The customary law’s importance is very much prominent in deciding the rights and duties of members of joint family and in determining the inheritance to the joint family property. This particular branch of customary law, which governs the joint family relations, is known as Marumakkathayam. The Lakshadweep practice of Marumakkathayam is in many ways different from the Marumakkathayam prevalent in the mainland Kerala. How far Lakshadweep adopted the pristine Marumakkathayam and how far it has deviated from that? In this chapter a critical study is made on Marumakkathayam as customary law of Lakshadweep.

Lakshadweep Marumakkathayam — The Concept

Marumakkathayam is a body of custom and usage. There are no sacred writings binding on the followers of this system\(^1\). The matrilineal line of descent is the basis of Marumakkathayam. In this system of inheritance descent and succession to property were traced through females. The mother formed the stock of descent and kinship as well as a right to property was traced through females, not through males. The word

Marumakkathayam literally means inheritance by nephews or Marumakkans. This literal interpretation can be comprehended only by assimilating that the wife and children of the head of the family known as Karanavan has no right in the joint family property known as Friday property. This Marumakkathayam is to be contra distinct from Makkathayam which means descent by children.

**Traditional Family Relations**

For a proper understanding of the customary laws in this respect a grasp on traditional Lakshadweep family relations is a necessity. In Lakshadweep the marriage of a girl, never operates as a severance of membership from the family of her birth, nor does it create any membership in her husband’s family. There is no mutual right of inheritance between the husband and wife as regards this ‘Belliasha’ property’ (Friday property). The traditional pattern of residence on marriage in Lakshadweep ordinarily excludes the possibility of husband, wife and children living in one domestic unit. Neither the bridegroom, nor the bride is required to leave his or her respective residence on marriage. Their pattern of life was that, the husband used to visit the wife’s house during nights and return to his own natural home in the morning. They used to call the house of the husband as “Pura” while the house of the wife is called as Beedu.

The modern idea of a family is that - a group of persons related to each other by birth or marriage and (in the case of Hindus) by adoption also. A common ancestor with his wife and children together with the descendants in the male line constitutes an

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2 Sundra Aiyer, *Malabar and Aliyasanthana Law* (1922), p.2. According to Sundra Aiyer, this was the law of the indigenous people of Malabar Nairs and some other class below them constituting the major population of the Malabar. *Ibid.*
ordinary patriarchal family. The female members born in the family cease to be members thereof on their marriage, similarly the wives of the males acquire membership therein. In a patriarchal system, a change of family is occasioned on the marriage of the female members. But in the Marumakkathayam system, the marriage of a girl never operates as severance of her membership from her mother’s house nor does she get a membership in her husband’s family. Mutual rights of inheritance between the spouses do not find recognition under Marumakkathayam law.

The socially approved sexual relationship between the spouses, which the marriage establishes, is effected through the pattern of night visits of the husband to his wife. As it is observed:

“One of the intriguing sights in Lakshadweep is married men of all age groups, torch in hand, hurrying to their wives’ houses, as soon as it is dark; then at day break, after a quick breakfast of rice water-Kanji (porridge)-striding back to their mother’s home”.

In a study out of 670 married men of the Kalpeni Island 515 are visiting husbands. Of the remaining 155 married men, 124 live exorilocally, 23 live nenolocally and in 8 cases the wives have moved over to live with their husbands. The depth of this matrilineage ranges from three to six or even more generations.

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7 P. V. Balakrishnan, supra n. 4 at p. 136.
Origin of Marumakkathayam in Lakshadweep

The natives of the present society of Lakshadweep Islands consist of hundred percent Muslims, who are classified as Scheduled Tribes. Basically, Islamic way of social life is a patriarchal one. How a social set up based on matriliny, which is diametrically opposite to the Muslim concept of family, is still prevailing in Lakshadweep is an important question in the study of customary laws. There is no recorded history to identify the origin of the matriliny in Lakshadweep. On the basis of tradition and available historical as well as ethnographic evidence, it can be assumed that except the people living in Minicoy, all other Islanders were immigrants from the Kerala coast, even though some people in Andrott are supposed to be from Arab countries.

They came first as Hindus and later embraced Islam. The resemblance of ponds found in the Lakshadweep resembles that of the Hindu temple ponds of Malabar in the Kerala Coast. The Tharawad names such as Illam, Madom and Edom are the suffixes, which are common among upper caste Hindus of Kerala coast. The old songs containing verses of snake worship and lines in praise of Rama and idols and sculptures were unearthed from various parts of the islands. All these point towards the Hindu emigration. The local traditions also suggest that the early settlers of these islands were Namboothiries, Nairs and Thiyvas.

