CHAPTER VI

LEGAL SYSTEM: POST-INDEPENDENCE PERIOD

After India became independent, in 1947, many changes in relation to the legal system took place in the mainland to achieve the constitutional goals. But they have not reached Lakshadweep. This was mainly due to the absence of initiative and lack of communications in dealing with the Lakshadweep affairs. The high cost and risk involved in the modernization of this society was the deterrent factor. A change in this setup started on the basis one inspection report filed by a civil servant.

The Report

Changes took place in Lakshadweep in the post-independence era. In heraldic to these changes one official report on the islands is very important. The report which popularly known as Krishnaswamy report,¹ is prepared by the then Special Inspecting Officer of the Laccadive and Amindivi Islands, Sri. S.Y. Krishnaswamy. Perhaps after Ellis published his report in 1920 a study worth examination was almost nil till that of Sri. Krishnaswamy. The report admitted that largely due to their inaccessibility to the mainland, the islands could not achieve progress on par with the mainland especially in state assistance, political awakening or social reform. It was mentioned that the islanders are by no means a backward people as may be mistakenly supposed. Their isolation from the mainland should not be taken that they are not cultured. Their human relations are more cultured than the general mainland system. However, the modern gains of

¹ For the details of the report, see G.O.No.1453 of the Government of Madras dated, 22nd April 1955.
civilization is yet to reach them. God only knows whether they may become as “cultured” as the mainlanders may.

Though the inhabitants of these islands (except for Minicoy) are ethnically one and speak the same language, yet have had little contact with one another. One example is that people of Agatti speak of the people of Kalpeni as foreigners with quaint customs. As a matter of fact each of these islands has had separate, but more frequent, contact with mainland than with one another. Krishnaswamy reported that various local customs have, therefore, sprung up in each island and legal sanction has been given to these by adhoc decisions by inspecting officers. This indicates the prevalence of different customs in different islands and its legalization. The people were divided into three groups, the Koyas, the Malmis and the Melacharies in the descending order of social importance. It is said that:

“The Koyas are uniformly the priests and landlords and the owners of boats and the Melacharies are workers who may be described as hewers of wood and drifting into the upper or lower strata. The Koyas neither spin nor toil. The first is done by the tree culture which calls for neither sowing nor reaping, nor even any kind of maintenance, have made the Koyas lazy and litigious and the problem of their employment is one that confronts any one trying to reform the islands”.

\[^2\text{Id. at pp. 13-14.}\]
Of late some changes in the social hierarchical order took place. An inter-group integration reduced the rigour of social stratification.\(^1\) The men and women marry early and divorce frequently in those days. The general law of inheritance is matriarchal. Krishnaswamy found that inter-island differences existed in the laws of inheritance, landlord-tenant relations and marriage customs.\(^4\)

**Rationing and Coir Monopoly**

The food situation was peculiar in the island. The islanders have to subsist entirely on the rice from the mainland. There were no alternative foods. There was no scope for cereal cultivation of any kind. There was no additional black market supply of food. All the islands were under an informal system of rationing. The quantity allowed except in Minicoy was 8 ounces per head per day.\(^5\)

The custom of purchase and distribution was also peculiar when an odam (boat) is proposed to go to the mainland; the owner of the odam presents a petition to the Amin to allow him to purchase a particular quantity of rice. The petition is to be accompanied by a statement showing the particulars of the families whom he intended to supply. The heads of those families should sign the statements to show that they accept the arrangements. The Amin recommends the quota to the Collector who issues the permit. When the rice is brought to the island the Amin issues an order to the boat owners to supply the ration as specified in the original petition.\(^6\)

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\(^1\) Backward integration of Koyas with Malmis and by the forward integration of Malmis with Melacharies through marriage

\(^4\) Supra n. 1 p.14

\(^5\) Id. at p. 16.

\(^6\) Id. at p. 16.

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The system had many limitations. There is limit to the carrying capacity of the boats. The financial capacity of the owner, which could be assessed on the price he gets for the island produces, is a determinant factor. Lastly, how many have signed the petition also was important. At times the boat-owners used to give preference to their friends and dependants. The persons who did not have copra at the time of sailing of a particular boat were facing difficulties to raise the fund for their rations. Ultimately this also forced them to spread over their needs. The system led to the common malpractice’s exploiting poverty of the indigent persons by the boat owners. The boat owners were collecting the signatures of the poor people who were not having the money for the ration. The purchase of rice in the name of these poor people was financed by the boat-owners themselves. But when the rice was brought to the island it was not distributed to the signatories of the original petition. The practice was that the one third was given to the signatories as credit advances. The two-third was retained by the boat-owners for private sale at enhanced rates.

In effect this system was inefficient, it could not provide ration for all people atleast for certain period at same time. These were the problems at island level. There were difficulties or problems at the mainland also. The important difficulties experienced by the islanders for procuring food items at mainland were (1) the inability to find the prevailing market price for the island produce and (2) the exploitation by the middlemen on the mainland known as Dalals.

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7 Id. at p. 17.
8 Jos V. Alavares & Co. v. Kudeya Pure Khasim, for details of the case, see Appendix D(3) and see also supra Ch. V.
The Dalals offer various facilities of boarding, lodging and providing ample credit to the boat-owners of the islands. The credit created long-run accounts between them, which remain unsettled for years. The Dalals used to deduct the dues owing to them before sending the accounts due in island produce. In most cases the islanders became scapegoats. There were cases of whole boatloads being confiscated for debts. The islanders could not spend much on rice as they required or they could not take the rice allotted by government.  

