CHAPTER-V

LEGAL SYSTEM: BRITISH PERIOD

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

1 In 1791 Britishers conquered Cannannore. That led Britishers to claim the rights of sovereignty over the possessions of Beebi, including her islands. But as a ‘matter of policy and conciliatory of the mappillas in general’ the Beebi was permitted to retain her possessions on paying tribute to the company. The British Govt. attached the islands on 3rd April 1875 for an arrears of Rs.49789. See R.H. Ellis, A Short Account of the Laccadive Islands and Minicoy, Govt. press Madras (1924), pp. 15-21. See also N.S. Mannadiar, Gazetteer of India: Lakshadweep (1977), at pp57-66.
The powers of the Monegar were since then progressively raised. In 1845 he had the powers of an Amin of Police. In 1847 Madras Government directed the Karanavans to assist the Monger as assessors both in police and civil cases of petty nature. The working of the system was that of a court with Monger as president. In 1866 South Canara Collector reported the inter relation between the Monger and people in the following words:

“I am inclined to think that virtually the Monegar possess very little authority and that islanders have altogether outgrown the State of simplicity and pupilage in which they were formerly”\(^2\).

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

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

\(^2\) Madras Government Order no. 2045 2\(^{nd}\) September 1867. As quoted in N.S Mannadiar, id. at p.256.
value. He had power to impose fine under the Cattle Trespass Act. The salary of the Monger was raised from Rs.17.50 to Rs.70 in 1871. In 1872 the Monegar was invested with the powers of Third Class Magistrate. It was specified that in case beyond his jurisdiction under Regulation XI of 1816 and within his summary jurisdiction as Third Class Magistrate he should associate with not less than three Karanavans of the island in which the trial is held as assessors. It was stipulated that the apart from the view of the Karanavans the evidence also should be recorded.

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

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3 Madras Government Order no. 1428 9th September 1870
4 Madras Government No. 186, 30th Jan 1872
5 Ellis p.36
6 Madras Go N0.186, 30th January 1872. The Powers of Village Magistrate and village munsiff as defined in Regulations of XI of 1816, IV of 1821, and IV and V of 1816.
In 1874 the Laccadives were declared as Scheduled District. The combined effect of Scheduled Districts Act 1874 and the Local Laws Extend Act 1874 was that many of the laws in force were not applicable to the Scheduled Districts unless they were specifically extended to these districts.

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

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

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7 Scheduled District Act 1874.
8 Letter of Collector of South Canara to the Secretary, Board of Revenue of Madras dt. 27 Dec 1880.
people should take the law into their own hands and resort to violence in order to the settlement of their disputes.\(^9\)

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

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

\(^9\) As quoted in N.S Mannadiar, supra in 1 at p.259.
\(^10\) Madras Government Order No. 438 Dated 31\(^{st}\) May 1889.
\(^11\) R.H. Ellis, A Short Account of the Laccadives and Minicoy (1924), p. 36.
Shujaad Ali Khan in the year 1888 listed\textsuperscript{12} nineteen offences, which were punishable under the customary law.

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

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

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

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

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

14 Supra n.5. p. 37.
15 Go. No. 384 political dated 8th June 1905.
9. Not attending the cutcherry without reasonable grounds when ordered to do so,
10. Obstruction in the execution of an order of Amin or any other public officer,
11. Disobedience of the order of the Amin or any public servant,
12. Not giving information to the Amin of births and deaths,
13. Injury to property other than by fire,
14. Criminal trespass,
15. Slander, and
16. Escape from lawful custody.

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

The 1912 Regulation

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

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16 The Lacadive Islands and Minicoy Regulation 1912. It received the assent of the Governor General on 22/1/1912 and was published in Gazette of India on 3/2/1912. For text, see Appendix-C.
17 The Lacadive Islands and Minicoy Regulation 1912 s. 2 (i)
excluding Amindivi groups of islands. It may be mentioned that this Regulation continued in force even after independence till new courts were established in the islands on 1-11-1967.

The Inspecting Officer was the most powerful authority in the Island administration as per the Regulation. This was defined as: 

\[\text{any officer directed by the Local Government or Collector to inspect the Islands or any of them}.\]

In the year 1937 by the Adaptation Order of 1937, the word ‘Local Government’ was substituted with ‘Provincial Government’. Later by the Adaptation Order of 1950, the word ‘Provincial’ was substituted for ‘State’.

