trust or contract but is the offspring of his natural condition".63

T.L. Strange in his report as the Special Commissioner on the affairs of Malabar wrote that

"the theory of Hindu family in Malabar is that the head thereof has entire control therein".64

In Chathukutti Nair Vs Komappan Nair the court ruled that

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64 Here again we can see the assumption that manumakkattayam family structure and working can be subsumed under the general framework of the hindu patriarchal family. T L Strange dated Sept. 25, 1852.
"The power of a karanavan of a Malabar taravad are more like those of a manager of a Hindu family than those of a Hindu father."65

After the courts equated the taravad with a patrilineral joint family in the pan-Indian context it was but natural for them to compare the same with the nambutiri family of Keralam. The comparison was made easy by the fact that the terms used for the head of the family (karanavan), junior members of the family (anantaravan) are the same.66

To cite a few examples the judgment in Varankot Narayanan Namboodiari Vs Varankot Narayanan Namboodiari lays down the powers and functions of the karanavan and the rights of the junior members of the family. This judgment is seen an important one dealing with the powers and rights of the karanavan and the anantaravan-s and is quoted as precedent in marumakkattayam cases. This case went on to strengthen further the karanavan’s position. The judgment by Justice Innes stated,

"The analogy between a trustee and a karanavan is not correct in as much as a mere trustee has no personal interest in the estate whereas a karanavan has such a interest."67

Vasudevan Vs Sankaran, 20 ILRM 120 FB and Govindan Vs Krishnan, 15 ILRM 333 are other two cases that tended to compare the nambutiri illom and the nair taravad on the same footing.68 Judgment cited as precedents for marumakkattayam law thus cut across religious and regional boundaries. In all these cases, it was the powers and duties of the karanavan that has been compared. Thus the tendency was to equate

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66 Only difference in the terms were the ones suggesting family house, ‘illom’ in the case of nambudiri and ‘taravad’ in the case of nair and the females of nambudiri illom-s were called antaranam. When opinions were called forth in1931 when Madhusoodhanan Thangal introduced the Nambudiri Bill No. 20, Mr. Ramachander Avargal, District Munsif of Cannanore pointed out whether the term ‘tavazhi’ could be “employed with reference to an illom... when it is said to connote a group consisting of husband wife and their descendants who are members of the illom including the wives of the male descendants. An expression akin to Hindu law may be conveniently employed.” Opinions in favor of the Nambudiri Bill, p. 29. In the act we do not come across this term.
68 Similarly the karanavan was compared to the Ejaman of the aiyasanphana family Seshappa Shetty Vs Devaraja Shetty ILR 49 M 407, Maradevi Vs Pammakka, ILR 36 M 203 to mention two such cases.
marumakkattayam taravad in its operation to that of a patrilineal joint family with certain
differences. This meant that the differences or the special privileges or status that
women enjoyed were soon negated in the judicial process as can been seen in the case
of women being ruled as not eligible for the post of karanavan in her own right.

The karanavan, the head of the taravad was seen as the lynchpin around which
the whole structure of the taravad revolved. The courts concentrated powers in the
hands of the karanavan. For the courts the taravad could only be represented by
karanavan. He was seen as the legal representative of the taravad for the courts.
Holloway in his judgment of A S 120 of 862 laid this down thus

"A Malabar family speaks through its head in courts of justice, except in
antagonism to that head can speak in no other way".69

The karanavan was thus placed at the apex of the hierarchical pyramid of the nair family.
The karanavan was taken as the guardian of all the members of the taravad. In Mathu
Baputty Vs Chakyath Chathu,70 the High Court judge Morgan and Holloway held that

"Mother herself while alive and her children too were under the
guardianship of the head of the family, the karanavan. Their position (is)
alog(ous) to the members of a Roman family under the patri
potestas".71

The karanavan was thus held to be the legitimate guardian during and after the mother's
lifetime. Thus was due to the fact that unlike other family structure the nair-s did not
have a husband-wife or father-children relationship that could bestow the guardianship
on the father. Hence the karanavan, being in a similar position as the father in his

69 L Moore, Op. cit., p. 98. Out of analysis done of 294 case judgments, the result showed that 19%of the
judgments reiterated the court's view that the karanavan was the legal representative of the taravad.
71 L Moore, Op. cit., p. 97. According to Menikkoth Kelu Nambiyar, 14 grade pleader at Tellicherry it is since
Holloway's decision that karanavan became the legal guardian. Before this father was considered as the
legal guardian of his children if they and his wife live with him. And the karanavan would take charge of
any children if he saw that their father was neglecting them. Witness No. 2, App. IV, MMCR, p. 3. This
was the case in North Malabar where the residence was patrilocal. Now irrespective of whether in North or
South Malabar, the karanavan became the guardian.
relationship with the member of the taravād, was put in charge. Later on as the taravād got split up into tavazhi-s the court held that it was the taravād karanavan and not the karanavan of the tavazhi who was the guardian of the minor members of the tavazhi. The judgment held that,

"it is the manager of the taravād alone and not each karanavan or karanavathi of the various tavazhi inside the taravād that would be the guardian of all the minors in the various group or tavazhi existing in the taravād".

Here what has to be noted is that women could be the head of tavazhi as karanavathi but this position has no power or authority and was under the karanavan of the taravād. This could be the reason why the court allowed the women in such cases. Here we see the court positioning the woman in a subordinate position to the karanavan.

Another major function of the karanavan was the management of the taravād property. In the judgment of Varankot Narayan Namboodiri Vs Varankot Narayanan Namboodiri, the duties and powers of the karanavan was discussed.

"In him is vested actually (though in theory in the females) all the property, movable and immovable belonging to the taravād. It is his right and duty to manage alone the property of the taravād, to take care of it, to invest in his own name (if it be movable) either on loans or kanom or other security or by purchasing in his own name (to receive the rents of the lands). He can also grant the land on kanom by his own act or on otti he is not accountable to any member of the taravād in respect of the income of it nor can a suit be maintained for an account of the taravād property in the absence of fraud on her part. He is entitled in his own name to sue for the purpose of recovering or protecting property of the taravād. None of the acts above mentioned can be legally questioned by the taravād if he has acted bonafide. If any of his acts have been done malefide they can be questioned by the members of the taravād and he may be removed for malafides".

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Thus the management of the *taravad* and its affairs was in the hands of the *karanavan*. In the religious realm, it was the *karanavan* who decided the ceremonies and rites that had to be performed in the *taravad* of and by its members. The junior member could dispute the authority of the *karanavan* if non-performance of such ceremonies led to social disgrace or ostracism.⁷⁴ In the case of alienations, the only condition was that it had to be for the benefit of the family for it to be valid. Thus the position of the *karanavan* is not that of trustee or any agent. He acts with special authority. The powers of the *karanavan* was elaborated by, Henry Mayne, in his *Hindu Law*, as follows:

"The head of the family is entitled to its entire possession and is absolute in its management ..... An absolute discretion in this respect is vested in the manager." ⁷⁵

In *Kenath Achan Vs Kalliani Amma* it was held that,

"the *karanavar* has in some respects greater power than a manager of a joint hindu family. He has full power of management of family property." ⁷⁶

Though the *karanavan* was thus equated with a trustee or a manager he was given more powers than them. Thus we can see that this comparison of the *karanavan* with the *kartha* of the Hindu joint family was in a sense equating the *marumakkattayam* system of law with the *mitakshara* law and bringing it in conformity with the pan-Indian Hindu pattern. But even when the court grants large powers to the *karanavan*, it is seen that it is not without a note of caution. For it says in the same judgment that

"the office of *karanavan* is fiduciary... And that a court has no authority to confer on *karanavan* larger power than such as are sanctioned by usage". ⁷⁷ (emphasis added)

But the courts through their own action had given larger powers than did exist to the *karanavan*.

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⁷⁷ Ibid.
A statistical analysis was done on the cases in the colonial period, using certain indicators to check whether there was any increase in the karanavan’s power. These indicators were, (1) self acquired or self earned income of the anantaravan lapse into the taravad joint property, (2) tavazhi is formed by males with their mother and sisters, (3) karanavan acts with special authority and not as agent, (4) karanavan is able to alienate, lease or mortgage taravad property, (5) anantaravan not granted maintenance if he stays away from the taravad without karanavan’s approval, (6) court accepts karanavan’s discretion while giving maintenance to a junior member who lives outside the taravad citing reasons of health, education etc, (7) anantaravan’s right of maintenance is seen as merely a right to be maintained in the family houses, (8) the karanavan is seen as the legal guardian of the members of the taravad (9) the karanavan is seen as the legal representative of the taravad and (10) the karanavan is seen as is seen as the representative of a deceased anantaravan.

In case of management of taravad affairs, the indicators are (1) the karanavan allocates properties to a different tavazhi-s for maintenance, (2) the karanavan invests surplus capital, (3) the karanavan revokes properties allotted to the members or group of member or a tavazhi for maintenance, (4) the karanavan can use the income of the taravad according to his will without being questioned unless there was a misuse funds, (5) junior members cannot demand accounts of income and expenditure of the taravad, (6) the karanavan’s act was considered to be binding if it was for taravad necessity or benefit, (7) the karanavan can alienate movable properties of the taravad, (8) the karanavan could decide on the rituals and ceremonies to be held by the taravad, (9) karanavan is not removed from karanavan-ship in spite of evidence and (10) the court reinstates him as karanavan. Of these indicators karanavan being the manager of
taravad was the one with highest frequency amounting to 22% followed closely by karanavan being taravad's legal representative (19%). This was followed by karanavan's power being equated with that of the father or manager of the Hindu family and karanavan's alienation or mortgaging or leasing of taravad property being upheld by the court. But this absolute control over the resources of the family were kept in check to a certain extent by the stipulation that act should be bonafide. Thus we see that the position of the karanavan was strengthened in the 19th century.