Thus the procedure of rationing was neither uniform, nor enforced strictly. One of the reasons for this was the collusion between the boat-owners and the Amin. At the same time the Amin of Kalpeni has reported that on return to the island with rice, the boat owners were not producing it before him but were distributing it according to their whims and fancies. Jettisoning of cargo was not uncommon. The problems emerged from the use of country boats added to the misfortune. The boats could not keep the time schedule. Thus islanders were left with meager supplies or no supplies at all. The defects in supply led to the emergence of an internal ‘black market’ operating on the rationed quantity. The boat owners did this internal black market.

**Relation with Coir Monopoly**

There was a difference between two groups of islands. In Malabar group rice obtained by exchange of coir was in addition to the normal ration. This was an incentive

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9 During the early 1950s, they never took wheat. In 1950 there was a balance of 312 bags of rice in Androth. But this was not purchased for want of funds. Ibid.
10 We could not predict anything. Generally they took three-four days of journey. But sometimes it may extend two to three weeks depending on whether the sea is rough or not.
11 This was in addition to the customary 10 percent transport charges for coir given to the owners in terms of rice.
to produce more coir and get more rice. But in Amini group an additional supply of rice over the quantum of ration was made. In certain islands then there was no ration for small children. Minicoy was a favorite child in every welfare measures. There was no coir monopoly. The islanders were given ten ounce of ration while others got only eight ounces. In Minicoy, the government officials were ruthless and forthright while shopkeepers kept their correct accounts without mistakes and malpractice’s. Rationing arrangements in other islands was anti poor, inadequate and mal-distributed.

Coir monopoly is the term for the state monopoly in transaction of coir—a product of Lakshadweep. This was for the benefit of those engaged in the production, to free them from the mercy of the boat owners and the mainland merchants. According to the report of Mr. Krishnaswamy, coir monopoly should be abolished only on the establishment of co-operative mechanism for the transactions that relate to coir and coir products. The island wise transaction is to be carried out under a co-operative society. Purchase and sale in each island on all materials can be effected through the society. This will help the islanders to get things at proper price and to earn regular permanent income for the island produces.

12 The Collector of Malabar was supplying rice through two approved agents on the mainland who in turn supplied it to various shopkeepers on island each householder was provided with a card. He could collect the rice from any shop on getting it stamped. The shopkeepers were bound to keep stock registers showing daily sale. The purchases were made daily as a rule. Generally the rice was purchased by cash also. It could be seen that copra was not used as an exchange because the shopkeepers used to buy coconut and to prepare their own copra.

13 On every island a co-operative society should be started. It should function:
(a) the Government ration depot,
(b) The agency for buying coir, coconuts, copra, jaggery, vinegar and other island produce and
(c) A consumer stores for articles, required by islanders.

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A federation of co-operative societies was also proposed. This was to sell coir in the main port in Cochin to fetch a competitive price at international market level. Krishnaswamy suggested that the tax to be collected at the single point where the import and export of things took place at the island. The proposed agency for this import and export was the co-operative society of the island.

The importance of Krishnaswamy report lies in the fact that later this report formed the very foundation of the modernization of Lakshadweep. The law of a particular society is very much linked to the socio-economic life of the society. To avoid social friction and to eliminate arbitrariness the injection of rule of law in a territory is a must. It is directly necessary for a peaceful social living. The isolation from outward world is a negative factor in achieving development of a territory. So to improve linkages and interaction with the mainstream of the country he recommended regular ship service. Regular shipping to the island started in the year 1958-59. Its impact on the social life was tremendous. Scarcity of things bade good bye to this territory. That helped them to pursue higher studies in mainland. They could solve their health problems with the modern medical facilities available in the mainland. For improving, the level of literacy he suggested various ways and means. Today Lakshadweep is having highest literacy among Indian union territories.

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15 The establishment of regular shipping service reflected in the social life. It paved the way for the amicable settlement of customary tenancy related issues and customary services. Ultimately this issue has been solved by an amicable settlement arrived at between the landlords and kudiyans. See the chapter on land reforms.
16 See Appendix B(4).
He has suggested introducing money compensation for nadappu tenancy by eliminating compulsory customary practice. He has given the reason for this change as: by the inauguration of regular ship service, the need for customary boat services by tenants' would disappear. Later the post and telegraph office at each island was established on the basis of his recommendation. For a better society the legal culture is as important as the efficiency level of the economy. So he has suggested modernisation of the legal system by establishing a Judiciary as in the main land. It is highly fruitful to have a idea about the working of a legal system in the post independence period but before the introduction of modern judiciary.

Civil justice

To get a picture of the working of the legal system after the independence in 1947 and before the introduction of modern courts in 1967 the picture given by Sri. Krishnaswamy is very much useful. The nature of suits filed is money suits for recovery of dues, arise from the unsatisfactory landlord tenant relationships. Younger members of the tharawads were filing suits for separations. A large number of miscellaneous petitions were related to execution of decrees, petitions regarding boundary disputes and other matters of civil nature. The delay in disposal of cases is appalling especially in Malabar islands. In 1954 in Androth island cases were pending right from 1942. Three to five years delay in disposal is quite common in other islands also.18

17 For a detailed discussion, see supra Ch. III.
18 Supra n. 1 at p. 50.
The reason identified for the heavy arrears\textsuperscript{19} in the Malabar islands are many. The incompetence of the Amins to manage the court work was most important among them. Because of the involvement of interpretations of local custom and the absence of the practice of reducing into writing the maintenance arrangements the decision in island suits are inherently difficult. Absence of land boundaries and the computation of property by coconut trees and the interplanting of trees by several owners as well as by landlord and tenants in a plot, which is identifiable only by local name, are making the decision extremely difficult. The Amins were totally incompetent to adjudicate in the face of such vague and conflicting evidence. In Amindivi Islands major reason for the arrears was the delay in visiting the islands by the officers and the frequent transfer of officers.

