CHAPTER IV

LEGAL SYSTEM:

PERIODS OF OBSCURITY AND RAJAS

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

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

During the first period we were unaware of the details of working of the legal system. The second period was solely based on the custom of the society. The third period witnessed a gradual inter-mixing of formal western legal system into the customary law governing area. Institutionatilisation has started in the legal system. The
fourth period experienced the mainlandization of the legal system providing the exclusive professionally managed judicial institutions with the flood of new legal rights and obligations imported by the extension of mainland laws, echoing the death knell of the customary law.

Period of Obscurity

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

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

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

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

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

3 Id. at p. 9.
and Agatti. The melacharies claim their ancestry from Teers and Mukuwars. The ancient settlers of these three islands recognized subjection to those of Amini. The early polity of the islands seems to have been very simple. Each island was an independent administrative and economic unit. Only exception seems to be the case of Amini. Though it was not authority, they enjoyed some sort of priority over the other three smaller islands Chetlat, Kiltan and Agatti of that group.

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

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4 Id. at p. 10
5 Ibid.
6 N.S Mannadiar (Ed.), Gazetteer of India: Lakshadweep (1977) p. 46. Ibid. See also supra n. 2 at p. 10.
No authentic data on the then legal system was available. The Muthalal or the chief inhabitant of the island was assisted by a team of old people to settle all sorts of disputes. This team of elders was known as Mukhiasthans or Karanavans. Their assembly or council is known as kootam. Since the population was too thin and the principal families heads were there in the council which helped the Muthalal in the administration. The councils might settle the disputes that might have arisen. Apart from that, the isolation and the simplicity of the life rules out the occurrence of any severe problems. The council of head of principal families and the Muthalal on considering the community consciousness naturally might have done the dispute resolution. The presence of the rigid caste mechanism also made the dispute resolution very easy, due to the straight flow of the authority from the top to the bottom of the society. There were no prescribed rules, law or procedures. The logic and common sense of the Karanavans were the undercurrent of this.

**Period of Rajas**

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

The Kariakar or agent of Raja in each island administered both civil and criminal justice. A committee of the principle inhabitants of each island assisted him. These...
principle inhabitants were known as Karanavans. The power\(^8\) of these traditional judicial functionaries, Kariakars and Karanavans were extended only to petty civil and criminal matters, and the maintenance and protection of monopolies. Raja or his main Karyastan at Canannore tried the grave matters and serious violations of fiscal rules.

**Resolution of Disputes**

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

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

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\(^9\) *Supra* n.6 p. 255.
Robinsons report comparing the Malabar islands and Cannanore is given a different note.\textsuperscript{10}

\textbf{Kavarcha}

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

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

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

\textsuperscript{11} Id. at pp. 53,142-145.
6th October 1847. There were two instances of Kavarchas administered in 1847 and one in 1843 in Androth Island.

The 1847 Kavarchas

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

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

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

\(^{12}\) Monopoly price was six maunds of coir worth value of five or six rupees per moodah of rice. \(\text{Ibid.}\)

\(^{13}\) The other punishments given were to bring back the rice and a fine equivalent to double the price of the rice stolen. \(\text{Id. at p. 53.}\)
They took away everything in the house. The females were turned out of the house and striped out the jewels. Several bangles have cut with knives and wrenched and broken in striping them off. In this form of punishment the other customs of island life also were violated. For example in this case a lady from the delivery bed also was driven out.\textsuperscript{14} During this, the newly born infant have fallen or been pushed out of her arms. The child died within 12 days of the occurrence.

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

**Chakyatillath Case**

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

**Valiyaillath Case**

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

\textsuperscript{14} In the islands the custom mandates a woman who gave birth to a child to observe seclusion for a period of forty days. The observance of this was very strict. \textit{Id.} at p. 80.

\textsuperscript{15} \textit{Id.} at p. 81.
an unfortunate woman, concealed herself for some days in a cave in Kalpitti islet was put to death.

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

**Oaths and Ordeal**

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

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16 This place is now known as Kunhi Bi Para, *Id.* at pp. 80 and 81.
oaths and ordeals were considered as a way of deciding the guilt of the accused. The ancient Indian lawgivers like Manu, Narada and Brihaspathi had explained this meticulously. Narada has prescribed this just after mentioning the valid and invalid evidence. He mentioned that this has to be followed were there is absence of both witnesses and documents. The term used to denote this is 'sapatha'. This term denotes both an ordeal and an oath; some commentators deny that the former meaning to 'sapatha'. If other ways to prove the guilt had failed "let him cause the defendant to undergo one of the ordeals by fire, water, proof of virtue and so forth, (which may seem) appropriate to the place, to the season, and to the strength (of the defendant). If a man who is performing the ordeal by water does not rise from water, and if blazing fire, which he is holding in his hand does not burn him, he is freed from the charges, otherwise he is deemed guilty." 18 The recorded history of the Lakshadweep has mentioned that oath and ordeals 19 were used in the administration of justice. They settled the disputes. That is, by same means the detection and search and penalties were restored in criminal, civil, commercial and fiscal arrangement violations. All these were settled summarily.