Initially karanavan alone could mortgage, alienate or lease taravad property. Decrees or execution orders, sales, mortgages and leases of properties by the karanavan were invalid if fraud or collusion on the part of the karanavan was proved. As was held in Varanakot Narayanan Nambudiri Vs Varankot Narayanan Nambudiri,

"... nor can a suit be maintained for an account of the tarawad property in the absence of fraud can his part... None of the acts in relation to the above matters can be legally questioned if he is acted bonafide. If any of his acts have been done malafide - they can be questioned by the member of the tarawad and he may be removed for malefides in his acts or for inconsistency to manage other causes...... Unless he acts malefide or with recklessness or with incompetency, he cannot be removed from such management." 78

In the case of decrees against the karanavan, it was held to be binding on the taravad in the absence of any fraud or collusion as the karanavan was taken as representing the taravad. According to Lewis Moore prior to 1880, the principle that karanavan fully represented the taravad was universally admitted. In Kombi Achen Vs Lakshmi Amma, the Full Bench of the High Court comprising of Justice Turner, Kernan, Muthuswami Aiyar, Hutchins and Brandt reviewed the question that under what circumstances the decree passed against the karanavan was binding on the other members of the taravad. The Bench decided that if the karanavan

On the whole we see, that the decrees against the karanavan in his representative capacity in the absence of fraud or collusion was held to be binding on the taravad and its members. Soon it was stipulated that for alienations of the taravad property, the assent express or implied, of the chief anantaravan was needed.

Curbs on the Karanavan’s Powers

a. Removal from Karanavan-ship

Soon restrictions were placed on the karanavan by the court as a result of increasing mismanagement, alienations and fraud on the part of the karanavan-s. There was a corresponding increase in notices given by anantaravan-s against the karanavan for the latter’s deed against the interest or integrity of the taravad. The courts through their decisions had formulated and established clearly the powers, privileges and duties of the karanavan. In 1813 the Provincial Court of Western Division in the suit Cheru Amma Vs Romara Nambair, set aside the demand on the part of the plaintiff for partition of property. But on account of debts and mortgages incurred by the karanavan, the anantaravan was placed along with the karanavan to manage the properties. The Sudder Court confirmed the decree in the Appellate Suit No. 38 of 1814. But in the case of Aracky Coonhy Taravoo Vs Aracky Awoola Hajee the karanavan was removed and the next senior anantaravan was placed. It was confirmed by the Sudder Court on

special appeal in S A 373 of 1860. But in A S 61 of 1860, Holloway the civil judge of Tellichery cautioned,

“it is very inconvenient to remove heads of family. I allow that it should ever be done without clear proof that the conduct of the head is calculated to beggar the family.”

When the case Eliya Thampurati Vs Valia Thampurati (Pudiya Kovilagam) came before the High Court, Holloway and Kindersley did not allow the removal of karanavan saying “such removal ought to take place only on paramount ground of necessity.” While the removal of the karanavan of Chirackkal Kovilakam in the judgment of O S 5 of 1870 by the District judge of Telliassery, Reed, no less than 22 appeals to the High Court were sent and the decision of the original suit was reversed. According to Holloway in Eravanni Ravivarman Vs Ittapu Ravivarman,

“the suit for the removal of karanavan has been on the increase on the misnomer that a karanavan can be removed for a single instance of departure from his duty to act equally for the benefit of all... the person to whom the karanavan bears closest resemblance is the father of the hindu family. Like him, his situation as head of a family comes to him by birth. He should certainly not be removed from his situation except on most cogent ground.”

Thus for the court, removal was the last resort. In case of mismanagement court would at times appoint an anantaravan along with karanavan to manage the affairs of the taravad. Karanavan’s powers could be limited by family karar-s. Karanavan could delegate his powers of management but this delegation could be resumed on their will.

In Cherukomen alias Govindan Nayar Vs Ismala it was held that such an agreement

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81 cited in ibid., p. 138.
82 Idem., in laying down principles of Malabar law Holloway was one of the judges who shaped them in the 19th century. He was considered as an expert on Malabar law L. Moore describes Holloway as, one“ who was intimately acquainted with Malabar law”. Ibid., p. 108. P V Balakrishnan calls him the father of modern marumakkattayam law. P V Balakrishnan, Op. cit., p. 13.
84 Ibid., p. 141. Thus the office of karanavan-ship was seen as one that was a result of his ‘natural condition’.
85 In A S 172 of 1859 it was held that, “this document might narrow the powers either of the karanavan himself or of those who took his place during his lifetime, but that it could have no force after his death.” Ibid., p. 117.
entered into by the karanavan and an anantaravan was in the nature of power of attorney not an irrevocable waiver and transfer of his rights.\textsuperscript{66}

The initial empowerment of the karanavan was because judges like Holloway felt that,

“it is most essential for the avoiding complete anarchy and consequent ruin, to maintain the distinct rules as to the karanavan’s power, whenever it is infringed the miserable consequences apparent in the present case immediately result.”\textsuperscript{67}

Such a stand must have seemed absolutely necessary in a situation where nair taravad-s were beset with intercine quarrels among members of the taravad. Commenting on the increasing suits by anantaravan-s against the karanavan-s Justice H.C Morgan and Holloway in Dhatri Vallia Amma Vs Ittappen Ravi Varman opined that this was (ILR M 158)

“a kind of litigation which is of recent growth, has been fostered by the sympathies of judges who are themselves anandaravan-s and as in a case which recently came before us, it has been exercised on the mistaken principle that a man can properly be removed wherein a single departure from his duty to act equally for the benefit of all can be proved against the karanavan.”\textsuperscript{68}

Out of the cases analysed, cases by anantaravan-s against karanavan-s form 20% of the cases. One of the foremost issues in them was the alienation by karanavan-s, which was being contested by the anantaravan-s. According to the courts the alienation of the taravad property was valid only if it was for taravad needs. Of the cases analysed it was seen that in 34 cases court ruled that alienation for taravad need were valid. While we have 26 cases where court ruled that the alienation were invalid. In these cases, maximum times the court ruled it as invalid was when fraud or collusion on the part of karanavan was proved in the sale, followed by giving on lease for long period.

\begin{footnotesize}
\textsuperscript{67} Judgment delivered in Velia Kaimai Vs Velluthadatha Shamu on Second Appeal to the Civil Court by Holloway and Scotland, cited in ibid., p. 114
\textsuperscript{68} I.L.R 1 M, ibid., p. 158.
\end{footnotesize}
and when it was proved that the alienations were for the karanavan-s personal need and not for the need or benefit of the taravad.

b. Family Karar-s

Another instrument that in a sense curtailed the power of the karanavan-s as far as the management of property was concerned was the family karar. The karar-s were initially drawn up to keep the hold of the karanavan on the properties that were allocated to the various tavazhi-s. The MMCR indicates this:

"Karanavans are now alive to the danger of allowing junior members to establish a tavazhi at outlaying kalams (granaries) and the practice now is either to employ a kariastan (baliff) or to insist upon the Anandaravan executing a formal lease." 89

Thus karar-s were seen as a means to retain control but after long periods of separation these would not have the desired effect. Karar-s also had another important aspect, it in one way gave the other members of the taravad a say in the management of affairs. Most of the family karar-s that we come across are those that deal with the allocation of family properties to either certain branches or persons for their maintenance, this in one sense is a pointer towards the later tavazhi division as is discussed later on. It also limited the power of the karanavan with respect to the management of property of the taravad. It was held by Holloway,

"whole of the members of a family have by common consent to regulate the karanavan's agency and that such regulation will be binding on all such as have notice, express or implied of their existence." 90

Here the presumption was that, the karar was entered by all the members of the family and a single member could not refute it. In the case of setting aside the arrangements relating to property, the court ruled that if this was to be done alternate

89 MMCR, para. 55, p 31.
arrangements were to be made. In the case of the anantaravan who was a party to the karar and becomes the karanavan at a later stage he is not bound by it. During this period debt was a major issue in many taravad-s and hence figure in these karar-s. In O S 408 of 1885, we find mention of the family karar signed by the members of the family whereby any member contracting debt will be summarily removed from the management of the taravad. The issue leading to the signing of the karar was the debt contracted by the karanavan of the taravad that was not for the benefit of the family as was also the issue in O S 540 of 1899. Thus karar-s became an instrument that reduced the powers of the karanavan.

Emergence of the Chief Anantaravan

The term ‘anantaravan’ meant ‘sister’s son’ or nephew who was the heir of the nair taravad after his uncle. According V. Nagam Iyer, Dewan Peshkar of Travancore, ‘Anandaravars’ literally means ‘those who come after’: splitting the word into two he said ‘anantharam’ means afterwards and ‘avar’ means ‘they’. They have the sole right to all property left by the karanavan (both uncle and elder brother are included under this term) whether ancestral or self-acquired. In O S 643 of 1887 it was observed that

“In a marumakkathayam taravad colloquial of the words marumakan and anandaravan are used almost as synonyms ... Though etymologically they slightly differ in meaning ... It seems to me that both these terms are used indiscriminately to denote one and the same meaning without in the least intending to attach more significance to the one than the other.”


The karar signed by the Kottiyath taravad set apart property for the maintenance of their karanavan with the stipulation that after the death of the karanavan it would revert to members of the Chakkatath tavazhi as it was a kuzhikanam property under them. But he raised money for the marriage expense of one of the female members though this was a taravad need in the process the plaintiff was deprived of the enhanced rent that he would have otherwise got thereby the judgment allowed the plaintiff his share.