**Criminal Justice**

Criminal justice was administered on the Malabar islands in accordance with Regulation of 1912 by the local Amins. He was trying the offences under Indian Penal Code - offences triable by a magistrate of third class and certain customary offences as specified in the last chapter. In south Kanara islands, the Deputy Tahsildar functions, as if he were a second class magistrate under the Criminal Procedure Code. He had to try IPC offences and the customary offences.

The general criminal case were criminal trespass, theft. Defamation was third. The major portion of criminal trespass is due to civil disputes about property, and are often attempts made by one party to intimidate the other into accepting an unwelcome maintenance arrangement. Coconut thefts were very common. The mixing up of property

\textsuperscript{19} Id. at pp. 44-45. For the exact figure of delays in disposal see Appendix B(6).
created a particular situation facilitating this theft. The chances to mix up the coconuts without any risk of identification with ones own coconut made this offence an easy one. The difficulty in obtaining adequate food and difficulty to procure foods by paying black market forced them to eat coconuts.

The criminal cases were allowed to be compromised irrespective of the nature of the offences. The delaying factors of the civil cases are equally applicable to criminal cases also. In Agatti a theft of coconut filed in 1948 was pending 1954. The delays in the disposal of criminal cases were more dangerous than in the delay in civil cases. This had reduced the respect for law and increased the lawlessness. At that period there was no police force. The first police station in the island was established in 1958. The absence of police also helped to worsen the societies peaceful atmosphere. There were session's cases like arson that has gone undetected.

Police

The first police station in Lakshadweep was opened at Minicoy in 1958. Later in 1964 three more stations were opened at Kavaratti, Amini and Androth. In the very same year the Post of Deputy Superintendent and one Circle Inspector was created. Now the Lakshadweep is having one police superintendent. All the islands are having its police station.

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20 For explaining the then delay in the disposal of cases in Androth, out of 44 cases filed in 1943, only 10 were tried by the Amin that year, 2 were tried in 1944, 2 each in 1945 and 1946, 8 in 1947 and two were pending in 1954 also.
21 For details of delay and pendency during 1941 to 1951, see Appendix B(9).
22 This has happened in Kavaratti Island. See supra n. 1 at p. 51.
Till 1967, the police had no powers to investigate. Their duties were limited to keep law and order alone. Till that Amins who were assisted by Karanavans in Malabar islands conducted the investigations. In Amini group of islands, the preliminary enquires into the crimes were done by the peon of the Monegar, and arrest also was done by peon. This Monegar had the powers of police Amin. Even today the police of the island cannot be compared with the police of the mainland. The people are not taking them as an isolated group. From what I could identify is that due to the lack of crimes, the people are friendlier with police than in mainland. They are considered as part and parcel of the same social group.

**Deviation as regards the recommendation on customary laws.**

In bring out such a basic document with pragmatic recommendations Krishnaswamy has consistently followed an ultimate aim of bringing island administration in par with rest of India. In such circumstance his observation on customary law is gathering importance:

"It is not desirable to codify customary laws at this stage of social flux and impending administrative changes, though a policy may deliberately tried of standardizing custom to the maximum extent possible by judicial decisions. No Changes are proposed at this stage in respect of ordinary leases between landlord and tenant."  

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23 This is deviation from general concept of police duties. In all societies the prime function of civil police is investigation of crimes.

24 Supra n. 1 at p.47.
Introduction of Mainland Model -Modern Judiciary

The breakthrough from the customary justice System came in the form of a Regulation; The Laccadive, Minicoy and Amindivi Islands (Civil Courts) Regulation 1965. By this how far the laws of Lakshadweep reached in par with mainland laws is an important area to be searched. The President of India has promulgated this regulation under Article 240 of the Constitution with a view to constituting certain civil courts for this Union Territory and the related matters. A three tier civil court set up has been envisaged for the Union Territory such as the District Court, the Court of Subordinate Judge and the Court of Munsiff. The power for deciding the qualifications of the Subordinate Judge and the Munsiffs were given to the Administrator in consultation with the High Court. The Central Government was empowered to fix the place or places at which the courts are to be held. Its peculiarity is that such places can be within or outside the territorial limits of the islands. This is the basic provision, which is enabling the island court to conduct their camp sittings in the mainland even now. Original jurisdiction of these judicial officers was governed by section 15 of the Civil Procedure Code.

The 1965 Regulation had a reference to customary law. Section 16 of the Regulation reads:

"Certain decisions to be according to the personal law or custom:- where in any suit or other proceeding it is

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25 Section 3 of Laccadive Minicoy and Amindivi Islands (civil courts) Regulation, 1965.
26 Id., S. 5.
27 Id., S. 7.
28 Civil Procedure Code, S. 15.
necessary for a civil court, to decide any question regarding succession, inheritance, marriage, caste or any religious usage or institution, any custom having the force of law, or any personal law, governing the parties to or, applicable in relation to the properties in issue in, such suit or proceeding shall form the rule of decision except in so far as such custom or personal law has, by legislative enactment, been altered or abolished”.

The regulation was providing a special procedure for cases involving customary law. In such proceedings four assessors should assist the court. It is the duty of the court to obtain the opinion of the four assessors separately on fact in issue. Presiding officer was not duty bound to follow the opinion of assessors if he disagrees with the opinion of the assessors. But the reason should be recorded. Presiding officer can decide the case in accordance with his own opinion. This procedure of obtaining the opinion of assessors was specifically excluded in the case of appeals.