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

19 Robinson supra n. 2 at pp. 53,54. See also Report of Mir Shujaat Alikhan dated 28th July 1988, which recorded as: "The marvelous sense of honour, they scrupulous regard for truthfulness and great dread of an oath on the koran which the islanders possess, make it very easy for the mokasars or elders who assist the Judge to arrive at the truth, however old any given case or suit may be". See also Mannadair supra n. 6 at p. 255.
all the suspects with oath. From that confession on oath by one, ultimately ended in awarding Kawarcha as a punishment. Robinson specifically mentions that the barbarous ordeals commonly practiced in native states were used in these islands also. Though they were practiced, there was no mention of any rules for this as mentioned by Narada and Brihaspathi. Nowhere it is mentioned that there was different oath for different castes. It is to be differentiated from the cultural angle. The great law giver Narada prescribed these distilled principles of Indian customary law of oaths and ordeals as a guidance to the Kings and Chief Judges how to perform administration of justice based upon Dharma through this instrumentality of law. In Lakshadweep the concept of Dharmas had no sway as in the Indian mainland as in its original form and with roots as a philosophy. Their plain simple life and commitment towards truthfulness, God fearing, and allegiance to the Raja were all their assets. When a group of people are living in the midst of uncertainties and difficulties, their belief in God and their commitment to truthfulness would be great. This simplicity from life is gone, when the society moves up in the ladder of development. This was through societal integration with a developed culture. At that stage some of such cultural specificities started vanishing. The peculiar dispute resolution methods existed in that society also ceases to exist. That is what happened in Lakshadweep in modern times. At a certain stage of social development this system ceased to exist.
Compensation and Fine

On those days the most common punishments were confiscation and fine\(^2\). The fines were collected not in cash but in kind. The common product in the island was coir. It was by exchange of the coir, the fine was collected. These fines were frequently carried over to account, and became book debts. This collection of fines and making them as debts are quite contrary to the modern concept of fine. Now fine should be paid in cash.

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

**General Administration**

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

The Raja or Beebi managed the general administration of the islands at their respective periods from the mainland. The nature and quality of the administration had been varied from period to period, depending on the individuality of the Raja or Beebi, sometimes by a Yellyah (Beebi’s husband). During certain periods, the control from the mainland was nominal. Control of the Raja over the islands progressively increased from earlier periods. When it reached the later period of Beebi it assumed despotic and oppressive.\(^1\)

\(^{20}\) Supra. n 6 at p 254.

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

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

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

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

\textsuperscript{23} Id. at p. 7.

\textsuperscript{24} Ibid.
godowns as third class coir.25 The monopoly existed even for tortoise shell and Kowaries.

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

Local Administration

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

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

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

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

\textsuperscript{27} See William Logon, supra n.1 at Appendix XXI.

\textsuperscript{28} Supra n. 2 at p. 78
annum (value 36 and 2 rupees respectively). Their remuneration consists of cesses levied on the people. The Perwana - the appointment order must be renewed on every occasion of leaving the island under the same Nazeranah. This had to be renewed almost annually. The Nazeranah and the fees extracted from the Karyakars were more than their annual salaries. This they had to pay almost annually. Even then the competition to get that appointment itself indicates how lucrative it was. The injustice in the conferment of appointment made these Karyakars to enforce various authorised and unauthorised fees from the people. In one case just for withholding fish's head - the Karyakars due-Karyakar fined a man rupees two in Kavrathy. The absence of any supervision from the King or Beebi gave these Karyakars an unbridled power to implement their greed and nepotism. By the end of Beebi's rule it is reported that changed feeling of the people and circumstance of the Cannanore family have reduced the rates of Nazeranahs. Which ultimately reduced the competition for these offices.

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

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

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29 Id. at p. 79.
confiscations. The violations were treated with fine and imprisonment. These servants were responsible for managing the Raja’s private property and trade at distant islands. But the control of Raja over these servants and trade was more or less nil. The lack of superintendence and accountability when coupled with the distance and absence of communication made this Karyakars extremely powerful.