Chakkiyedath Parkum Valia Unitatt Parath Mathu Vs Thondyerri Parkum Valiya Unitatt Parkum Unichathen and 9 others. Court of the District Munsif Pynad.
According to the Indian legal thought, the person who performs the funeral rites of the deceased succeeded to his properties. The funeral obligations and heir-ship were mutual. In the case of the nair taravad, it was anantaravan who performed the last rites and offered the ball of sacrificial rice for his uncle as his heir.

The records of the pre-colonial period show that anantaravan-s did join in the management of the taravad property. Yet another example is the Document No. 12 dated 1587 translated by William Logan in his 'Malabar Manuel' shows land being purchased by an Urallar (Who probably was the karanavan of his taravad) with his nearest anantaravan-s (signifying his nephews who were his nearer in kin in the taravad). Thus we can see that transactions were done along with the anantaravan-s. The Kootali Granthavari, too abounds with such examples where, the transactions were done by the eldest person or the head of the family along with the junior members. The term used in these documents is however not anantaravan-s but 'thampimarum'. These documents cover a period from the 17th to the 19th century. To cite a few example documents in section B No. 5 dated 1600, No. 8 dated 1602, No. 16 dated 1612, No. 36 dated 16367, No. 39 dated 1642, No. 49 1692, etc. In O S 88 of 1894 the judge observed that:

"Tambimar I believe is a Tamil word. It means "younger brothers"... the expression "Tambimar" occurs generally in old documents in Malabar." 95

94 M G S Narayanan notes a Trikkakara inscription of 10th century showing four brothers of a brahmin family receiving gold and mortgaging their common property to the temple. It was a brahmin family it could be that the nair-s too must have followed such a system as the tendency to ape the members of the higher caste is there. Moreover the style of recording such transactions were well set and followed evenly in the case of any caste. Thus though property was managed by eldest member, the younger members also had a say in its affairs. M G S Narayanan, Perumals of Kerala, Op. cit., p. 148.

95 Kathiri Mussan, karanavan and manager of the Parambankamarakath taravad Vs Matankeloth Veel Krishnan Nair and Beeveerath alias Parambankamarath Kunhamed, in the District Court of Taliparamba.
As seen before, for the colonial court the position of the anantaravan-s was similar to the filius familias of the Roman family. Under the Roman law, a filius could own no property and whatever he acquired was for his pater familias. In the hierarchical pyramid, the karanavan was at the apex and the other members including the anantaravan-s, nieces and the womenfolk at the base of the pyramid. Initially this structure was a two-tiered one. With the courts initially giving a wide berth to the karanavan, the position of the anantaravan was reduced to that of a filius familias. The anantaravan-s had no existence apart from the taravad, were not entities in the eyes of law and they could not abrogate to themselves any of the powers vested in the family.

But the various acts of mismanagement, fraud and transfer of the taravad properties or wealth, by the karanavan for the benefit of his wife and children lead to increasing number of suits against the karanavan. This forced the courts to create the position of senior anantaravan or major anantaravan or the chief anantaravan whose assent was needed for alienating, leasing or mortgaging the taravad property. In A S of 1816, the judge held that for a sale to be valid it has to be executed in front of the whole family without a voice of dissent. By 1839 it was held that no karanavan could alienate property without first obtaining the consent of the anantaravan or next heir. By 1857 this became the written assent of the chief-anantaravan or his signature in deed, showing that the transaction was for the benefit of the taravad. This consent could be expressed or implied. This was taken as the indication of the assent of the whole family. Thus the ‘collective right’ now became entrusted in the hands of two people of the taravad and the

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57 Ibid., p. 35.
58 According to L Moore, this was decided not just because the court felt that the other family members were joint tenants of the property, but also because of the custom according to the Vyavahara Samudra that six people had to be present during an attiper (out right sale of the property). L Moore, Op. cit., p. 148.
"onus of proving the dissent was the burden of those who allege the dissent." In many cases (Rama Vaidyar Vs Ambu Viadyar, Chami Mannadiar Vs Thengu Mannadiar to name just two) the court empowered the senior anantaravan to manage affairs along with the karanavan. Thus, the category of chief or senior anantaravan was a creation of the courts when it felt that, the karanavan-s were misusing the powers allotted to them. With the insertion of the chief or senior anantaravan in the rung below the karanavan, the two-tier structure of the taravad became a three-tier one.

We also come across the category of the senior anantaravan-s (older in age) who was not the senior most anantaravan. In Mohammad Vs Kunhikutti Ali, (AIR 1929M 451) the suit was instituted by a senior anantaravan of the taravad for declaration that a lease of taravad properties given by the karanavan in favour of the member of the taravad was not binding on the taravad. Though we see the category of 'senior members' in the cases, they are not raised to positions where they share power with the karanavan and the senior most anantaravan. Thus the judicial discourse built up a hierarchy among the people of the taravad. Curiously enough the category of chief anantaravan was defined only in the legislations of the native states of Travancore and Cochin, not in any of the acts passed by the Madras legislature. But this three-tiered structure lasted only till the passage of the Madras Marumakkattayam Act of 1933 as it lay down that decisions were to be taken by the majority of the members who had attained majority.

99 Kondi Menon Vs Sranginreagatta Ahammada, I Mad H C 248, Ibid., p. 150.
100 The chief anandaravan or the senior anandaravan was thus elevated to the position of 'primus-interparius' among the other members of the taravad.
101 The Travancore Nayar Act of 1924, defined the chief anandaravan as the "the major anandaravan who for the time being is next in the order of succession to karanavasthanam in the taravad". The Cochin Marumakkattayam Act includes in its purview the senior major female among the anandaravan-s either in the absence of a male major anandaravan where by family usage, the senior female member is the karanavan in which case in the absence of such a member would be the senior major male anandaravan. Kerala Law Manuel, p. 12.
Formation of Tavazhi-s

The emergence of tavazhi-s is seen as being important in the final emergence of the nuclear family and the disintegration of the taravad joint family. A taravad got divided into tavazhi-s once the number of the members became unwieldy or other subsidiary houses were formed, but in the colonial period the courts placed restrictions on partition hindering their emergence. The distinction between tavazhi and taravad was one of degree. In A S 263 of 1940 it was stated that

"a tavazhi has been always understood as consisting of a mother and all her children and descendents in the female line."

In Sulaiman Vs Biyathuma, it was held that

"The word 'tavazhi' is a word of equivocal meaning and may be fairly used when the separation is complete."

In Haji Peer Muhammad Isac Sait Vs Kunkan judge Venkataramana Rao opined,

"A Malabar tarawad or tavazhi is a corporate unit just like the Mitakshara joint Hindu family. The members are joint in food, worship and estate but the property held by them is impartible except with the consent of all the members."

Thus the tavazhi and taravad were seen as similar in nature except for the size - the tavazhi being a smaller unit than the taravad out of which it was separated. In Korappan Nair Vs Chennan Nair (6 MHCR 411), Judges Holloway and Innes defining the tavazhi talked of how families got split into various branches due to an increase in the number of members of the family. The legislative process started to define tavazhi only in the 20th century. The appearance of the tavazhi in the acts indicate the fact that people started the first step of distinguishing from out of the members of the taravad their "next to kin." The next was the identification of husband, wife and children as a familial unit.

102 This identification of the "next to kin" was a result of the new world-view that was internalized by these people. Earlier wealth acquired by a person would go to the taravad property pool to be enjoyed by all but now it started to be considered as personal property. The notion of private property came to be associated with self-acquired income. Kerala Patrika, April 29, 1883.
and the children being the natural heirs rather than the anantaravan-s. Husbands
sometimes would keep apart income or gift properties to their wife and children. They
did not want their properties to be divided among the whole taravad. But wanted it to go
exclusively to their wives and children or in the case of the natal family to his siblings only. But soon the former came to be more preferred. This led to the precedent of setting
up a separate tavazhi consisting of one’s wife and children gaining currency.

The question of the emergence of tavazhi was intertwined with the question of
partition. In the case that came up before the Provincial Court of the Western Division in
1810, the principle of partition was agreed to. In continuation of this decision the judges
in their Circular Proceedings of 28th May 1810 cautioned that it might lead to further
demands of partition

"As this decision may possibly instigate the younger branches of the nair family to demand a portion of the property of the family to which they belong." 104

Thus, we see that initially at least the principle of partition though reluctantly, was
admitted. But in 1813, the same court in Ambu and Kelu Vs Raman Nambiar and
Cannan decided that marumakkattayam law did not admit partition of property and was
subsequently confirmed by the higher court. But even though the courts did not allow
partition, we see that, family karar-s did in effect partition the property by allotting
properties to the various tavazhi-s. Tavazhi-s were set up as a result of separate access
to properties for a particular branch of the taravad. The access could be, as a result of
the karar entered into by the members of the taravad or, as a result of access to the self-
acquired and self earned income of the member. In O S 3 of 1890 the devolution of the
self acquired property of a deceased member who stayed at one of the subordinate

103 In O S 20 of 1920 the self-acquisitions were willed to his sister and her children in the female line and
was to be managed by them jointly.
houses led to the claim by the plaintiff that they were a separate tavazhi under the 
taravad. This access to property could also work to the contrary cementing the assertion 
that control of separate property was a basic requirement for tavazhi-s to come into 
being. In O S 88 of 1894 we see that property of a deceased member led the taravad 
karavan to claim that the division to tavazhi had not taken place. The self-acquired 
property once gifted to the children was seen as putravakasam property that was used 
to create claims of a separate tavazhi. In O S 71 of 1898 the plaintiff claimed the 
alienated property as jenmorn of the taravad and not putravakasam property as claimed 
by the defendant. In short, the tavazhi as a family form was created when its members 
had access to separate or exclusive property, which was denied to other members 
whom they perceived to be outsiders or ‘others’ in their enjoyment of it.