The powers to appoint assessors to each civil court were vested with the Administrator or any officer appointed by him for this purpose. This list shall be revised annually. The process of selection of assessors for each case is to be by lot. Whenever any objections as regards partiality or anything is leveled against any assessor the court has to change the assessor. The specific guidelines prescribed for

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29 Id., S. 17.
30 Id., S. 17(2).
31 Id., S. 18.
32 Id., S. 19.
changing the assessors on the ground of impartiality, incompetence etc is an innovation on 1912 regulation. The regulation was designed in order to suit the local condition, which is different from the mainland situation. For example the 1912 Regulation provision of the exclusion of the four-month monsoon period from computation of the limitation was maintained in the 1965 Regulation.

The peculiar situation, which is prevailing in Lakshadweep islands even now, is that all ministerial officers attached to the courts are under the control of executive side of the government. The reason for that is section 23 of Regulation which specifies that ministerial officers of the Courts of Subordinate Judges and the Munsiff shall be appointed by the District Judge in consultation with the Administrator.

With effect from 1-11-1967\textsuperscript{33} the central government has extended to the Lakshadweep almost all the central enactment. As envisaged by 1965 regulation, on the date of commencement of the new courts the procedure followed was that of Civil Procedure Code 1908. This has a far-reaching impact on the customary law. In 1967 the system of assessors in trial has been taken away except in cases involving customary law. The customary law involving cases also have to be tried in accordance with the general principles of Civil Procedure Code. The judicial setup envisaged in this regulation constitute the Lowest Court was the Munsiff Court.

Consequent upon the notification in 1965, the officers in the administration acted as Subordinate Judge and Munsiff's\textsuperscript{34} despite, then, none of those first officers were

\textsuperscript{33} Though the Civil Court Regulation published in 1965, the notification which is giving, effect to this Regulation came into being in the year 1967 with effect from 1-11-1967.

\textsuperscript{34} At first Munsiff's Courts were established in four islands, Kavaratti, Minicoy, Androth and Amini.
having legal qualifications. That is, the judicial powers have been conferred on executive officers. By another notification the magisterial powers has been conferred on these officers with effect from 1-11-1967.

At this period from 1.11.1967 District and sessions judge at Tellicherry was the District and Sessions Judge and the appellate powers were with him. In this set up only the District and Sessions Judge at Tellicherry was the only legally qualified presiding officer to hear the matters. Thus when the modern courts were started in 1.11.1967 the judicial set up was that the first Munsiffs were not legally qualified persons. Tahasildars of their four islands were appointed as Munsiffs. The pecuniary Jurisdiction of the Munsiff was fixed at RS 5000/-. This regulation brought about a revolutionary change in the judicial system by providing for the first time in the island history the institution of regular legally qualified judicial officers.

The next court established in the hierarchical order is the Court of Sub Judge or Subordinate Judge. The pecuniary Jurisdiction of the subordinate Judge was unlimited. The territorial Jurisdictions of the Subordinate Judge was the entire union territory, that is, all the islands. The Subordinate Court is the court, which is to hear the appeals from the judgements and orders from the Munsiff Court. Here also the person appointed as Sub Judge was not a legally qualified person. But, the Secretary (Administration) was appointed as Sub Judge in addition to his other duties.

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The District Judge, Tellicherry in the mainland, State of Kerala was appointed as the District Judge for the entire islands also. This District Court was having unlimited pecuniary Jurisdiction.

The High Court of Kerala, situated at Cochin was designated as the High Court for this entire union territory. This was the case since the formation of the union Territory from 1-11-1956.

One more important enactment, which came into force on 1-11-1967 also, has an important bearing on the Lakshadweep Judicial history. That was a turning point of Lakshadweep legal system. That was the Laccadive, Minicoy and Amindivi Islands (laws) Regulation 8/65, promulgated by the President of India. Through this, various mainland enactments were extended to this union territory. This notification was dated 24-10-1967.

List of enactments made applicable to the islands

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<td>1-4-1969</td>
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<td>47</td>
<td>The Criminal Law Amendment Act, 1938</td>
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<td>The Registration of Foreigners Act, 1939</td>
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<td>The Arbitration Act, 1940</td>
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<td>The Delhi Special Police Establishment Act, 1946</td>
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<td>The Foreigners Act, 1947</td>
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<td>The Prevention of Corruption Act, 1947</td>
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<td>The Minimum Wages Act, 1948</td>
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<td>The Census Act, 1948</td>
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<td>The Government Grants Act, 1895</td>
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<td>The Indian Electricity Act, 1910</td>
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<td>59</td>
<td>The Children (Pledging of Labor) Act, 1934</td>
<td>1-7-1973</td>
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Though this modernization of legal system was partial at this stage (the Presiding Officers were not legally qualified). It is to be noted that this 1-11-1967 as a watershed mark in the Lakshadweep legal system. Hither to, these islands were Governed only by the general principals of mainland laws which was enshrined there in the 1912 Regulation. By that 1912 enactment so much flexibility and desecration was vested with the officers. This was very much ideal and conducive for the peculiar set up in which these people were lived. But by the sudden import of all those enactment's and the variety of technicalities had wide range of impact on their social life, social institutions, their out look to life and even on their value systems. Till that basically they were having a community-based life and outlook. On analysing the function of the society, one could see that the import of mainland laws later started working as a bridge between the two. Hither to, these islands was having separate legal identity in the Indian continent, by the introduction of those laws, that separate identity has been melted away in the deep Arabian Sea. I have named this 1-11-1967 island as watershed mark of the Lakshadweep legal system not only on the ground of this flood of new rights and liabilities through new enactment. But also for creating a special judicial setup. Inspite of this, on 1-11-1967 judicial courts have been entrusted with legally not qualified executive officers. It is very pertinent that at that period in India the bifurcation of the Executive and Judiciary was not implemented. That object has been achieved later by 1973 Criminal Procedure Code in mainland of India. But this is a recognition of the need and importance of the legal institution as a tool for the modernization of this society. The integration of these tiny islands with the mainstream Indian legal system actually started on 1-11-1967. The list of enactment's extended to Lakshadweep during 1967-73 itself will explain how many
new rights and duties have been introduced in the island all of a sudden. Among these most of them have been introduced in 1967.