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

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

\[\text{Supra n.11 s. 2 (ii).}\]
\[\text{Id., at s. 2 (iii).}\]
\[\text{This was inserted by Section 2 of the Laccadive Islands and Minicoy ( Amendment ) Regulation 1949 ( Central Regulation of 1949)}\]
applicable to these Islands. In 1949 chapter IX of the Code of Criminal Procedure extended and new Sections 34 to 36 were added.

**Criminal Justice under 1912 Regulation**

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

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

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

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21 The words “the Indian Penal Code” were inserted by Section 2 of the Laccadive Islands and Minicoy (Amendment) Regulation, 1926 (Central Regulation 1 of 1926).

22 Section 3 of this 1912 Regulation has been amended by Section 3 of Laccadive Islands and Minicoy (Amendment) Regulation 1949 (Madras regulation 1 of 1949).

23 *Id.*, at s. 4 (2).

24 *Id.*, at s. 4 (3).

25 *Id.*, at s. 4 (1).
rupees, or with both. These minor offences were theft, criminal force, assault, hurt, criminal trespass, use of abusive language, obstructs any person in seizing stray cattle, failure to attend courts (kachahri) when ordered to do so, causes mischief to property otherwise than by fire, liable to harm the reputation of the person, and escape from the lawful custody.

Amin's position retained

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

British recognition of customary laws

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

26 Id., at s. 5.
27 Id., at s. 5 (a) (e) (f) and (g).
their peculiar community life. The customary practices of the society, which were very much inevitable for keeping the community life in harmony, had given a legal color and was supported with legal sanction. This was an instance of the British attempt to preserve the customary practices and the customary law in its original form. It is to be particularly noted that while framing it into a law, the Britishers had kept the chance to correct the earlier mistakes or the original reparation chance intact. Being isolated in deep sea the islanders could not pull on without launching or drawing up a boat. This is just the recognition of the custom prevailed in that society. This shows life of the society was very much community oriented. Their sense of justice and the then prevailing administration of justice were given preference to the community interest or common interest over the individual freedom and individual choices. Thus there was an amicable system embedded in the customary law. One could compensate or correct the fault with in a specified time. The English people had maintained their hands-off approach to the social life of the local people until the particular custom was not going to affect their authority of governance.

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

\textsuperscript{28} Id., at s. 8.
\textsuperscript{29} The only crop in the islands is the coconut. The rats destroy all the tender coconuts with out allowing them to be ripen. The extent of loss was much more than what they could collect.
The tactful approach of the Britishers on the legislation and administration of justice was evident in keeping the two assessors as mandatory for the trial conducted in the Islands. This was to keep the people feel that their interests was taken care of. Earlier those assessors were selected from among the Karanavans of the noble families of the Island. So it was devised by the Britishers as an instrumentality to get the popular support and control over the society.

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

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

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

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

Status of Amin

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

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30 Id., at S. 9.
31 Id., at s. 5 & 8.
32 Id., at s. 9.
The position of Amin was progressively enarmed with more and more powers. In the year 1926 the Amin was vested with the power of a Magistrate of Third Class by empowering him to try offences which, if committed in an area in which Code of Criminal Procedure, 1898 was in force, would be triable by a Magistrate of the Third Class under that code and offences punishable under Section 224 or Section 500 of the Indian Penal Code. Later the Amins were empowered to try offences notified in the official gazette.

Procedure to be followed by the Court of Amin.

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

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

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33 Id., at s. 9(1)(b)
34 Id., at s. 10
35 Id., at s. 10 (1)
36 Id., at s. 10 (2) (3)
procedure prevailing in the British India and a modernisation of the island legal system by bringing it closer to the legal system of the main land or basic fair trial procedures.

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

\textsuperscript{37} Id., at s.10 (4)
\textsuperscript{38} Id., at s. 10-C
\textsuperscript{39} Id., at s. 10-B
There was yet another development of the Criminal justice system. Hitherto unknown provision in islands - the security bond provisions - denotes an extension of the Government's control over the law and order situation keeping the society within scrutiny.