When we compare various other instances of Hindu Customs followed by Muslims elsewhere, we can see that Khojas retain the Hindu mode of succession even

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10 R. H. Ellis, A Short Account of the Laccadive islands and Minicoy (1922), p. 15.
after conversion. Similar is the case of “Cutchi Memons” and “Sunni Bohras”\textsuperscript{11}. When we analyse these and other instances of en masse conversion of religion by a society, it can be seen that the converts used to retain the rules of inheritance, which they were following in their old religious set up. To make conversion a smooth process and sometimes to encourage conversion, the heads of the new religion might have conceded to retain their old customs and life style\textsuperscript{12}. Thus, it can be seen that Marumakkathayam was the custom and usage, which was prevailing there in Kerala coasts among the Hindus at the time of migration to the islands. When people from the main land migrated to this new place - islands - they brought with them or transplanted the social set up then prevailing in the mainland. Later when conversion took place they might have followed the general trend, which is mentioned earlier. That may be the reason why matriliny is existing in this Muslim area.

In Kerala itself, Muslims of north Malabar and Muslim families in Edava, Varkala, Tirur, Parappanangadi, and Ponnani were following Marumakkathayam\textsuperscript{13}. Some Christian families of Neyyattinkara, are also the instances of other communities who were following Marumakkathayam.

\textsuperscript{11} Supra n. 4 at pp. 122-123.
\textsuperscript{12} Supra n. 2 at p. 231.
\textsuperscript{13} Supra n. 3 at p. 2.
A different variety of dual property systems were there among the Muslims in Malaysia and Singapore.

**Legitimation of Muslim Marumakkathayam in Malabar**

At first the British authorities refused to recognize the local usage of Marumakkathayam among Mappillas of North Malabar. The reason might be the strangeness of customs that was quite opposed to the precepts enjoined in the Koran. This attitude of the authorities changed later from the year 1816 onwards. The Provisional Court of the Western Division held that the Marumakkathayam Law of inheritance was generally applicable to Mappilla families in Cannanore. Later the Sudder Court followed this rule in 1885 and 1860. In the year 1895 Madras High Court has held that in the case of Muhammadans in North Malabar the presumption was that they followed Marumakkathayam. Way back in 1939 Madras Legislature had passed the Mappilla Marumakkathayam Act, which regulated the Malabar Marumakkathayam Muslim’s joint family matters.

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14 “In the states of Malaya and Borneo the law applicable was not pure Islamic law but law as varied by Malaya custom, or rather the Malaya custom as varied by Islamic law. This Malaya custom was brought over by the Malayas when they migrated from Sumatra, where the prevailing form of tribal organization was matriarchal and exogenous. In the Menangkabu region of Sumatra, the matriarchy was developed into an elaborate system of customary law called the “adalat perpateh” See N. D. Anderson (Ed.), Studies on Modern Asia and Africa, Family Law in Asia (1968), Ch. 9.

15 1 Sudder Decisions 29.

16 A. S. No. 44 of 1816


18 S. A.No. 380 of 1895, H. C.

19 The Mappilla Marumakkathayam Act xvii of 1939.
Marumakkathayam in Kerala

Marumakkathayam system of law was prevalent in the south western coast of India, from where it reached Lakshadweep. This area now forms part of Kerala, Karnataka and Tamil Nadu States. Before the State Re-organization Act 1956 all these places were in erstwhile Madras State, in Malabar region. Several legislation had been passed by the Provincial Legislatures of the Former State of Travancore and Cochin and the Former State of Madras. The ambit of pristine Marumakkathayam extended not only to succession, but also to marriage, divorce and joint family management. There were separate laws and later separate enactment for Nairs, Ezhavas, Namboothiries, and Christians and even for Muslims, who were following Marumakkathayam.

This history gives four different stages in the evolution of mainland Marumakkathayam. They are as follows:

a. In the first stage custom and usage guided the law strictly. There was no question of partition at this stage. But by allowing partition on the consent of all members the custom was modified at the latter part of this stage. No member could claim a division as a matter of right. Every member could resist partition if he did not like. That was the legal position at the end of this period.

b. The second stage witnessed various legislation to regulate Marumakkathayam laws of various sects of people. The general trend of this period was that, majority of the major members could enforce Thavazhi partition with the consent of the common ancestries.
c. The third stage enabled individual members to claim partition as of right. Enactment of Hindu Succession Act 1958 brought changes. Section 17 (g) of the Act reduced the rigour of the system. The impact is that the property need not devolve on female line only.

d. The fourth and final stage was the enactment of the Kerala Joint Hindu Family System (Abolition) Act 1976. This came with effect from 1.12.1976. The right by birth was taken away, joint tenancy replaced; and tenancy-in-common introduced. Thus the legislature put an end to the Marumakhathayam in Kerala.