By 1880’s it was held that 40 years of separation was enough to prove effective 
partition (24 ILR M 275). The following were the indicators that were used by the courts 
for saying that the tavazhi had become separate from the taravad. (1) There would be 
additions to the original name of the taravad, (2) no passage of members, (3) separate 
residence, (4) separate management of affairs, (5) separate property for each of the 
branches, (6) non exercise of the right to interdict alienations, (7) separate assessment 
and collection of dues, rents and payment of revenue and (8) separate performance of 
religious rites. In the statistical analysis of the cases done, those dealing with the 
question whether the tavazhi has been partitioned from the taravad, the indicator 
‘separate residence’ and ‘separate management of affairs’ could be seen 60% of the 
time. Hence these can be taken as key indicators of partition. This was corroborated by

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605 The prefix that would be added were ‘puttenveetil’ meaning new house or the tavazhi-s would add on the 
name of the compound or the paramba to the original taravad name (6 MHCR 411). In O S 228 of 1895 
Punaparath taravad has members having 12 different compound names attached to their names. This 
shows separate residence of these members. But separate residence alone need not mean that these 
were full-fledged tavazhi-s of the taravad.
other indicators like original taravad name with additions, no passage of members, non-
exercise of the right to interdict alienations, separate assessment or collection of dues
and separate performance of religious rites. In Nanu Vs Puvvayil Theyyan it was held
that the,

"Joint performance of religious ceremony is a circumstances against
partition but insufficient to rebut the presumption of partition."

In Mundancheri Mootha Nair Vs Purayil Theyyan (1911(1) MWN 281) on the
issue of whether there should be legal document of evidence regarding the division,
Judge Sundara Aiyar and Benson held that,

"In order to constitute separation in interest it is not necessary that there
should be an execution of a legal document evidencing the division but it
may be a question of inference from the acts and conducts of parties."

Courts held to the dictum that in case of separate enjoyment for a long time, the onus to
prove that partition did not take place shifts to the party denying partition. From the
MMCR we do get evidence of tavazhi partition. Ayillath Kutteri Anandan Nambiyar in his
disposition to the commission said

"There are three tavazhis in my tarawad divided some thirty years ago.
The three have now no community if interest. My tavazhi now occupies
three separate houses." 106

Thus we see that the taravad had got partitioned into three branches by the 1860's and
now the tavazhi-s too seems to have gone on to the initial stages of separation or to
three separate houses in that divided tavazhi. Vazhotha Palliyil Unhikutti Kidavu too talks
of his branch of the taravad paying Rs.1300 as assessment107 indicating that the
branches were responsible for paying revenue of properties set apart for their
maintenance. According to another witness Vapalla Kliathil Chappan Menon,

106 Witness No. 27, App. IV, MMCR, p. 19.
107 Witness No. 72, App. IV, MMCR, p. 49. Similarly, Korothvitil Krishnan Nambiyar talks of 6 tavazhi-s in his
taravad living separately and enjoying property separately but undivided in interest. He was the karanavan
"I know one taravad which occupies 13 or 14 separate houses each under separate management, but all nominally under the control of the karanavan." 108

Here the separation was not complete. As far as power relations were concerned, we can see the emergence of two sets of karanavan-s, – one the taravad karanavan who was in-charge of the whole taravad, the other the karanavan-s of the various tavazhi-s of the taravad.

Thus, we see that there were dispersed centres of power in varying degrees within the taravad. At the apex was the karanavan of the taravad, next in the hierarchy was the chief anantaravan of the taravad, who would be, the senior most of the tavazhi karanavan-s. Then came the other tavazhi karanavan-s and the chief anantaravan-s of each of the tavazhi-s. Thus positions of power and hierarchy were dispersed in different hierarchal rungs in the taravad that led to increasing pressure for the division of the taravad. When bills for tavazhi partition was brought up in the legislature, one of the main objection raised was, that it would lead to the creation of more karanavan-s thereby increasing the strife in the taravad.

In O S 15 of 1910, we see that the case was brought up by the plaintiff for declaring a kanom deed for Rs.600 by the karanavan of the plaintiff’s taravad. On examining the case we find that the karanavan and the plaintiff who was the senior-most lady of a branch belonged to two different branches of the taravad and the previous karanavan was from the plaintiff’s branch residing in a separate house called the Puthiamalikkal house and the two branches were at feud with each other. Thus battle lines were drawn here between two tavazhi-s for gaining control over the property and

other resources of the taravad. In O S No. 356 of 1886 the parties to the suit belonged to different tavazhi-s of a taravad. The defendant’s branch was called Keloth and its branch karanaan for the past 40-50 years was appointed by the taravad karanaan and part of the taravad estate was set apart for the support of the Keloth house. The defendant, who was the branch karanaan, then became the taravad karanaan. As karanaan of the Keloth branch, he had alienated property that gave rise to the suit against 10 members of the Keloth house. The issue then was whether in defending the suit the first defendant should be regarded as representing the whole taravad. The plaintiff’s argument was that the authority delegated to the 1st defendant did not authorise him to incur debt for his tavazhi. But the judge was of the view that, the debt was to be incurred for the benefit of the taravad, as two junior members had joined the karanaan in executing the deed, it was a taravad debt. As regards the delegation of authority, as the branch karanaan the judge was of the opinion that he was left independently to act and he himself and the outsiders regarded him “as possessed of unlimited authority over the property assigned for the support of Keloth house.” It was held thereby that the whole taravad was bound by the debt. The High Court of Madras (S A No.648 of 1888) which upheld the verdict of the lower court on the ground that where the “anantaravan has been placed in a position of manager of a part of the taravad property and has been held out to the world as de facto karanaan” a debt contracted by him is valid as debt of the taravad. Here, the powers of the branch karanaan, was equated to the taravad karanaan in the case of the management of properties assigned to it.

109 Pallikkaravittil Parum Manikoth Koman Nambiar and 19 others Vs Mayyil Manikoth Komer Nambiar, karanaan and 9 others.
Another related development we see in many cases seeking the removal of karanavan was the plea that the chief anantaravan be declared ineligible to become the next karanavan. This happened when the other members of the taravad perceived that the karanavan and the senior anantaravan were in league with one another. In such cases the plaintiff would at times be only distantly related to the karanavan and the chief anantaravan or belong to a different branch, is seen in O S 3 of 1890. The plaintiff claimed that he belonged to the Peringothil tavazhi of the Kattody taravad while the fourth defendant denied the existence of the Peringothil but instead claims that the plaintiff, and the third, fourth and the fourteenth defendant were members of the Edakatt tavazhiyil taravad. The first issue then framed by the judge was whether there was community of property between the tavazhi-s. Ironically after mediation by the parties concerned it was decided that they all belonged to the Peringottil tavazhi taravad having mutual community of interest in the tavazhi taravad and that Edakatt was merely a house subordinate to that tavazhi taravad. It was held that the properties with the plaintiff (including the properties of a deceased member of the Edakatt house) would be with him while the karanavan would pay Rs 350 from the taravad estate to the plaintiff. It was also held that the first defendant, the present karanavan would manage the affairs of the taravad but would not give further kanom or undertake loans in case of further necessity without the plaintiff.

Out of the cases analysed, there were 34 cases dealing with self-acquired or self earned income of which 14 cases dealt with the intestate devolution of self acquired properties. In 11 cases, the court said that the property should go to the taravad and in 3

10 O S 27 of 1892.
11 Ramuni Nambiar and 23 Others Vs Kattody Kaurappen Nambiar and 18 others. Here Ramuni felt that the taravad income was used by the karanavan for his wife children and his immediate anandaravan-s and does not look after the other members of the taravad.
cases it was said, that the property should go to the \textit{tavazhi}. Thus the court tended to favour \textit{taravad} in the case of intestate property. It is to be noted that in none of these cases does it go to the wife and children. But as seen in the previous chapter, they were provided for by gifts or wills, which increased year by year.

\textbf{Partition}

The attempt here is to look at the emergence of the concept of personal property belonging exclusively to the acquirer as against the joint family property in which all the members of the \textit{taravad} had rights. What is new in these partition suits is that it was not structure bound but agent bound. It is the English educated individual that acts here, whose attribute is a free will, the capacity to change the system after internalising the politico-juridical discourse and being convinced of the ideological superiority of the English law and systems. The concept of personal property had emerged during the colonial period. The courts in Malabar refused to consider the partition of the \textit{taravad} property while at the same time accepting the fact that the members had a right in the joint family property. This led to the growth and acceptance of the idea, of the ‘share’ of each person in the joint family property. Once the member of the \textit{taravad} incurred debts the debtor tried to redeem the amount loaned to a person from his share of the property. The denial of the court or the contention of other members of the family that the debt incurred by the \textit{taravad} was not for the \textit{taravad} but for the personal needs was in a sense an affirmation of the rights of the other members of the \textit{taravad} in the joint family property. This was in a sense, a negative way of affirming their share in the \textit{taravad} property. Another indication of the growth of this idea can be seen from the fact that the self earned or self-acquired property was now seen as distinct from the \textit{taravad} property.
Earlier on this property became a part of the *taravad* joint family enlarging and enriching the *taravad* coffers.

Another reason that must have spurred on this idea must be self-preservation when all the properties of the *taravad* must have been sold as a result of the debts incurred. The files of the Judicial Department of the Malabar Collectorate deals with appeals against execution orders of the sale of properties or *taravad*-s. The examples of can be seen in petition No 529 of September 30, 1817 to stop the sale of the *taravad* house and petition No. 261 to stop the sale of the *taravad* house and paramba as a result of an execution order against their *karanavan* in favour of Mabrante Embrantry dated April 15, 1816. Many of the petitions were of similar nature begging that the plaint *paramba*-s, *nilam*-s or *taravad*-s should not be sold as they were the last holdings or the house in which they lived. Similarly petition by the members of the Mosikutty Tarawad dated August 14, 1817 claimed that the suit O S 17 of 1815 was not instituted on account of the family need in which case the *taravad* property would be considered as answerable.