**Completion of mainlandization of judiciary**

In the year 1969 the mainlandization of the judiciary was completed by appointing legally qualified persons as Judges and Munsiffs. In this year separate courts were established and officers of Kerala Judicial Service taken on deputation manned them. Later by a Notification,\(^36\) the Ministry of Home affairs of Government of India issued order changing the then setup of courts. This notification reduced the number of island courts from five to three. By this 1969 notification the courts were located as follows:

1. Court of subordinate judge - Kavaratti
2. Court of Munsiff - Androth
3. Court of Munsiff - Amini
4. Court of District judge - Tellicherry

In the year 1969, another major change was effected in the Lakshadweep Judicial system. The powers of the Munsiff were taken away from the Tahasildars and separate Munsiff Courts were established in 1969. Major change came into another form also. Legally qualified persons were appointed as Munsiffs. As there was no legally qualified persons in the islands, judicial officers from the Kerala Judicial service were taken on deputation and appointed here. In this new set up implemented in 1969, the number of Munsiff Courts has been reduced to two from the 1967's four Munsiff Courts. These two

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\(^36\) Dated 19\(^{th}\) March 1969.
new Munsiff Courts started functioning in 1969 were at Androth and Amini. The territorial Jurisdiction of the Munsiff Court at Androth is over Androth, Kalpeni, Minicoy and Kavaratti islands. All the rest of the islands are under the Jurisdiction of the Munsiff Court Amini. That set up is still prevailing. This brought no change to the pecuniary Jurisdiction. By the very same order a Sub Judge also was appointed at Kavaratti who is having Jurisdiction over the entire islands. He also was a judicial officer of the Kerala Judicial service on deputation. The reasons for the import of the Judicial officers from the Kerala Judicial service were (1) There was no qualified persons in the Islands (2) The language of Kerala people and Kerala Judiciary is Malayalam which is being used in Lakshadweep. (3) Lakshadweep is under the Kerala High Court. (4) This deputation from the mainland helped the new island legal system to obtain the service of highly experienced and qualified judicial officers who were working for a long in the legal environment which was introduced in the islands. This reduced the chances for trial and error and it also helped the island legal system to achieve highest standards of legal values. But the major set back was these mainland officers did not know anything about the cultural roots of island laws.

In 1969 one more major change also came into force in the Lakshadweep Judicial set up. That was the change of the District Court under which the islands were placed. With effect from 1-6-1969, instead of District Court Tellicherry, it was placed under District Court, Kozhikode\(^37\).

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\(^{37}\) The island people represented that it is difficult for them to go to Tellicherry from Calicut if appeals in original cases are heard by the District Judge Tellicherry. (The nearest port is Calicut only) and requested to attach this powers with the District Court, Kozhikode. The meeting of the Advisory Committee associated with the ministry Home Affairs endorsed this on 21.11.1968. The Bar Association at Tellicherry objected this transfer. Ultimately the powers of District and sessions judge had been conferred on the District and sessions judge Kozhikode with effect from 1\(^{st}\) day of June 1969.
That is more beneficial and easier for the people from the standpoint of to and fro travel.

**Criminal Justice System**

Tahasildars were invested with the powers of the magistrate. The Secretary (Administration) was the District Magistrate. A change came into this with effect from 1-3-1970. This was through the Union Territories (Separation on of Judicial and Executive functions) Act XIX/69. The effect of this enactment was that the powers of the First Class Magistrates were conferred on both the Munsiffs at Androth and Amini in respect of all the respective islands over which they are having territorial jurisdiction. The power of the chief judicial magistrate was conferred on the sub-judge who was also having the powers of the 1st class magistrate. The sessions powers were given to the Sessions Judge Kozhikode.

**Executive Magistrate**

By the above order, from 1-3-1967 on wards the Collector is the District Magistrate. The Thasildars of Kavaratti, Amini, Androth and Minicoy have been appointed as Executive Magistrates in their respective jurisdictions. The later changes, which came in to force in the Lakshadweep judicial system, was in the form of island District Court.

**Formation of District Court at Kavaratti.**

The powers of the subordinate judge Kavaratti have been given to the Munsiff Androth. This position continued till separate full-fledged judicial district is formed for
the Lakshadweep by appointing Mr. B. Amanulla as 1st District and Sessions Judge. It is pertinent to note that this Mr. B. Amanulla was the first island Judicial Officer. He entered in Lakshadweep judiciary in the year 1978 as Munsiff.

Now he is holding the post of chairman of Consumer Redressal Forum in addition to his normal duty of District Judge. Thus introduction of consumer protection courts in the island judicial system has also done by introducing the Kerala State Consumer Protection Forum as the State forum for Lakshadweep. So it achieved another milestone in the mainlandization of laws. Now we have come across the various fundamental changes occurred during this period. How it affected this customary law predominant society, is very crucial question, which is to be answered.

**Impact of Mainlandization of Customary Laws**

The sudden flood of laws, regulations and enactment's as on 1.1.1967 without making any change in the then existing Mukthiari set up in the island totally confounded the society. These Mukthiyars were not at all trained in modern legal techniques. They do not know English or the fundamentals of the English legal system, which was introduced there. The highly technical law introduced in the islands actually worked in the hands of Mukthiari of islands just like a violin was provided with a five year old boy who is witnessing the violin for the first time in his life.

