CHAPTER-III

CONCEPT OF PROPERTY, LAND TENURES
AND LAND REFORMS

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

Land — the concept in general

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

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

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

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

**Land in Lakshadweep**

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

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

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

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

\(^5\) For a discussion of Coir monopoly, See infra, Ch. IV.
purity and serenity of life with content. This was due to their peculiar life style. But, whether it is Arrakkal Rajas, or Britishers, their idea was to extract maximum income from these islands. Though the Arakkal Rajas have not made any scientific attempt to improve land, they have brought the entire wasteland under Rajas as Pandaram land.

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

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

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

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

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

The Cannanore Rajahs had at first no private property on the islands. He has not put forward any claim on lands or trees upon them. Those were treated as the absolute property of islanders. At that time the idea of private property was quite unknown to the islanders. But about hundred years later Cannanore Rajahs began to assume the entire area of unoccupied lands on inhabited islands. These lands were treated as the private property of the Cannanore Pandaram⁷ or Government known as pandaram lands⁸. There was little opposition to this acquisition. Where there was opposition the chief inhabitants (Karanavans) were put in charge of management as a way of compromise.

⁷ Pandaram is coming out of the word “Bhandaram” means treasury.
The Rajas were taken a conciliatory approach with Karanavans who wielded power and influence. During the period of Rajas a strip of 40 kols (100 feet) wide all along the shore had been summarily confiscated. This strip round the shore thus confiscated since then known as the Chuttu Karaima lands. This Pandaram claims on Chuttu Karaima lands were relinquished on 1870.

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

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

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

10 Id., p. 56.

11 Ibid.

12 Mannadiar supra n. 6 at p. 234.
the plots granted by the Raja to the holders of title or Sthanams\textsuperscript{13}. On the death of the titleholder, his heirs have to pay a fixed amount for the retention of title and land.

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

The Cowle System

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

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

\textsuperscript{13} The Sthanams were purchasable thing from Rajas on paying fixed amount. For details see infra Ch. 4. See also supra, n. 6 at p.234.

\textsuperscript{14} kacheri means court.

\textsuperscript{15} Ellis, supra, n. 8 p. 21: See also G.O.416.pol.2\textsuperscript{nd} July, 1877.
with Mr. Winterbotham who visited the islands that year, a scheme for granting the lands on improving leases or 'popularly known as cowles was drawn up'\textsuperscript{16}.

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

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

1. Phalam (bearing).
2. Apha1am (out of bearing)
3. Maram (young tree not yet in full bearing)
4. Kill (plant)
5. Thei (seedling)

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

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

\textsuperscript{16} G.O.No.72 Pol 23\textsuperscript{rd} Feb. 1880. Ellis, supra n. 8 at p.57.
might be at interval. After the destruction of trees by any serious calamity, and the assessment enhanced or lowered accordingly.

The Cowles were granted for a period of 40 years subject to regular payment of tree tax. But a Cowledar could claim no compensation. Except this tree tax, no other tax was realised from the Chowle lands.\footnote{Ellis supra n. 8 at pp.57-58.}

The surveying and paimashing the Pandaram property preliminary to leasing it out to the islanders was a laborious task. It was impossible for the inspecting officers to do more than a portion at each visit. So, though this was started by Mr. Winterbotham in 1878, it could complete in 1884 by Mr. Tate. All most all the inspecting officers made minor variations. The final form was published in 1885. The conditions remained almost the same but the power to surrender at one-year notice also was added.\footnote{G.O. No. 748,pol 28th October 1885.}

The Cowles issued after 1885 were having modified terms. But that has not been mentioned in the subsequent printed inspection reports. So we have to assume that they have ever been formally sanctioned.\footnote{Ellis supra n. 8 at p.58.}

Occasion to reduce the assessment was the loss of trees by storm, lightning or other calamity. This system is followed even now. This system was much more simpler than for looking of the bearing of trees and was accepted by the people as more fair one. The latest paimash was in the year 1976 here after, there will not be any paimash. When the landforms is fully implemented, this question of tree tax will not exit.\footnote{Id., p. 59.}
In Agatti and Kavaratti islands the Cowledars were not that much enthusiastic. The major reason for this set back was that, the persons who got Cowle were having even otherwise have large number of private coconut trees with enough income. To make the system more effective in 1908 a penalty was imposed on those who fail to plant minimum number of trees per year. In Agathi and Kavarathi the Cowle lands have been inspected and the number of trees to be planted by each Cowledar every year was fixed.\textsuperscript{21} This coercive measure also failed in those islands. In 1920, Mr. Ellis, then collector of south Kanara identified that in some of the plots the trees were lower than it was in 1908. He changed the policy by giving Cowles to more industrious people. Definitely they are from poor sector of the society. Cowles to lessees who had not planted even half of the stipulated number of trees were resumed by the Government. And redistributed to the people from the poor. In 1913, the system of prize distribution to the Cowledars who perform at higher level also was introduced\textsuperscript{22}.