Though the court laid down that the *marumakkattayam* *taravad* was impartible, initially it looks as if the courts did allow partition. Lewis Moore in his book says that impartibility is the rule prescribed and the community of interest can only be severed by voluntary separation and partition. The rule of impartibility could have stemmed from the fact that the courts tended to hold the view that a family governed by *marumakkattayam* law could possess property only in its collective capacity. In 1810 though, the Provincial Court of Western Division held that a person’s individual share was liable to the sold for debts contracted by them. It laid down that if partition was to be made it must be per stripes and not per capita and that the *karanavan* was not entitled to a larger share than
the other members. The judgment went on to caution that such a partition should be allowed only if a person was demanding it as a representative or a co-representative of a branch of the family.\textsuperscript{112}

But the same court in 1813 ruled in Ambu and Kelu Vs Raman Nambiar and Cannan that marumakkattayam law did not admit the division of property. This decision was then confirmed later on by the higher court.\textsuperscript{113} In 1825 the court held that when a member separates from the taravad and receives his share of common property he forfeits all rights to the property as long as a single member is alive. In A S 208 of 1855 judge Chatfield held that.

"The assumption of a division being opposed to hindu law where the rules of marumakkattayam prevail is not true as the heirs by mutual consent and agreement as in the case here have full authority to effect a partition of the family estate."\textsuperscript{114}

In 1854 the Sudder Court had put in a note of dissent. In a case where the liability of the family was questioned, the court was of the opinion that it was an error to presume that each member of a family is possessor of an individual share in the estate available for the discharge of his debts. The rule being that in all such families, family’s property is only liable to be sold for obligations incurred by the head for the taravad need. This was based on the belief that head incurred expenses for the good of the taravad as a whole. The idea that a member’s share in the family property was liable to be partitioned and

\textsuperscript{112} Circular Proceedings of the Court of Western Division, dt. 25\textsuperscript{th} May 1810 cited in L Moore, Op. cit., p. 12. The judges were not with out apprehension that such a decision would incite the younger members of the family to demand partition, which according to the nambutiri-s, whose opinion was sought, was not the usage of Malabar. But as seen before in the case of the tavazhi-s what can be inferred was that in the pre-colonial period, there might not have been a rigid code against partition.

\textsuperscript{113} 2 junior members had sued 2 senior members for their joint share of property. Court then removed Raman Nambiar from management of taravad affairs for being incapable and entrusted it to Cannan along with the 2 plaintiffs. It is interesting to note that even after this decision, individual shares were being ascertained. In the extract from the Proceedings of the court of Provincial Appeal, dt. 28\textsuperscript{th} Jan. 1817 we see that the individual share of Mooikara Koonada Moota Nair’s property was ascertained. The total value of the property was Rs.8930.260 from which the value of his sthanom properties were deducted. As the taravad was divided into five branches the amount of each branch was found and the share of the nair’s property was fixed at Rs.2103.63. File No. 8364, Malabar Collectorate Judicial dept. 1816-1818.

sold off for repaying the debt was not acceptable for the court even though the court may not be averse to the principle of partition in some cases. In Ravee Varma Vs Meeppas Amma Valia Amma, the Principal Sudder Amin awarded to the plaintiff a share in the family property and it was confirmed on appeal by civil judge of Tellichery. In A S 219 of 1856 Calicut Zilla Sub judge Mr. Cook held that

"to constitute a valid division of the tarawad property, local usage demands that all the members of the tarawad are aware of and consent to the contemplated division."\(^{115}\)

But in S A 4 of 1857 Cheru Amma Vs Ramana Nambiar and Cannan the Sudder Court judges Moorehead and Goodwyn reversed the decision of the lower courts for division of property and dismissed it. In A S 36 of 1860 Judge Holloway clearly spelt out that the partition among Malayala Brahmins was alien to the principles that govern them.\(^{116}\) But in the Madras Law Journal, judge opined that

"as far as Malabar is concerned, the law of impartibility has been laid down by the highest court ever since the year 1814 and thus the view upon which the marumakkattayam people have acted for a long time."\(^{117}\)

Thus after an initial confusion in the matter court tended to hold the view the marumakkattayam property was indivisible in theory.

But the practice of setting aside property for the use of its members went on unhindered for tavazhi-s and sthanom-s. In case of the properties set aside or allocated to various tavazhi-s for their maintenance it could only be revoked by the karanavan after making alternative arrangements for the maintenance of these tavazhi-s or groups of people. Once the property was allocated it was the member's responsibility to look

after its upkeep. Such allotments were done through family *karar*-s\(^{118}\). In the statistical
analysis done, eleven cases show such an allotment to *tavazhi* or to certain members or
groups of members of the *taravad*. Such properties set apart were then claimed by
*tavazhi*-s as the property of the *tavazhi* later. Once such a precedent was set and these
properties were with the *tavazhi*-s for the lifetime of two or three *karanavan*-s without any
alteration, it was taken as the property of the *tavazhi*. This could be seen as conditions
that favoured or led to partition later on as it fostered a sense of a separate, exclusive
property (personal property) belonging to certain members or branch of the *taravad* in
exclusion to other members or branches of the *taravad*.\(^{119}\)

**Maintenance**

Looking at the cases that deal with the issue of maintenance the attempt is to
see how the court through its judgments strengthened the right of the members to a
share in the family corpus and strengthened an alternate concept of the family form. By
granting of maintenance from the joint family corpus of property, the court was reiterating
the member’s right to his share of the property. In the case of granting maintenance to
the female members who lived along with their husbands the court was accepting an
alternate family form wherein the husband, wife and their children lived together away
from the woman’s *taravad*. The various conditions stipulated under which maintenance
was paid point towards the emergence of a nuclear family. As also the change in the
term from ‘*menchilavu*’ to ‘*bharyachilavu*’ show. Here the idea of the husband’s

\(^{118}\) The *karanavan* on his own could not set aside the *karar*, neither could the members ask for the inclusion
of properties subsequently acquired to be included in the *taravad* income from such properties for
maintenance. But members born after the *karar* was signed has a claim on the properties and a *karar*
signed in the time of the previous *karanavan* need not be binding on the next *karanavan* even though he
was a junior member at that time.

\(^{119}\) In case of a branch that became extinct, the court decided that the property of that branch, was to be
divided among all other *tavazhi*-s(in 2 out of 4 cases). In 1 case it was decided that the it was to be given
responsibility towards his wife and children was emphasized in maintaining them, a responsibility that was not theirs specifically earlier on. Out of the total number of cases filed by the anantaravan-s against the karanavan 31% of the cases dealt with the issue of maintenance of junior members 49 cases totally dealt with the issue of maintenance which formed 17% of the total number of cases analysed. Only in 7 cases did the court rule against giving maintenance. According to the court it was the right of the junior members of the family to be maintained in the family house.

Initially the question, that came up before the court in 1883 was whether, the junior members living in the taravad could bring up a case for maintenance against the karanavan. Holloway in A S 275 of 1858 ruled that in case, the members were not living in the family house, then they had no claim to maintenance unless they could prove that it was the acts of the karanavan that deprived them of subsistence in their own family house. In Kesava Vs Unnikkanda the District Munsif and District Judge ruled in the negative, but the high court reversed this. In S A 23 of 1882, the high court in Kuhambu Nambiar Vs Paidal kunhakom and others ruled that the

"members of the taravad are entitled to receive maintenance out of the taravad house, when there is no room for them in that houses and if the karanavan makes insufficient allowance, the anandaravan-s are entitled to apply to the court to determine what allowance is sufficient and having regard to the circumstances of the family. When the wealth of the taravad increases, the allowances may be increased."

In Peru Nayar Vs Ayyappan Nayar the High Court judges Muthuswami and Kernan pronounced

"the general rule is that an anandaravan cannot have separate maintenance, there may be rare exceptions and this case the judge has found one, as the karanavan has been the cause of quarrels which

\footnote{to the tavazhi or taravad from which it separated last (Madhavan Nair was the judge in this case). In the 4th case, it was held that the property should go to the taravad or branch that separated from it.}


\footnote{121 L Moore, Op. cit., p. 132}
necessitate the plaintiff leaving the family house, the maintenance granted viz Rs.2/mensem is intended to discourage such application. But if the member was living in an affiliated house due to convenience or necessity then the rule that members staying in the taravad house only would get maintenance does not apply. The court ruled that the right of a junior member to maintenance is an incident of co-proprietorship of the family property.

Another issue that came up was as to what all was included in maintenance. In Govindan Nair Vs Kunchu Nair, 1919 MWN 302, it was held that a claim to menchilavu is on the same footing as a claim for maintenance. In Seshppa Shetty Vs Devaraja Shetty 1926 AIR M 723, judges Odgers and Madhavan Nair held that the term ‘maintenance’ is often loosely applied. In its limited sense as understood in Malabar, it means the expenses required for food, raiment and oil, in its more comprehensive sense it includes what is usually called in Malayalam ‘menchilava’ which is treated as part of maintenance.

According to Sundara Ayyar "menchilavu is used to designate part of what is required for the support of person and is distinguished from what is strictly necessary for food and raiment. Judges Couttis Trotter and Kumaraswami was of the opinion that menchilavu which has been translated as maintenance is said to be distinguishable from maintenance of the members of the Hindu family. The English word ‘maintenance’ is not strictly speaking...