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

If any person required to give security under the above provision did not give such security, he could be committed to prison or, if he was already in prison, be detained in prison until the period fixed under the above provision expired, or until within such period he gave the security. Imprisonment for failure to furnish security might be either simple or rigorous. The Collector or the Inspecting Officer is empowered to cancel any bond for keeping the peace or for good behavior. They may also release from prison any person imprisoned for failure to give security. The Regulation empowered the Collector to withdraw to his own file any case pending before the Inspecting Officer or an Amin. A similar power was vested on Inspecting Officers to withdraw to his own file any case pending before an Amin.
A provision enabling the Collector to transfer any case pending before him or before the Inspecting Officer to any of his Divisional Officers for trial also was added in 1926.

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

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

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40 Id., at s.15. No second appeal shall lie in any case whatsoever.
41 Id., at s. 12.
42 Id., at s. 14.
against. But the prisoners are specifically exempted from payment of stamp duty. This is in tune with the trend of modern Criminal jurisprudence.

**Civil justice administration**

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

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

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

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43 Id., at s. 15.
44 Id., at s. 22.
45 Ibid.
46 Id., at s. 26.
47 Ibid.
48 Id., at s. 26(2).
49 Ibid.
Collector's Assistants exercising original civil jurisdiction, it is an absolute vested right. And appeal shall lie to the Collector\textsuperscript{50}.

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

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

\textsuperscript{50} Ibid.
\textsuperscript{51} Id., at s. 26(3).
\textsuperscript{52} Id., at s. 27.
\textsuperscript{53} Id., at s.15.
\textsuperscript{54} Ibid.
\textsuperscript{55} Ibid. (the months of June, July and September were excluded in reckoning such period).
By this Regulation 1912, the Britishers had given legal sanction\textsuperscript{56} to the custom. The custom continues in areas like the inheritance. Thus, the legalisation of the customary laws in the island society formed a strong base of Lakshadweep legal system even today. This has been done by specifying that all questions relating to any rights claimed or set up in the civil courts of the islands ‘should be determined in accordance with any custom not manifestly unjust or immoral governing the parties or property concerned and, in the absence of any such custom, according to justice, equity and good conscience’\textsuperscript{57}. So when selecting the law to be administered in the civil courts the Britishers have given first preference to the local custom. But they validated only that custom which was not manifestly unjust or immoral. This is the general pattern of the British reforms. Wherever they have attempted legal reform they were very much cautious in not touching personal laws. Wherever the custom is absent to govern the particular rights the Britishers were trying to administer justice with broad-spectrum flexibility in the form of “according to justice, equity and good conscience”.

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

\textsuperscript{56} Id., at s. 20.
highly cautious enough not to get rejected by the new laws and system by the community en mass. At the other hand the Amins may not be knowing the local customs very well. The presence of the assessors, who are well conversant with the local customs, would be an additional safe guard to avoid mistakes. Apart from that the Amin who was entrusted with the administration of justice was not a professional lawman. So, instead of depending upon the Amin, the better choice was the collective wisdom of the society.

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

Reference to assessors and changing of assessors

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

Trial procedure

57 Id., at s.21.
58 Id., at s. 25.
59 Id., at s.25(2).
Presenting a plaint\textsuperscript{60} to the Amin having jurisdiction over the suit shall commence every suit. The parties would be allowed to attend the hearing of the suit in person or by a Mukhtyar. The evidence\textsuperscript{61} should be taken in open court. Representation of the parties has been regulated in such a way that no pleader should be allowed in any court except with the special permission of the Collector. But the parties are allowed to be represented\textsuperscript{62} by their island Mukhtyar. The appearance of every Mukhtyar appearing before a court on the mainland on behalf of a party in the islands, must produce stamped Mukhtyarnama\textsuperscript{63} or power of attorney bearing a court-fee stamp of eight annas. But this power of attorney was not needed in the island courts.

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

Service of process

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

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\textsuperscript{60} Id., at s. 23.  
\textsuperscript{61} Id., at s. 25(2).  
\textsuperscript{62} Id., at s. 18.  
\textsuperscript{63} Id., at s. 19.  
\textsuperscript{64} Id., at s. 25 (4)  
\end{flushright}
reason to be recorded in writing. If the execution is inadvisable, he may refuse to execute it. This provision is made applicable to the service of decree also.