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

**Cowle in uninhabited islands**

The success of cowle system in the inhabited islands paved the way to introduce this in the uninhabited islands also\textsuperscript{23}

\textsuperscript{21} Ibid Failure to achieve this target was fined at the rate of Rs. 1/- per every 50 seedlings not planted

\textsuperscript{22} Mannadiar supra n. 6 at p.237.

\textsuperscript{23} Cheriyam was the first uninhabited islands where cowles were granted. It was in 1922. The people of Kalpeni Island considered this islet as charitable gift and they used to plant trees there in fulfilment of vows made when they were detained by winds or caught in storms. So the people (f.n. contd.)
Originally the cowles were granted for 40 years. One of the conditions of the cowl system was that in case the Government is ejecting the lessee, compensation had to be paid for all the trees planted by him. Since the redemption was a costly affair government never attempted redemption. So after some years all the government trees starting at the time of the original grant died out and plantations would be full of new trees planted by the cowldars. In effect there was security of tenure and the tenants were virtually owners of the land.

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

of Kalpeni long resisted the introduction of cowle in Cheriam. In 1880 Valiakara and Cheriakara in the Kavaratti group were leased. In the same year Bangaram, Tinnakara and Parli were leased out in blocks to Agatti islanders for 3 years. During this period itself Suheli islets were also leased pending the establishment of colony from. In 1891 Bangaram group was leased to Agatti Amin. Kalpitti also was rented out for 20 years. In 1904 the Agatti Amin surrendered his lease of Bangaram. All this has effected only after cowle system was introduced in the inhabited islands.
property and allowed inheritance of their tenancy rights. Ultimately this led to disputes between tenants and landlords on cowl lands also. The Laccadive Minicoy and Aindivi Islands land revenue and tenancy Regulation 1965 empowered the Administrator to confer tenancy rights on these cowldars and other occupants of pandaram lands. That is, this 1965 regulation made them virtually the landlords with heritable and transferable rights.

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

Lands

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

Jenmom Lands

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

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

Tenancy system

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

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

24 See for a detailed discussion on the peculiarity of land, See infra Ch. 8. In 1929, in Suheli also cowle was introduced. This was for a period of 12 years. The cowles were granted in Bangaram, Tinnakara and Parli in the year 1931. It was introduced in Kalpitti which attached to Agatti in 1933.
The system of land revenue or land tax was not there. A land survey and settlement was started for the first time in 1959. Because of the complexities of the concept of property like a single person’s coconut trees in another’s land, the settlement could not finish even in year 1999.

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

NadapuTenancy

NadapuTenancy was a peculiar system granted generally by the owners of boats. In this the landlord is entrusting a Nadapu normally consisting 30 to 40 coconut trees to the tenant. The tenant has to pay to the landlord an annual rent for Nadapu. In olden days the rent was paid in kind in the form of copra. Later its value had been commuted in terms of cash. There was no unanimity in this valuation among different islands. The settlement was more or less permanent. There is no question of enhancement for improvement made subsequently. Since if a Nadapu of 30 trees the tenant has planted more trees and the number of trees in the area had become 150 the landlord had no right to claim the rent for the excess trees planted over and above the original Nadapu. In Amini the custom is slightly different. There the rent was paid in copra and in accordance with the actual number of trees the rent also was fluctuating. The reason may be their ignorance regarding the land as a criterion property. In practice land was becoming the absolute property of tenants subject to conditions regarding rent and certain services attached to this. Generally a kudiyan has only one Nadapu. But there are cases in which
the kudiyan got more than 2 Nadapus under the same jenmi or who was holding more Nadapus under two jenmis. There was no unanimity as regards the rent collected also.  

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

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

(a) working as a member of crew on the jenmi's or cowledar's boats;
(b) thatching the boat-shed of the jenmi or the cowledar;
(c) repairing and oiling and maintaining jenmi's or cowledar's boats;
(d) carrying out seasonal repairs on the jenmi's or cowledar's house or;
(e) Rendering service on occasion of birth, marriage or death in the jenmi's cowledar's house.

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

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

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

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

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

\(^{27}\) Lower caste could break this tradition only during the middle of the present century. See also Mannadiar supra n. 6 at p. 91.