122 11 ILR M 282, cited in Ibid., p. 128.
123 Chalayil Kandoth Nallakandiyil Parvadi Vs Chalayil Kandoth Chathan Nambiar, cited in L Moore p. 127. Soon this hard stand softened and concessions were made if the members stayed away from the taravad with ‘good cause’ then maintenance was allowed and this included a wide range from staying with the spouse, in the husband’s taravad to karanavan being the reason for staying away. We have 8 cases where maintenance was give if the cause was good. Thus the court started accepting the living away of the anandaravan-s from the taravad. This initial good cause covered in its purview a wide variety of causes. Staying with the spouse was also accepted and this acceptance was the first step towards acceptance of the alternate family form of the husband, wife and the children living together.
124 1915 MWN 379. In 4 ILR M 341, Valia Parvathi Vs Kamaran Nayar, the district judge disallowed junior members maintenance including allotment for the maintenance of the woman with whom he had formed sambandham and his children when they came to live with him in his taravad. But the High Court allowed it after examining the custom of North Malabar.
126 42 ILR M 686, Ibid., p. 101
equivalent of the Malayalam word ‘chilavu’ of which it is generally understood to be translation. The term means expenses and is comprehensive in its significance. The right to maintenance is the right to claim one’s expenses which obviously must be of various kind such as medical treatment, arrears of menchilavu, education expenses, marriage expenses, defending members of family charged with rioting etc. But, justice Madhavan Nair and Odgers tended to take a wide meaning of the term. They even included bharyachilavu (wife’s expenses) as a necessary item of expenditure while computing the amount of maintenance a junior member was entitled to.127

In another case Krishnan Vs Govinda Menon a junior member of the taravad had left without the consent of the karanavan to Palaghat to learn English. Karanavan refused to pay the expense incurred by him for maintenance and school fees. The High Court ruled in favour of the karanavan. The suit failed as it was found that such an education had not become essential in the sense that it was necessary for the karanavan to provide for it as part of his duties with reference to the members of the taravad.128 Another question raised, was the maintenance of a member having separate property. In Thayunkunji Amma Vs Shangunni Valia Kaimal, the High court judges Turner and Muthuswami held that if the,

“members of one branch of taravad house have private means of their own, the karanavan is not found to make them the same allowance as he does to other members of (the) taravad”.129

127 This inclusion could be seen as one that was due to the fact that an alternate concept of family in the modern sense of the term had started gaining ground. The term ‘modern’ is used to juxtapose the lack of the idea of father, mother and children as a familial unit in the traditional nair society before the colonial period. Another factor that must have resulted in such a wide interpretation of maintenance must have been the fact that one of the judges was Madhavan Nair, who must have represented the urge of the educated nair-s of the time for reforms in the community. Another case that represented the same question was 1929 MWN 413.


129 5 ILR M 71, cited in Ibid., p. 131.
The judgment also said that if the *taravad* had sufficient income, then an equal amount could be set apart for all the branches. In the cases analysed, in 6 cases it was held that if *taravad* income was sufficient or family circumstances allowed then, maintenance could be given in spite of separate property. Only in 3 cases did the court hold that maintenance could be given irrespective of family circumstance in spite of having separate property.

In the case of maintenance while living with husband the High Court ruled in Raman Menon Vs ittunayamma (S A 11 94 of 1898) that a

"nair women who went to live in between to her *sambandakaran’s* house did not forfeit her right to maintenance from her *taravad*. The case could be different if she and her children were proved to reside in that house permanently".130

But soon the court started ruling that maintenance could be paid if they lived with the husband or was maintained by the husband or lived in husband’s *taravad*131 similarly the *anantaravan*-s too were given maintenance when they lived with their wives.132 This is very important ruling as far as the dissolution of the joint family *taravad* was concerned. The junior members who were employed at times away from the *taravad* and stayed in the work places were the harbingers of the call for changing the *nair* family form. Through English education, they had imbibed western notions of family, which comprised of the husband, wife and children and became uncomfortably aware that the *nair* familial life did not fit in this mould of accepted notions. Once they started staying away from the *taravad*, after marriage they would bring their wives to live with them. The next step was asking or claiming maintenance from their *taravad* as they were staying

131 In 1918 MWN 761, 22 MLJ 309,36 ILR 203, it was held that they were entitled to maintenance from the *taravad*. In 6 ILR 341, it was held that they were entitled to maintenance if they lived in the husband’s *taravad*.
132 As in the judgments of 1919 MWN 302, 2 ILR 686, 1923 AIR 280.
away from the *taravad* house, they felt that as co-owners of the property, they too were entitled to a share of income from the property. The acceptance of living with the husband as a norm is seen in judgment of Kunhikrishna Menon Vs. Kunhikavamma when judge Sadasiva Aiyar laid down

"The desirability to live with the husband is a good ground for a nair lady living away from the *taravad* house whether in North Malabar, south Malabar or under *aliyasanthana* law. The onus to prove a custom that a member living away from the *taravad* house for living with her husband, forfeits a claim to separate maintenance is on the person who sets up the custom." 133

A clearer picture emerges when we look at the various indicators that point to the emergence of a concept of family. Of the total cases analysed, in 19% of the cases maintenance was granted while living with the spouse. 12.5% of the cases show that the *karanavan* of the *taravad* lived with his wife and children and in 75% of the time it was in the *taravad* house. 134 The next indicator taken that was analysed was the gifts or wills given to the wife or children. 43.75% of the cases show wills or gifts given to the wife and children. 15.6% of the cases deal with maintenance given to the wife and children and in 6.25% of the cases, maintenance was claimed for children from non-nair

133 1918 MWN 761, cited in Madhavn Nair, *Op. cit.*, p. 103. It was also laid down in the case that when a junior member lives away from the *taravad* house with her husband maintenance should be given irrespective of her husband’s ability to maintain her. Neither should the possession of separate property be taken into account. Similarly a case was reported earlier on in the *Malayala Manorama*, where a woman living with her husband claimed maintenance from the *taravad* saying that her husband cannot maintain her financially. Though the District judge and Munsif ruled in the negative, the High Court held that living with husband was a valid reason to stay away from the *taravad*. But the maintenance should be decided after taking into consideration the wealth of the family. *Malayala Manorama*, November 27, 1912.

134 This must also account for the fact that the *karanavan’s* wife ‘*amma*’ is often pictured as the villain. One of the proverb of North Malabar goes thus ‘On a stone place your *karanavan’s* wife, And with another stone- Narayana, In a mill put your *karanavan’s* wife and, Till blood comes out pure- Narayana.” In Chappan Nayar Vs Assenkutti, the *karanavan* who was sentenced to imprisonment delegated all his powers to his son. The court ruled this delegation to a stranger as ultra vires and void.12 ILR M 219. In O S No.11 of 1890, *karanavan* gifting property to wife and children was ruled by the court as invalid. Ordinarily transfers or sale of property by father or husband to children and wife were not uncommon and was regarded with utmost suspicion. Similarly O S 26 of 1884 was a suit to remove the 1st defendant from the *karanvanstanom* of the *illom* and the plaintiff who was the *anandaravan* accuses the *karanavan* of alienating properties in favor of the many ‘*sudra wives*’. Unfortunately no further details were available regarding this in the case.
husbands. Such property given soon acquired the character of *tavazhi* property and many a time *tavazhi-s* consisting of the mother and the children came up. In case of gifts given by the father or husband who was also the *karanavan* of the *taravad*, if questioned by the *anantaravan-s* of the *taravad*, it had to be proved that they were self-earned and not part of the joint family property. If the property was in favour of the wife, the court ruled that children were also included. If it was in favour of a child then it was taken that the mother and the other children were also included. Children born after the donation also had claim on the property if they were from the same father. O S 412 of 1891 is a case the daughter brings against the father. The plaintiff brought a case as a next friend of her minor nephew who is the son of her elder sister Devaki against plaintiff’s father. The title of the property disputed was in the name of the plaintiff, her deceased mother and sister. Father claimed that the money to buy the property was given by him while the daughter claimed that her mother’s jewels had been sold to pay for the property. It was held that

"the purchase made in wife’s name by funds supplied by the husband... presumed to vest the ownership in the wife unless distinctly proved".

The court ruled that the first defendant had no claim in the property. Once gifted, the husband’s power to interfere in his property ceases if questioned by the donees.

A S No. 263 of 1940 dealt with the question of a will executed by Kunhi Sankaran Nambar in favour of the wife and children and step-children. The question then was whether the properties willed by Kunhi Sankaran Nambar were to be enjoyed by woman

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135 22 ILR 246, 3 MLJ 281 are eg. of this. Malayala Manorama reported a case where, a nair lady filed a case against the Brahmin father for maintenance and the courts allowed it. Malayala Manorama, October 2, 1893.

136 Ammankuty Vs Appu Nambar 1910 MWN 124 & Katankandi Koma Vs Sivasankaran 20 MLJ 134. In case of in-testate self-acquired property of woman it devolved on her children in whose absence it would go to her *tavazhi*-Krishnan Nair Vs Damodaran Nair 38 ILR M 48.
and her children by two men as members of a tavazhi\textsuperscript{137} or as tenants in common. The District Munsif held that it was tavazhi property while the High Court over-ruled it and said it was to be enjoyed as tenants in common.\textsuperscript{138}

Section 4

Women and \textit{Marumakkattayam}

\textit{Marumakkattayam} system traces descent through women. This section tries to look at the changes in the power and privileges of the women due to the changes in the socio-economic and cultural spheres as a result of the introduction of colonialism in Malabar. The issues addressed are the rights of women in the spheres of property management, \textit{karanavan}-ship of the \textit{taravad} and the regulation of her sexuality. The actual position of women in such a system is one that has been a point of debate among the historians, sociologists and anthropologists. Anantakrishna Iyer paints a picture that shows that the women in the \textit{nair} family enjoyed wide powers. The eldest daughter has been compared to the "Prime Minister of the family"\textsuperscript{139} but this view of the powerful women is debatable.