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

Execution

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

Attachment and sale

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

\[\text{Ibid.}\]
\[\text{Id., at S.28.}\]
\[\text{Id., at S 8.}\]
\[\text{Id., at S (9) & S.29}\]
\[\text{Id., at S 30.}\]
Inherent powers

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

Power to exclude mainlanders from the island

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

This provision had very deep impact on the later Lakshadweep development. This has been followed in Government. of India Act 1935 and even after Indian independence. The post Independence laws passed also do not permit mainlanders to acquire land in the islands. This 1912 law has laid foundation stone for that even by stipulating a power to Governor in Council to require person ordinarily residing on the mainland who have taken up the residence in the islands to leave the islands. Even today in 1999 the mainlanders cannot visit Lakshadweep without obtaining permit from the Administration. The importance of this provision is that this was the major reason which safeguarded the customary law of the islands unpolluted even though the mainland law on the very same
respect had undergone vast changes and extinct by legislative hammer in the year 1976. This exclusion of the mainlanders kept their culture intact, saved them from the tricks and plays of the capital market and the affluent group of the mainland. So for laying the foundation stone for preserving this culture intact we are obliged to the men of 1912 Regulation. In 1912, the civil law was run in the mainland in accordance with Civil Procedure Code and various substantive laws. At the criminal side, the Criminal Procedure Code was applicable to the whole British India as procedural law along with substantive laws like Indian Penal Code. The Evidence Act has to be followed in the entire civil and criminal cases in the mainland. The gist of these mainland enactments was introduced in the islands by bit by bit without disturbing the public sentiments. Assessors system linked or bolted the new system in this traditional society. Not to make the people offensive, they have recognised the customary law, and they have not touched the personal law. The Britishers were very clever. They knew that if this remote isolated island people are turning hostile, they cannot maintain these islands profitably. The economic burden that may arise in creating and maintaining a police force in this distant island prevented British from starting police force in the islands.

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

70 Id., at s. 33.
71 It extended to many para of a case how evidence has to be adduced. How process has to be served. How the judgement has to be pronounced. What should be the form and the contents of the judgment, how and were the appeal has to be filed. What is the period of limitation. How the orders has to be executed. What are the authorities for the execution. How the resistance for the (f.n.contd)
procedure for trial and appeal was laid down. Special care was taken for providing punishment for the violators of customary law also. So the customary practice also has got legal sanction in the 1912 Regulation. A new wave of institutionalisation has been introduced. The set up was not akin to mainland. New procedure and new concepts of justice were introduced. Their attempt was to make the territory under law and order control and to free it from arbitrariness. While introducing these changes the British were very much conscious about the fact that the administrative expenses shall not exceed the income derived from the territory. This might be one of the reasons for a difference in approach.

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

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

72 Kalpeni Amin Kacheri criminal case No.1/1922.
73 Kalpeni Amin Katcheri criminal case No. 36/1922.
74 Kalpeni Amin Katcheri criminal case No. 35/1922.
75 Kalpeni Amin Katcheri criminal case No. 28/1922.
76 Kalpeni Amin Katcheri criminal case No. 26/1922.
A suit for justice filed by a lady was for restraining her brother from plucking coconuts from the trees allotted to her. There is a difference from the practice in the mainland where in similar instances parties are restraining the defendant from entering into a plot. In that period land was not the basis of property concept of the islanders. They followed peculiar system of allotting trees, which led to a situation, that in one and the same plot three or four persons may have their trees. This led them seek injunction prohibiting plucking of coconuts from trees allotted. In order to identify trees they used to create marks. The case was compromised.

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

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

77 Kalpeni Amin Katcheri civil No. 65/1932.
78 Kalpeni Amin Katcheri civil No. 69/1932.
79 Amindavi island Monegar Court civil case no. 74/1924. In those days the shortage of rice made rice as a precious thing. Apart from that barter was the mode of exchange. See Appendix D Cannanore Khader v. Fatade Sara
Mokthessors present in the court were of the opinion that the case has to be decided upon oath. As the person who borrowed was not alive the Monegar accepted the opinion of the Mokthessors who suggested oath taking. This case was decided on 18.9.1924.