\(^{28}\) See K.P. Ittaman, Amini Islanders, pp.181-182. See also Mannadiar, supra n. 6 at p. 232.
Pattom Tenancy

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

House-site Tenancy

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

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29 N.S. Mannadiar, supra n. 6 at p. 232.  
31 Id., at p.233.
Property

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

This resulted in a peculiar custom, which enabled a person to plant a coconut tree in any vacant space provided that he maintained certain minimum distance from any other person’s coconut trees. Within in the minimum distance the right of planting is exclusively reserved for the owner of that tree. This custom also is having linkages with their idea right over a particular area is not upon land but upon trees only till the death of those trees. For example, in Nadapu Tenancy in between the 40 trees he is getting as Nadapu, the tenant could plant as many trees as he wanted. These newly planted trees are the tenant’s trees. For this he is not accountable to the landlord. This keeping of minimum distance was may be for allowing the tree to get enough space and sunlight to
grow. By preserving that distance for the owner they are preserving the right of the owner of the tree in perpetuity. If he is keeping that area vacant after sometime after the death of that tree he will lose his right over that particular space i.e. somebody will plant a tree. So to avoid this sort of dispute, the owner of dying tree used to plant another tree within that minimum distance. Now it can be seen that many person’s tree in the one and the same plot. For identifying their trees, each tree was having its own identifying marks. The major duty of Tharawad is the maintenance of its members. When the family is becoming bigger in size the branching out of family was accompanied with maintenance arrangement by allotting coconut trees.

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

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

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

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

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

(f.n. contd.)
the ancestral property could be subject of a mortgage but the right of redemption is reserved on the reversioners at the rate of rupee 1 per tree\(^{34}\).

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

The said Abdulkader Koya (signed)
Witnesses: Thithechetta Mohammad (signed)
After leasing out for seven years, the coconut trees owned by me shown in the lease deed on the reverse side of this document, on 25\(^{th}\) march, 1953, due to certain financial difficulties I, the said Abdulkader Koya, have again taken a loan of Rs. 50 (Rupees fifty only) from the said Adima on this 15\(^{th}\) day of January, 1958, and have leased out the same trees to him for a further period of five years for the purpose of realisation of the loan given to men according to the same conditions laid down in the previous lease deed. But if the entire loan amount of Rs. 120 (Rupees one Hundred and twenty only) is recovered from the sale proceeds of the rent of 1 Thulam of copra any time within the total 12 years of lease period, the rent of the trees for the subsequent years should be paid to me directly and if the amount of Rs. 120 (Rupees One Hundred and Twenty only) is not recovered within the specific period of 12 years. I hereby allow the said Adima to keep the trees leased out to him under his possession until the entire loan is realised completely.
The said Abdulkader Koya (signed)
Witnesses:
Moktessor Ella Ander (signed)
Thittechetta Mohammad (signed)
I, the said Kader Koya again lease out the coconut trees owned by the mentioned in the previous lease deed for a further period of 5 years to Adima on his 17\(^{th}\) January, 1961 after accepting personally a sum of Rs. 101 (rupees One Hundred and one only) from him. I hereby allow Adima to realise this loan amount according to the same procedure and conditions laid down in the first lease deed.
The said Abdulkader Koya (signed)
Witnesses:
Moktessor Ella Ander (signed)
Thittechetta Mohammad (signed)
For details see K.P. Ittaman Amini Islanders social structure and change. (1976), pp.227-228.\(^{34}\) R.H.Ellis, supra n. 8 A short account of the Laccadive Islands and Minicoy, pp.45-46.
Regulation 1959 and by the implementation of Lakshadweep Registration Act in 1967. The coercive force of law and the resultant governmental sanction induced the society and culture of these islands, far away from the mainland, assimilate the general concept of property. This has given an initial blow on the islands culture identity and social ethos since independence. Chain reactions occurred later in this society. The impact of the change on impartible joint family property and the matrimonial setup in the society is devastating. The transplantation of concept of property was contrary to, then prevailing common property (impartible joint family system) system in the Lakshadweep and it caused in the due course the disintegration of the very basis of the society, the joint family system and the matriliny.

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

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

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

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

**Land Revenue**

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

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

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37 AS138 of 1981 of Kerala High Court. This case was decided by justice T.L. Viswanatha Iyer and the judgement was pronounced on 29th July 1993. Actually this is an appeal on the file OS 9 of 1972 on the file of Subordinate Judge of Kavaratti.
The success of the land reform is based on the proper record of rights with clearly defined rights over land of individuals house holds. Actually this is the problem which troubled the authorities to implement the land reforms in the various other Indian States 1965 Regulation stipulates a record of rights for each island. That is a comprehensive land register so that will be the final shape of the settlement operations.