For people, all of a sudden they got new courts, new laws, new rights and new obligations. Their social life was essentially community oriented. Their concept of life

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38 Notification No. F 18020/1/96 j.du dated 11.10.1996 and designated as District and Sessions Judge Lakshadweep.
and property were based on common property, impartible estates in the form of Tharawad properties\textsuperscript{39} and more than a dozen peoples trees in the one and the same plot of land were the identifying marks of this simple society. It may be lived in distant past in a remote corner of the country. Their life was so plain and simple with lesser wants, with lesser interaction beyond the lagoons.

To them, even for relishing the new rights they had to restructure their fundamental outlook to life. From community based thinking and approach to the individual oriented materialistic way of life. To make the confusion more complex, there was not even a single person who can interpret the implications of the new laws and statutes and the newly created rights and obligations. If they want to assert their rights legally, nobody was there in the islands to take up their case. So for a long time without knowledge, without guidance they lived in ignorance as if they were not having these new rights. Though they were having lot of statues at this period, this blessing of total ignorance created a wide gap between the law in the books and the law in action in this island legal system. The law in action was confined to the customary laws. The major areas of formal legal disputes were limited to the partition and partibility of the common property. In short there is a change in the legal status of the islanders. That was basically quite alien to their culture.

By the introduction of new laws in par with the mainland legal system, attracted a well-defined, professionally manned hierarchy of legal institutions in 1969. This gathered the form of Munsiff Court, Magistrate Court, Sub-Court, Court of Subordinate Judge, police, Assistant Public Prosecutor, Public Prosecutor. The proven inefficiency of the

\textsuperscript{39} For details, see infra Ch. IX.
Mulaihars to deal with these new institutionalization, technalisation and professionalisation in the administration of justice forced the islanders to import the mainland lawyers to argue their cases. At first this was a necessity. In the later period this was a status symbol. The islanders are known for their litigious nature. The legal necessity and status requirement when coupled with exorbitant fees charged by the mainland lawyers on the basis of the risk in travelling to these islands resulted in the draining away of the island income to the pockets of mainland lawyers. Another impact of these can be identified in a new development in the island court halls. That was the mainland lawyers used to argue cases in front of the then mainland origin judges by interpreting the law and facts in the light of mainland culture and social life.

The non-availability of properly trained legal practitioners in the islands paved the way for a peculiar system of camp sittings away from the place where the law has to be implemented. Earlier almost all cases which required the assistance of trained lawyers, whether it is of the Munsiff or Judicial Magistrate of the First Class or Subordinate Judge who are not having the territorial jurisdiction, used to conduct trial only at mainland camps sittings. Earlier the District Court was at Kozhikode in the mainland. Now, after the establishment of District Court in the islands, the hierarchy of the judicial institutions in the island is completed up to District Court. Camps sittings are even now prevailing in the continuing excuse of lack of experienced lawyers in the islands.

40 The camp sittings were held at Kozhikode in the mainland. All the persons involved in the cases are very much happy in this. The clients-for them all their necessaries have to be brought from mainland. The mukthiayars also came in the above group. The judicial officers, all the judicial officers were of from mainland. For them this is a good opportunity to visit their home in governments expense without taking leave.
By stopping the assessor's post, the administration of justice was purely professionalised from the angle of bench. Thus remnants of community participation also was taken away. This is universalisation of the legal system except in the area of inheritance. The elimination of assessors made the system more accountable and objective. The operation of the customary law is now limited to the inheritance of Belliazcha swoth. In a way the cultural linkages of the legal system got a severe shock. The legal and social structures are dissociated from one another. The new law in this island environment was devoid of social class and historical content. The western model mainland law encapsulated the island society.

In all other societies, even in the mainland, the structural changes in the legal system is introduced in the society through legislation's gradually one by one. But all these mainland laws were extended to Lakshadweep, all of a sudden on 1.11.1967 as flood of laws. At that point that society was not that much equipped or prepared to receive that thunderstruck. It is highly important that at this stage, this society was not so developed politically. They do not have a purely democratic political body, which can take policy decisions affecting them.

Yet another impact of the 1967 was the completion of the non-Islamisation or in other sense the secularization of the island legal system. The process which was started by 1912 Regulation. This process has completed the dissociation of legal system from the religion.
Interrelation of Democracy, Bureaucracy and Judiciary

Indian independence has made fundamental changes in the direction of the governance of the country. This is reflected in Lakshadweep also. The constitutional goals are social, economic and political justice: freedom of expression, faith and worship; equality of status and opportunity; fraternity assuring the dignity of the individual and unity and integrity of the nation\(^{41}\). After independence the entire country has been brought under a single administration guided by the constitutional principles. It is felt that the entire nation is moulded uniformly thereafter. The presence of plurality of socio-cultural, political and economic specificity caused the regionalism to encroach into the developmental models. The outcome is the regional character of the problems of the society with specific cultural roots.

In the new developmental phase the questions emerging are: (1) Whether the newly emerged political and bureaucratic setup could tackle the differences between the mainland and the island. (2) Whether the reaction of this customary law based society was any way different from the mainland India. In this analysis the attempt is to address the modernization of the islands with in the specific cultural setup.

The Constitution is attempting to implement (1) separation of powers i.e., legislative, administrative and judicial power, (2) rule of law, (3) distributing powers between various levels of government. i.e. Central, State and Local Governments. As Montesquieu and Locke in Europe and Madison in USA propounded the mechanism of

\(^{41}\) Constitution of India, Preamble.
separation of powers ensures the checks and balances required for the smooth functioning of a democratic system and visualize the limitation of government upon the functioning of the various organs of government.