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

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

\textsuperscript{80} Kalpeni Amin Katcheri civil case No. 68 of 1932
In the period of obscurity 'Kootam' used to decide the disputes. Later the Britishers legalised the 'Kootam' as assessors. It is interesting to appreciate this fact. In a mono-religious Muslim Society, as the society in the island was, the religion has no role in the decision taking by the 'Kootam'. This is very much different from the peculiar culture prevailing in some Hindu dominated societies in South India. Where the authorities of Matt or the religious head used to impart advisory jurisdiction. Their advices were treated as supreme law.

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

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

\(^{81}\) Registration Register of Kalpeni 1879, p.12.

\(^{82}\) Amindivi Islands Monegar court civil case No 53 of 1926. The cases had been decided on 27.10.1927. For details see Appendix D, Case Nos. 2&3.
The community-oriented nature of the decision making is further clear from the decision taken by the Monegar earlier on 24th March 1919 in civil case NO. 13/1919. This is a typical case, which throws light on how the islanders were cheated or trapped in the mainland. In this case the plaintiff messers Jos. V. Alvares & Co, Manglore had given Rs. 100/- to Kundevyapure Kasim Koya of Chethlath Island to purchase one native craft, called, Thakalaodam. This had been given on executing an agreement in an eight anas stamp paper, executed at Managalore. In that the islander was bound down to pay 12% interest per annum and for next 5 years from the date of agreement to hand over all cargo's brought by the Odom to the Jos. V. Alvares to be sold on commission. If the cargo is sold to any other person within the said five years a damage of 500/- also is agreed.

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

83 ibid
84 Amindivi Islands Monegar court civil case no 13/1919. The case was decided on 24th March 1919. See Appendix D case No. 3.
85 The amount ordered was as follows: Principal- Rs.100, Interest 12% Rs. 130. 14 Anna 8 Paise, Total Rs. 31 Anna 6 and Paise 8.
The rationality and reasoning had a back seat. This is a deviation from the western law. Even during the British period the oath was frequent. For deciding disputes the Mukthessors used to recommend oath. Such decisions also used to be confirmed by the Divisional Officers. The lack of pinpointed reasoning and the presence of blunt justice to preserve the community interest prevailed in this society. To sum up, they were approaching matters with a preconceived notion, more community oriented than individual oriented. The operation of majority in the decision taking process of the assessors in away reflected the public opinion. This is especially true when the Monegars did not comment upon the reasonability of opinion of the Mukthesors. The Monegars were just endorsing. However, they cannot be characterised as a signing machine. They know the facts and materials of the case. They were living with parties. So one cannot call the approach as bereft of objectivity or neutrality. One may see the presence of these two elements more, in western state laws or principle of Dharma followed in the courts in the mainland. But one has to differ when he measures the quantum of justice in these islands.

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

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

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

\textsuperscript{86} See Appendix D
to extract the islanders by binding down them to unreasonable conditions as was seen in the case. When they got a chance, customary law had been given predominance over the state law of mainland even if it was supported with generally accepted and duly acknowledged document.

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

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

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

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

87 Case records kept in Amin katcheries and Monegar courts, old cases kept in the new courts and the registration records were also examined by the scholar.
88 Mill, The History of British India  Vol V.425
was in a half-baked stage under Britishers. The development of a full-fledged legal system requires a fully developed administrative system. Which in turn requires integration with the mainland system. That was too expensive. This expense was one of the major reasons which forced Britishers to keep both the legal system and administrative system in the Lakshadweep in a half-baked stage.

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

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

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89The duties and obligations were working in the society through the privileges and disabilities attach to birth in the media of caste, matriliny based joint family with its peculiar property system.
Officers. The difficulty to file appeals at mainland reduces numbers of appeal considerably. Inspecting Officers and Collectors also a preference to customs as is evidenced from the case decided by Divisional Officer Manavedan Raja\textsuperscript{90}. At the island level the Mokthassers or Karanavas in the form of locating customs, were giving opinions, which is fundamentally decision making rooted in the island culture and the customary law preserved its purity till 1967 when the Indian status and judicial institutions with legally qualified officers were appointed in the islands.

\textsuperscript{90} Case decided by the Divisional Officer Manavedan Raja Case No.345/1920, Pudia Kulap Muhammed v. Kulap Muhammed. For the judgement, see Appendix D, Case No. 1
CHAPTER – VI

LEGAL SYSTEM:
POST- INDEPENDENCE PERIOD