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

Land Reforms

The LM & A Islands Land Revenue and Tenancy Regulation 1965 and the Land Revenue and Tenancy Rules 1968 came into force in the territory with effect from 1968. The important provision which are having impact up on the customary
laws were the abolition of Nadapu Tenancy, fixity of tenure to Kudiyans and tenants, conferment of occupancy right on a Cowledars and other persons in occupation of Pandaram lands.

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

The tenants other than Nadapu also were benefited by this Regulation. Section 86 guaranteed the fixity of tenure to tenants other than Nadapu tenants. It made the interests of such tenants heritable; but not transferable except to a member of the family. This guarded the illiterate tenants against the wrongful acquisition of their properties by others. The regulation also protected the tenants against wrongful
eviction by the Jenmis.\textsuperscript{39} It also provides the first option to purchase land to the tenants, in case the owner to sell it\textsuperscript{40}. The Kudiyans who had neither a homestead nor any land either as owner or as tenant in possession were also given fixity of tenure in his ‘kudi’ (the land and the homestead or hut)\textsuperscript{41} So as to safeguard the interests of kudians the rights of the kudian in his ‘kudi’ was made heritable, but not transferable except to his wife or husband or any unmarried minor child.

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

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

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

\textsuperscript{38} LM & A Island Land Revenue and Tenancy Regulation 1965, S. 85.
\textsuperscript{39} Id., S. 87.
\textsuperscript{40} Id., S. 95.
\textsuperscript{41} Id., S. 99.
\textsuperscript{42} Id., S. 83 and 84.
the tree tax were imposed on the society, their concept of property was based upon
trees, that is, on coconuts. At that time for them land was abundant. The only income
was the nuts of coconut tree. Centuries later population increased and pressure on the
land necessitated to consider land as a more valuable thing. At this stage the
integration of the society with the mainland culture and their administrative and legal
norms pressurised this society to move to the universalisation of their concept of
property to be a land based one. The new legal norms enforced through the Survey
and Boundaries Settlement Act and Registration Act made it difficult to pull on with
their old tree based land concept. In the old concept it was easy for Government to
collect tree tax. The shift in the concept of the property in the society made that tree
tax system unscientific and irrational. Tree tax is replaced with land revenue that
enjoins paying tax in proportion to land in hand. Earlier land records of this society
had given importance to the number of trees. In the new system it became imperative
to draw out a land Register based on land area with specific boundaries. That gave
final shape to the settlement operations started under LM & An Island, Survey and
settlement and Boundaries Regulation 1959. The abolition of tree tax is to be read
with the changes introduced through survey in settlement and shift in peoples concept
of property from the number of trees to land area.

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

43 This also was introducing in different stages This stage by stage implementation is for
lessening the burden of such levy on the islanders. By this the Administrator is empowered to
grant exemptions in case any hardship is caused by such levy. This land revenue is inevitable for
(f.n. contd.)
needs. Earlier in Lakshadweep there was enough land to be brought under cultivation. There was no scope for the availability of casual labours. The Koya families asserted their overlordship on land and handed over the land to the Melacharies of lower caste for improvement. At that stage of this insular society they had to bring everything from mainland. From their social and economic necessity, a particular form of customary tenancy is emerged by which the tenants of this boat owning class landlords are obliged to work as Khalsies in the voyage to mainland and back atleast once in a year. Apart from this it was compulsory for this tenants to ship their produce to the mainland and to bring their necessities from the mainland only by his landlords boats. Although there was a social and economic necessity of the society for ensuring the transportation of goods in that risky situation, the boat ownership class denied the opportunities to others to go freely out of the feudal net they have thrown on the society. The baster was the only system.

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

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

44 Report of H. Bradley, Assistant Collector, South Canara dated 30-06-1880.
property register was compiled in Amindivi Islands, another modification in customary practice evolved. By this modified custom, the tenants who were there in that 1875 register were treated as pazayakudian (old tenants) and their fixity of tenure was recognized. This modification of custom had reciprocity. The right of the landlord to claim compensation for the loss of service was also recognized by the legal system. The importance is that at that juncture it was inevitable for the society to preserve this customary practice to meet the community needs. At the same time the rampant disputes also should be contained. The society achieved the balance through the modification of custom.

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

CHAPTER – IV

LEGAL SYSTEM: PERIODS OF OBSCURITY AND RAJAS