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

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

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30 Id. at p. 50.
was used to exact for all interviews or audiences granted by the Rajah. This varies in accordance with circumstances. Other expenses also were attached to this. There was a custom by which the Raja should reciprocate by supplying a cloth or a moodah of rice to the persons who were meeting him. By the end of Beebis rule, because of the corruption and unreasonable exaction of Nazaranah the number of audiences sought for has considerably reduced.\footnote{\textit{Ibid.}}

\textit{Malmi Marvida} \footnote{Ibid.} or pilot fee was another form of Nazaranah. The islanders are known for their piloting skills. The people who captained the crafts belonged to Malimi caste. They used to pilot Arab crafts from the port till they cleared these islands. For this, a fee known as \textit{malmi maryadi} \footnote{\textit{Ibid.}, at p. 43} (Pilot Custom) used to be charged. It was an important head of collection on the Beebi's revenue. The rate of this Nazaranah was 4 rupees to the Beebi, 2 to the local Karyakar and 1 to the accountant for the Arabian trip. For the shorter trip at rupees 2 to the Beebi, 1 to the Karyakar and \(\frac{1}{2}\) to the accountant. On the other hand inland import duties of 10 percent were remitted, viz. on 8 moodahs of rice in the first case and on 4 in the second. Since the local officers were interested, they had performed this levy with utmost care and diligence. This caused difficulties to the natives and also the pilots going from coasts. Aboker Malmi of Agatti left the island and resided with his family in Calicut. From where he made several trips as pilot. But he withheld the customary share from the Beebi. To force him to pay the pilot fee dues, the Karyakar attached and administered his sister's property for two or three years till a
portion of the arrears were liquidated. This attachment of sister’s property for brother’s
dues was effected because of the prevalence of Marumakkathayam there.

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

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

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

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

34 Id. at p. 78.
35 William Logan supra n. 1 at p. cc/XXX.
36 Supra n. 2 p. 80.
37 Id. at p.51.
Degeneration of Kootam

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

Corruption

The civil services are basically the instruments of governance in all society. Political will is ultimately structured and executed through public administration. A comparison of the customary Nazeranah prevalent in the Lakshadweep islands with modern eras corruption is compelling to record that the structure of civil administration and commitment of its higher functionaries are critical determinants to achieve progress in any society. This is very much linked to the attitude of the ruler. The basic pattern of political structure reflects the Raja Praja relationship. The norms of behaviour in the society will be shaped in consonance with the prevailing ideas and culture. Self managed
societies and communities like earlier Laccadive were deeply rooted in tradition. When the free flow of communication is fragmented and made opaque by the super-imposition of any unlimited, unaccounted, unguided centers of authority, the system of administration will be turned into anti-people. The result was a stagnated period in the history of the territory.

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

In Lakshadweep during Raja’s period an authority of Karyakar with unguided and unbridled power had replaced the community participation (Kootam) in the public administration. For every activity of man they stamped authorised or unauthorised collections in the name of Nazaranah. In turn, it percolated down to authority to authority whether it is governmental authority or religious authority. For eg: In that period for the appointment of Khasi, exorbitant Nazaranah was collected: This religious head in his turn collected it from people. The hereditary Khasi of Androt died in 1846. His heir a boy of 15 was appointed to succeed in 1847. The boy was forced to pay 400 rupees as Nazaranah for Khasiship. 300 rupees of which were set down in the account outstanding against the island. About 100 rupees were borrowed from the Karyastans of
Cannanore and others. The effects of the hurricane ruined the family of the Khazeez. The relations of the boy took him on tour in the islands to raise charitable subscriptions to pay the Nazaranah. The fact is that this Khazee of Androth was the direct descendant of the Munbae Mollaka.  

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

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

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38 The person who converted the entire islanders to Islam. Saint Ubaidullah is also known as Munbae Mollaka. See supra n. 6 at p.44.
identify this with the corruption in the present day India. In the Rajas period there was stiff competition to purchase the post of Karyakar. In the modern period lakhs and lakhs of rupees were paid to get a posting as inspector and other lucrative posts. When such posts are available for purchase, whether it is old Lakshadweep or modern India it is proved as a good form of investment. In Lakshadweep this has happened when there was no code or rules for providing the basic conditions, requirements and style of work, discipline and accountability for all public servants irrespective of the categories or services to which they belong. Inspite of the existence of all these, the corruption originated in the modern India from the declining standards of personnel and cadre management, declining standards of productivity, poor quality of performance appraisal, diluted accountability, low motivation and morale, and excessive political interference. Robinson has described the ill defined, irregular, arbitrary nature of the administration of justice. Two hundred and fifty years back it is reported that at the peak of corruption that degenerated even the traditional guardianship of this society, the Mukyasthan’s or Karanavans.

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

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

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

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

LEGAL SYSTEM: BRITISH PERIOD