The rights of the male \textit{anantaravan}'s according to the court included the right to be maintained in the joint family house the \textit{taravad} and the right to succeed to the \textit{karanavan}-ship in the order of seniority. But in the case of the females\textsuperscript{140} they had only

\textsuperscript{137} If it were tavazhi property, then it would take on incidents of the \textit{taravad} property and would be inalienable thereby invalidating alienations.

\textsuperscript{138} In Krishna Menon Vs Kurungara Kunhu 1941(2) MLJ 287, court ruled that a separate tavazhi was not formed in such a case as the judge felt that "the provision of the will giving the property to the wife and only her children by the testator is against the principle that a tavazhi should consist of a woman and all her children in the female line."


\textsuperscript{140} The term \textit{anantaravan} is most commonly used in records the term \textit{anantaraval} hardly makes an appearance. The term \textit{anandaravan} included all the members of the \textit{taravad} other than the \textit{karanavan}.
the right to be maintained in the family houses. In A.S. 208 and 253 of 1881 the senior lady of the family refused to accept the re-allocation of the room occupied by her for many years by the *karanavan*. The judge held that the *karanavan* had absolute power and was entitled to the possession of the room. Thus the court treated the senior lady just like yet another *anantaravan*, unlike the position of the chief *anantaravan* who was a rung higher than the other members.

The regulation of the *taravad* in the colonial period by the court soon resulted in changes in the position of the women in the *taravad*. The comparison of the *marumakkattayam taravad* with the Roman *genes* where the head was the eldest male and where a female could not become the head of the *genes* was the first step towards the exclusion of women from the management of the *taravad*. Thus at the conceptual level itself the women were excluded. The court judgments actively tried to enforce this exclusion. It was the *karanavan* who managed property affairs and who in the eyes of the court was the representative of the *taravad* in all its affairs. In O.S. 196 of 1897 Pudiyavalaapil parkum Pudiyaketh Kutti Mammi Haji Vs Kuttani parkum Kuttani Edamoli Pavu Amma, manager and Jema holder of the house (this was how the case mentioned her) and 5 others. Kuttani was claimed to be a branch of the Edamoli *taravad* of which the 2nd defendant Krishnan Nair was the *karanavan*. The house was in the name of the 1st defendant Pavu Amma, who claimed that she was managing the properties of the *tavazhi* independently as her mother before her. The attempt by Pavu Amma here was to establish the custom of female management of property in Edamoli *taravad*. The court did not allow it on the ground that her mother Chirathayi Amma had become the manager as she was empowered by the *karanavan* and two *anantaravan*-s. It seems to confirm the court’s assumption that the women’s right to manage properties in Malabar seemed to stem from the fact that they were basically devolutions made by the men of.
the taravad. The judgment thus invalidated the right of the first defendant to take decisions or manage property in place of the karanavan.

O.S. 117 of 1899, Pathiyen Cheeru Vs Puthiyandiyil Mundane Amboo and Pathiyen Kunhikannnan, filed in the court of the District Munsif Mundappa Bangaru of Tellicherry was yet another case that addressed this issue. To support the claim, by the plaintiff, it was she and not the second defendant (the taravad karanavan) who managed the affairs of the taravad, assessment receipts for the years 1895 and 1896 were produced along with the hypothecation deed executed by her on October 31, 1896 and the receipts of the municipal tax paid for the said years. But the evidence on which this judgment was based was on the earlier rejection of the appeal of plaintiff against the execution order in Small Cause Suit No. 1749 of 1895 in the Sub-Court of North Malabar where the claim against 2nd defendant which led to the attachment of movables of the taravad. Thus, we see that as far as the management of taravad property was concerned, the actual management by women did not carry any weight in the case against the established norm of the karanavan’s right of management of the taravad and its affairs.

In O.S. 432 of 1898, the tussle was between the karanavan and the senior female of one of the branches of the taravad for managing its properties. According to the taravad karanavan and the third defendant Avulla Hadji, it was the karanavan of the branch who was responsible for managing the property and not the plaintiff Kottal Kunhali Umma who was the senior female member, and that the transfer of assessment to her name does not empower her to collect rent or maintain the members of the house. The judgment delivered contended that that the family karar only set apart properties for each house but was silent as to who should manage it. Neither does it divest the eldest.
male of his right to management or invest the eldest female with it. It only specified that
the management was to be carried out without the interference of the common
caranavan. As regards the assessment of these properties it was laid down that these
should be transferred to the name of the senior female of each house through the
generations. The judge felt that the

"assessment stated in the name of the females in the marumakkathayam
tarawad is no conclusive evidence for holding that the management of the
taravad is also vested in them. In theory they are no doubt the properties
of lands belonging to the marumakkathayam tarawad. But in practice it is
the eldest male who manages the tarawad properties and
marumakkathayam law vests in him exclusively the right to manage
them."143 (emphasis added)

Thus the right to manage the taravad property by the female member of the taravad was
not recognised by the court. But as far as joint management was concerned we do have
cases supporting it. In 10 ILR M 355 we see that the karanavan and the senior woman
together executing a bond. These instances, when compared to the instances where the
senior anantaravan executes deeds and bonds along with the karanavan, are few. Most
of these joint managements point to the fact that women here figured only in name.142 In
O S 275 of 1894 the 2nd and 3rd defendants who were sister and brother (Kunithala
Kunnon Madhavi and Rama Kurup) claimed 13 items of property as their private
property as it was purchased by their father Kakkatil Chandoo Nambar, who then
assigned the right to the property to the defendant’s grandmother Veliya Cherunni
Ammah. This was subsequently transferred to their mother Cheria Cherunni Ammah as
she was the senior lady in the taravad then. The witness admits to the fact that was
managed by these ladies and now by the second and the third defendants. The
judgment affirmed the rights of the 2nd and 3rd defendant’s private property. In O S

141 In O S NO. 23 of 1920 the family karar entrusted the management of the taravad affairs in the hands of
the eldest female and the male member of the family, and the reason for this is stated as, "...the
defendant one (first defendant) is a female. She is not entitled to manage under marumakkathayam law.

142 In O S No. 3 of 1890, O S No. 291 of 1891 and O S No. 3 of 1895 we have examples of such instances
that property in the name of the female members need not mean that they managed them.
No. 200 of 1896, in the exhibits that were produced as evidence we find an execution deed of 1878 that was signed jointly by a brother and sister. Thus the courts accepted the joint management of the male and the female members more easily by than management by the female members alone.

The exclusion of women from management was also practiced by casting aspersions that such management was in effect management of the sambandhakaran. In the context of access to property sambandham played a very important role. The highly favoured position of nambutiri men as sambandham partners for nair women in the pre-colonial period got eroded now. One of the reasons for this could be the fact that unlike the earlier period access to property for the taravad through them might have been limited when compared to the previous period. As far as the nair-s were concerned, the self earned income or the self acquired property of the nair men was a much more assured gain. Of course, this was contested between the taravad, the tavazhi and the wife and children of the acquirer. According to Janaki Nair, the debates on the issues of sambandham, its legality and debates on the sexuality of women and how they used it was very much linked to the control of property. In fact their relationship with men determined not only their rights but also the rights of their off springs and those of the future generations to come. This can be seen in O S 475 of 1898 and its Second Appeal Case No. 1142 of 1900 at the high court of Madras. Though, this case pertains to the nambissan caste following marumakkattayam, it illustrates this point clearly.

The above court cases were to determine as to who were the heirs of Urunnikavu Matam taravad. The last male member, Narayanan Tampi, of the taravad died in 1897 leading to the tussle for the management of the taravad properties and the guardianship of the two minors of the taravad Urunnikavu Matathil Nangeeli and Unnimaya. The case
was brought up by their father Sankaran Embranthiri as their guardian in opposition of the claim of the 5th defendant Devaki who claimed to be the present 'karanavathi' of the taravad, its affairs and the guardianship of the minors. After the death of Narayanan Tampi, Sakaran Embranthiri had obtained marupat-s as the guardian of the minors from the tenants of the taravad. His contention, which was allowed initially, was that he and not the attalatakkom heirs should be appointed as guardian, as father was the proper guardian of the minors. He also claimed that Devaki was not a member of the taravad, as she was the offspring of her mother Subadra from the sambandham relation she had with Damodaran Nampi after the tali was tied by Krishnan Nambi. His claim was that, "among the nambissan-s a women abandoned by her husband cannot have sambandham with another man of the caste." He also contented that Devaki was an imposter and, had never resided in the taravad while Narayanan Nampi was alive. From the evidences the lower court decided that Devaki was not a member of the taravad on the basis that the ages of the said daughter of Subadra and the 5th defendant, Devaki, did not match.

The issues framed by the High Court on appeal were,

"(1) Does either the Veli or Talikettu among the Nambissans constitute a legal marriage under ordinary Hindu law? (2) According to the custom among the Nambissan tarawads following Marumakkatayam, can a person born in the tarawad except as the issue of a marriage legal under the ordinary Hindu law become a member of a tarawad? (3) According to the custom prevailing in such tarawads, can a female member of such tarawad who has contracted a marriage under Veli or Talikettu rites enter into a sambandham connection with a person other than the person with whom the Veli or Talikettu ceremony was gone through, either during his life-time or after his death, the issues of which will become a member of the tarawad?"

These issues went in favour of the 5th defendant after the court sought the opinion of a cross section of nambutiri-s, nambissan-s, embrandiri-s and nair-s that were brought by both the sides. The court ruled that the customs of the two castes, nair-s and
nambissan-s, regarding social relations do not differ in any essential characteristics. The women could contract relations subject to the control and approval of her seniors in the taravād. Thus whom the women had relations became crucial now to determine her access to family property.