The major deviation from the separation of powers in the Lakshadweep is to be identified in the absence of legislature. There is no elected state legislature. Being a Union Territory its affairs is looked after by Parliament who have to enact laws or by the President who has to promulgate Regulations. Although the distance between Lakshadweep and New Delhi is about 3500 km, the cultural difference is far beyond that range. This may be the reason why the peculiar problems of the island are not getting adequate consideration. When the laws are formulated the people in Delhi or in other parts of the mainland cannot visualize the shape of problems of the islands. Only those who were resident in these islands for a long time can identify themselves with the island social life and understand the problems in their true perspective. The prevailing practice is that the senior officers of Delhi will come here for one or two days. In most instances this is considered as a tourist trip. In February to April the islands do have a pleasant climate. During this period it is the main headache of the Lakshadweep administration, to provide and rationalize the priorities in the room allotment. For equipping the powers that be in Delhi to draft laws and regulation for the islands, a prior constant association with the island culture is highly necessary. How to bridge the gap between law and culture is a major problem. For example, the implementation of Coastal Zone Regulation Act,\footnote{When the coastal regulations was implemented it was stipulated that no building shall be constructed within 100 meters from the sealine. If you are implementing this in islands no building can be constructed because of the specificity of these small islands. Many of the islands are not having this 100 meter width in many areas. Later considering these peculiarities of these small islands this 100 meter rule has been diluted to general 50 meters and even to 20 meters in small islands like Chetlat and Bitra.}
drinking water problem in islands.¹³

The correct perspective of this problem will be revealed when we are identifying the theoretical base of the working of the separation of power doctrine. As per that the legislature should play a leading role in formulating laws and policies. The judiciary and administration should be neutral. The basic reason is that all the laws are in a way, the fulfillment of people's desire to achieve higher level of living. This can be identified and formulated into timely laws only by Legislatures who know the heart-beat of the society. This being the cultural base of the law in any democratic legal system, the absence of a Legislature in the Lakshadweep, which should decide the policies of developmental options, is the greatest bane to the social, political and cultural life in the islands. Parliamentary legislation or the Presidential Regulations are laws framed for the mainland. The problems of mainland and the problem of islands are totally different. The methods proved successful to contain the problems in the mainland may be a total failure in the island situation. That may even confuse the island legal system. The inconsistency of pursuing the Marumakkathayam law¹⁴ is a good example.

The peculiar set up of the Lakshadweep made the executive head, the Administrator, also as the legislative head in effect. So far not even a single islander has reached this position. The next senior positions in the islands' administration are Collector and Secretary to Administration. Except in the case of Secretary to Administration all other higher functionaries are aliens who reach the island for the first

¹³ In Attakoya Thangal v. Union India, (1990) KLT 580, raised a very important question as to how far pumping of water is sustainable in long run? Whether pumping can be allowed there.
¹⁴ For details on Marumakkathayam, see Ch. IV, VII and IX.
time to take up the charge of his office. Obviously, this situation is not conducive to the objectives of bringing the islanders to the mainstream culture or democracy.

The Constitutional mandate is there, for the total upliftment of the Scheduled Tribe and a Scheduled Area. This has been enlarged by the strategic importance of the islands from the security point of view. All these forced the government intervention and the government spending in the region enormously high.

The socio-economic development of this island had to commence from nothing. Delhi had to delegate enormously high quantum of power and authority through delegated legislation to the island bureaucracy. Thus the power is concentrated on bureaucracy who with its financial and non-financial powers takes policy decisions. The absence of a legislature to oversee this allows the bureaucracy unaccountable locally.

45 Measures for the advancement of Schedule Tribes are exempted [Art 15(4)] from the general category against discrimination on the grounds race, caste, and the like contained in Art. 15. It means that special provisions are made by state in favor of members of Scheduled Tribe is not amounting to discriminatory as against others. While the rights of free movement and residence throughout the territory of India and of acquisition and disposition of property are guaranteed to every citizen. In case of members of Schedule Tribe special restriction may be imposed by the state as may be required for the protection of their interest. For instance to prevent the alienation or fragmentation of their property, the state may provide that they shall not be entitled to alienate their property except with the concurrence of a specified administrative authority or except on the specified condition [Art.19(5)]. The preferential claims of Scheduled Tribes in the appointment in the services and post in connection with the affairs of the Union or of a state is provided in Art. 335. By amending Art. 338 of the Constitution (65th Amendment) Act, 1990, a National Commission for the Scheduled Caste and Scheduled Tribe has been set up for investigating and reporting on the working of the safeguards provided to the Scheduled Tribes in the Constitution.
46 The financial aid for the implementation of welfare schemes of Scheduled Tribes is provided for in Art. 275(1) which requires the union to give grants-in-aid to the states or meeting the costs of the schemes of the Scheduled Tribes for raising the level of administration of the Scheduled Areas in a state to that of the administration on the areas of that state. Special provisions are laid down in the Fifth and Sixth Schedules of the Constitution read with Art. 244 for the administration of areas inhabited by Scheduled Tribes.
47 In the second five year plan the islands got a plan outlay of Rs. 73.85 lakhs. This was the first plan of the territory. In the fifth five year plan outlay was Rs. 120 crores and the expenditure was Rs. 148.72 crores. For details see Planning and Statistic Department, Lakshadweep and its People 1994-95 (1997), pp.22-26.
48 For details see Ch. VI.
Immediate legislative control over bureaucracy is a dire need to dispense with the total supremacy to bureaucracy.

**Inter-relationship between the Executive and the Judiciary**

From the above administrative backdrop verification is necessary as regards how the legal system worked in this bureaucratic set up. In the judiciary almost all the presiding officers are posted on deputation from the mainland who is not having any experience or interaction with the island’s socio-legal culture. For keeping away from the local influences, in accordance with the general trend of the judiciary elsewhere they never used to interact with the island people. The net result is that the presiding officers, being born and brought up in the culture of nuclear family in the mainland, with different prescription for individual property and highly materialistic outlook may not see eye to eye with the island culture and custom. For them the modernization of society means making the island society akin to mainland socio-cultural and economic environment. This may effect their power of assimilation of the island legal system and ethos. This may in turn reduce the initiative of the island judiciary.