Another reason why women’s management was not desirable was the outside influence of the Sambandhakkaran in the affairs of the family. In O S 540 of 1899 the plaintiff Cheria questions the validity of the sale of property to the 1st defendant by her karanavan Nambiar. In this case, the 1st defendant claimed that the 5th defendant’s husband was the one who was instructing the plaintiff’s vakil in the course of the trial.

In his opinion on the bill of 1931 B Desa Rai, pleader from Puttur said,

“I agree that the karanavan-ship should go to male members in preference to female members lest there should be family discord on account of evil influence of outsiders and near relatives of the female members.” 143

The belief that the influence from outside was bound to happen if women were put at the helm of affairs seems to have been reinforced here.

Thus, while her right to management of property itself was not recognised, how could she be entrusted with the position of karanavan-ship? May be internally they must have been powerful but the court does not recognise the senior women who managed the internal affairs of the taravād. This invisibility and inaudibility of the women is also mentioned in the report of the Malabar Marriage Commission. Neither do we hear their voice in the reform discourse that was the terrain where the men formulate norms or codes for the women regarding marriage and sexuality. The image of the one woman

that became infamous during this period was that of the *karanavan’s* wife or ‘*ammai*’ who siphoned off the family wealth for herself and her children at the expense of the other members of the *taravād*.

Though the right of woman to *karanavan*-ship was not recognised by the courts even theoretically, we get nearly 4% of cases dealing with the questions of women’s right to *karanavan*-ship or management of properties. In Akamal Vs Parvati judge Wigram ruled that in absence of the male adults the management would devolve on the senior female or on the mother of the senior of the minor males as his guardian. Though the issue came up before the High court in 1878 it refused to decide it.\textsuperscript{144} As regards the right of the women to *karanavan*-ship the court ruled in that in ordinary *taravād*-s it was the men, who became the *karanavan* but an exception was made in the case of *kovilakam*-s by the court. In Vira Rayan Vs the Valiya Rani the court recognized the case of Tamburatti-s of Calicut *kovilakam*-s to the management of the properties in preference to the senior male members. In the case of *sthanom*-s that were instituted in certain families for the eldest female, they might have managed the *sthanom* properties separately. O S No. 27 of 1892 mentions such a *sthanom*, but we do not get further details from the case. The court ruled that if there was a claim of management by female members in a family, such a custom to be accepted had to be strictly proved. Judge Holloway held in A S 194 of 1862, “the only defense attempted there (in the lower court) is that the second defendant the women, has always been the manager. To establish a custom contrary to the general customs of the country, the clearest evidence is required”.

Further in A S 434 of 1878 of South Malabar, Judge Wigram while delivering the judgment reversed the orders of the Munsif Courts that allowed management by woman.

\textsuperscript{144} L. Moore, *Op. cit.*, p. 94
"I cannot agree with the Munsif that the evidence is sufficient to prove a family custom which though it may be in accordance with primitive usage as opposed to the present usage of every other nair family in Malabar. I do not deny that in some taravad-s females are entrusted with the management with the consent of the male but I never yet heard of a case where the headship was claimed as a right by a female except in Koolagam-s. The management of a female like the management of an anandaravan, must, in my opinion, always be presumed with the consent of those on whom the law confers the right of management (i.e.) the senior male, and may at any time be resumed.

To the claim that her mother had managed the affairs of the taravad for 35 years, even after the male member attained majority, the court looked upon it as:

"it may well be that the male members as they grew up should wish to leave the management in her hands."

This decree was confirmed by High Court judges Turner and Muthuswami in the Second Appeal suit No. 634 of 1878. In A S No. 263 of 1940, the husband, in his will, left property to his wife and her children that led the wife to execute the deeds styled as "karanavati of the tavazhi". As the suit was to decide whether they could be considered as a tavazhi the court held that the usage of the title 'karanavati of the tavazhi' may not be of great use in view of the fact that disputes regarding the nature of the properties has arisen.

Thus, the women could occupy the position of karanavan-ship only if such a custom was proved or she belonged to a kovilakam. In cases where she was accepted as karanavan, it was held that she had the consent of the taravad or she was raised to that position in the absence of a male member who had attained majority. It was more easier for women to manage properties that were willed or gifted or came as a result of family karar-s. Women also could manage the tavazhi properties. Thus even in the

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145 1928 AIR 810 (the in this case was Madhavan Nair), 1930 AIR 418 & 10 ILR 223.
146 1928 AIR 810 & 11LR 223.
147 In O S No. 23 of 1920 the karar stipulated that the taravad properties and affairs was to be managed by the 1st defendant (who was a woman) and the plaintiff who was her brother. The court upheld the joint management of property by the eldest male and female.
case of management of property, many a times it was because the other members (to be read as males) gave them this right in most cases (i.e. they did not object to the woman managing the affairs of the taravad). Thus, her position was similar to the position of just another anantaravan to whom power was delegated temporarily.

The question then, is what was the position of women before the colonial period. A study of Kootali Granthavari reveals documents relating to land transactions like purchase, mortgage or lease of lands from the 16th century show very few women figuring in them. The only instance of women buying property independently is seen in Document 4 in Section C dated 1610. In section B Document 37 talks about the repayment of interest of the amount borrowed to be paid from Kottarathile Koottil Padvil Amma's share. From this we can infer that the said property was kept apart for women but the name suggests that the women belonged to a kovilakam and in all probability it could be sthanom property. In the instances where women figure, they were in the company of their brothers as the phrase "thampimarum" indicates. The only difference was that courts laid rigid norms through its judgments. Earlier on it might have been at least possible for the woman to rise to positions of power and management in the taravad this was accepted by the other members, but now her position could be challenged in the courts.

Summary

Thus we can see that courts during the period regulated the taravad - altering and changing its structure. By the end of the period we see that a new concept of family

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148 Thankammal Vs Kunhammed, 37 MLJ 369. In the case of Parakkal Kondi Menon Vs Vatakenti Kunhi Pennu, 2 MHCR 41, where the females were assigned property by the taravad for their support. But such
had taken strong roots, which in due course of time led to the establishment of a
patrilineal nuclear family. The process of emergence of this alternative family form is
looked at in this chapter through various indicators. One is the emergence of *tavazhi*-s in
the *taravad*. The difference was that in the pre-colonial period *tavazhi* divisions did take
place as a result of the expansion of family properties to other areas. But in the colonial
period it was as a result of the realisation that certain relationship started to be identified
as more ‘nearer to kin’ or ‘natural’ than other relationships. Man started establishing
*tavazhi* with the wife and children and it slowly started to gain preference over *tavazhi*-s
established with mother, sisters and their heirs. The practice of men bringing their wives
to their *taravad* house now started gaining more currency than before. This was seen in
the disposition of K V Tamu Panikkar before the Commission at Calicut,

“In most cases in my locality Anandaravans bring their wives to live in
their *taravad*. As they work for the *taravad* the Karanavan generally
raises no objection. Quarrels between Karanavan and Anandaravans
have been on the increase for the last 15 years. Where the Nayars are
very poor the wife lives with the husband and they both live by daily
labour. Where the husbands are rich, they have their wives to live with
them. Where the *taravads* are neither rich nor poor, the Anandaravans
do not have their wives to live with them, but the wives stop in their own
*taravad*s... I have one younger brother. His wife lives in my *Taravad*
house.”

It is this middle class *nair*-s who found going though and wanted their wives to
live with them and started wanting a change in their family form. When they gained
employment away from the *taravad*, they took their wives along to set up a house. They
soon started claiming a portion of the *taravad* properties as their share, since nothing
was spent for them as they did not reside in the *taravad* house. While trying to establish
an alternate family form, the paradigm was still the *taravad*. The *tavazhi*-s that they
establish with their sisters or wives were miniature *taravad*-s in their structure. But the

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148 Witness No. 90, *MMCR*, p. 63
for the emergence of the nuclear family. As far as the woman was concerned, she was not only excluded totally from the management of the *taravad* affairs but also her sexuality was regulated. Thus by the end of the colonial period the indissoluble *taravad* joint family following the law of *marumakkattayam* became one where division was possible along the *tavazhi* with the consent of the common ancestress, if she was alive. The community had not yet reached the stage of nuclear family, but in the span of the first two decades after independence this transition became complete.
elements of a patriarchal form of family pre-dominated in this new family form. But, at times, the property thus willed to the wife and children would also be contested by the children against the father by using the principles of the marumakkattayam law as seen in O.S 412 of 1891. Once willed to his wife and children it acquired the nature of that of the tavazhi property and in this even the mother had no control in terms of its division.

Another important indicator of the change in the concept of family can be seen in the changing scenario of the maintenance being claimed from the taravad while living away with the husband or in husband's taravad. Though the courts initially did not grant maintenance from the natal taravad for the women while staying away from the taravad with their husbands but soon staying with their husbands came to be accepted as a 'good reason' for granting maintenance even while staying away from the natal taravad. This is relevant particularly in the case of South Malabar nair-s who were matrilocal unlike those of North Malabar. Traditional 'menchilavu' now started to be called by the courts as 'bharyachilavu'. Father's responsibility towards the off springs too increased as many of them started taking care of the expenses of educating their children so that they could gain a foothold in the official machinery of the colonial government. This was expressed by Koroth Kannan to the Commission thus, "I have taken my father's house-name because he has protected and educated me."150

It was the notion of a separate or exclusive property belonging to a person and that could be willed to his wife and children that made the nuclear family form economically viable in its initial stages. The partition of property on the basis of tavazhi's permitted by the Act of 1933 gave legal recognition to the partition of joint family property. Thus the courts, through the various judgments created conditions favourable

150 Witness No. 4, _ibid_, p. 5.