The staff of the judge, Munsiff and Magistrates comes from the administration’s staff. Judiciary is not having any separate staff or proper control over them. The execution duties of individual orders are to be entrusted to the executive officers. This setup is not conducive to the independence and initiative of judiciary. The dependence of judicial officers on administration for all and sundry may go through a large extent affect their freedom of movement and action.

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49 At present the District Judge is an islander. This is a recent development. For details see Ch. VI.
The absence of Legislature and the absence of a congenial atmosphere in which judicial officers can work place the executive in an unquestionable omnipotent pedestal leading to the collapse of administrative neutrality, one of the basic assumptions of the concept of separation of powers. The immense and indiscriminate power and discrimination vested without accountability results in the development of interest groups and lobbies within the bureaucracy.

One of the basic ideas rooted in the Indian democracy is abstinence of bureaucrats from politics. The Lakshadweep practice seems to be somewhat different. They are even openly involved in the politics without causing any complaints. They have taken this as a way of life although the bureaucrats in the mainland and in the islands are governed by same set of rules.

**Rule of law**

The response of legal systems to the rule of law is important to the federal system in the island context. Here the extension of meaning from basic concept of rule of law from negative stand of protecting the individual from arbitrary power to the positive role of the state to ameliorate the woes of the people attains importance. This extended meaning made Lakshadweep administration's role more important than their counterpart in the mainland. Since the legislative capital of this territory is nearly 3500 kilometers away in a totally different cultural setup, it is imperative that the laws and policies are to be made with more care and attention so as to generate more people friendly and culture friendly programs. For this higher level of delegation is necessary.
The administrative action in a society will be increasing in proportion with governmental intervention in the developmental and social welfare activities. The disputes based on the legal norms of constitutional status of public authorities, and their power discretion, and duties are areas of adjudication in a rule of law society. The legal relationship between officials and the departments and that between departments and public are also the areas where the courts have to make decision. The legality of the administrative actions is also often challenged in a modern state. But there is a different story in Lakshadweep. An important change took place in the Lakshadweep due to expansion of governmental activity in the employment sector. By 1996 the number of governmental employees reached ten percentage of the total population. The large number of cases at the Central Administrative Tribunal at Cochin is an indicator of this trend. However at, the grassroots disputes between people and the government is very rare. Even then some issue such as drinking water, the excessive airfare and subsidized food in ships have reached the courts. This sort of challenges against governmental inaction or malfunctions are very rare in Lakshadweep. The reason is that the chances of transferring the officers from the posts that they hold are very rare. The lack of professionally trained lawyers in Lakshadweep is another reason why there is little litigation.

Because of the peculiarities in the island the executive is unable to implement laws. One example could be shown in the prohibition against collection of corals and sand. The islanders violated the law with impunity. This is with the silent support of the
officers in the Lakshadweep Administration who are supposed to enforce laws. They say that unless the government is supplying the building materials at subsidised price the enforcement of this law would cause great injustice. The reason is that, on the enforcement of this law the entire materials for buildings should come from the mainland. Usually the faults or omission of law are corrected by an enlightened bureaucracy. But the absence of a legislative check leads to unhindered freedom and discretion to the bureaucracy. The close relations prevailing with in this small society make the mutual dependence between official and common people, much more personal than in mainland. This ultimately creates the same soft corner in the minds of bureaucrats.

At the level of legal services and legal advice the absence of purely professionally trained lawyers makes a peculiar vacuum in the administration. In Lakshadweep due to the absence of professionally trained lawyers the usual control over the bureaucracy is less than the one in mainland.

Democratic governing require a three-legged stool with equally strong Legislature, Executive and Judiciary. In Lakshadweep there is no legislature and hence one leg of the stool is missing. The other leg, the judiciary is not as strong as the judiciary in the mainland. Thus the whole scenario of the so called rule of law society in Lakshadweep is in bad shape with too much reliance on the administration.

50 For example under the Environment (Protection) Act and Wild Life (Protection) Act, the boulders and the sand corals shall not be removed from the beach or lagoons. But the environmental wardens the particular department have not booked any case under this Act, though the violations are rampant. Actually even now they are making all the buildings only by using corals and boulders collected from lagoons. When interviewed the environmental wardens personally they have disclosed that if these laws are implemented, unless the government is supplying building materials to the people on subsidized price the implementation of law will fall as an oppressive mechanism on these isolated groups.
There were various schemes fully financed by government. The number of benefits given in the form of various social developments schemes also attractive. The money circulation in the society has been expanded. By the government spending and the payments and salaries through government jobs opened up the market. In the wave of new purchasing capacity a new market was opened. As a result an affluent class of traders emerged. The most radical and far-reaching change was visualized in the property concept of the society. The changes introduced in this area have shackled the very basis of the society. Their preferences were shifted from community orientation to the individual based materialistic aspiration. Health was the important area of governmental attention. There was a revolutionary change in the medical care. The effect was that the infant mortality rate has reduced below national average. Free universal health care provided by the Administration, introduced a new level of certainty in life. It could wipe out the old uncertainties based on poverty and disease. The literacy sat among the islanders is now very high reaching the second position at the national level. Even at the girls’ education islands were far ahead of national average. These educated islanders were totally absorbed in government jobs raising their ratio to 10% of the total islanders. The steady income and new security experienced in the social life of the islanders totally changed their social set up, life style, social institutions and even in the very approach to life. The relation between individual and the society has undergone a change, which has shaken the very basis of the society.
CHAPTER – VII

MARUMAKKATHAYAM AS CUSTOMARY LAW: INSTITUTIONS AND AUTHORITIES