In Kerala many people belong to castes and sub-castes among the Hindus followed Marumakkathayam law. It included Namboodiris of certain region at the upper social hierarchy through Nairs and Ezhavas at the middle level. Down to aboriginal tribes like Kurichiyans and Vettuvans.

A School of Hindu Law

There was a controversy whether or not Marumakkathayam law is part of Hindu

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20 Sundara Aiyer has listed the castes that followed Marumakkathayam as: 1) Namboodiris of Payyanur village. 2) Chakkıar nambiar, 3) Purapoduval, 4) Pisharodis, 5) Variar (They had custom of saraswadan marriage by which the wife is adopted into the family of the husband), 6) Theyyambodi Kurups and karopanikar, 7) Kshatriyas, 8) Samantas, 9) Nayars, 10) Taragans, 11) Revaries, 12) Tiyans in North Malabar, 13) Kusavans (Potters), 14) Ottatu nayars of Tilers, 15) Vaniyans, 16) Kulanagara Nayars, 17) Edachteri Nayars, 18) Vellutedans, 19) Villakkaturavans in the north, 20) Yogi Gurukkals, 21) Wayand Chetties, 22) Paravans (in most parts), 23) Velans (physicians) and Kuruthians in the north, 24) Mukkuvans in the south, 25) Vannans (in the north) 26) Moplas in North Malabar, 27) some aboriginal tribes like Kurichiyans, malakkars, Kasambalans, Vettuvans. Sreedhara variar, though followed Sundara Aiyers list, has added the following five groups. Such as Puspagars or Nambisans, Chakkiyars in some places, Thiyadi Nambiars in some places, Marrars in some places and Chaliyas in some places. Supra n. 2 at pp.328-329 and see also supra n.3 at p.23.

21 Sundara lyer mentioned that it was a school of Hindu law. See supra n.2. However The Supreme Court in Kochunni v. State (A I R 1960 S.C 1080) held a different view though they did not categorically said so. The Full Bench of the Kerala High Court held in 1993 in Kamalamma v. Narayana Pilai (1993 (1) KLT 174) that Marumakkathayam is a Hindu concept and practise.
law. Old writers\textsuperscript{22} pointed out that the very fact that the Christians and the Muslims who were following Marumakkathayam were originally Hindus and even on conversion they happened to preserve their Hindu Custom, the existence of ‘mappila’ Marumakkathayam and Christian Marumakkathayam does not wipe out the character or label of Hindu law to Marumakkathayam.

Halai Memons of Porbunder and Mappillas of Kerala are the communities known as anomalous Muslims\textsuperscript{23}. They were a class of persons who were originally Hindus, but who became converts to Muhammadanism about four hundred years ago, retaining, however, many Hindu usage, amongst others an order or succession opposed to that prescribed by the Koran. A similar sect namely Memon Cutchees had a similar history and usage\textsuperscript{24}. Labbaie of Coimbatore, Hindu converts to Muhammadanism also retained incidents of the Hindu personal Law\textsuperscript{25}. Though the Koran condemns magic, the Mappilla being superstitious and witchcraft was very much common among them. The Mappilla Jinns and Shaitans correspond to the Hindu “Demons” and are propitiated in much the same way\textsuperscript{26}. The Mappillas of the West Coast, who are Mussalmans by religion, were largely adopted the Marumakkathayam law. Whether a particular family practiced it or not is a question of fact\textsuperscript{27}.

\begin{thebibliography}{99}
\bibitem{23} J. Duncan M. Derret, \textit{Religion, Law and the State in India}, (1968), p. 522
\bibitem{24} \textit{Mayne Hindu Law} (1953), p. 67.
\bibitem{25} Shaikh v. Muhamme, ILR 39 Madras 664
\bibitem{26} Thurston, \textit{Caste and Tribes of Southern India} (1906), p. 489
\bibitem{27} Assan v. Pathumma, ILR 22 Madras, p. 494
\end{thebibliography}
The author of 'Tuhaft-Al-Mujatidin' wrote about the Marumakkathayam inheritance among the Muslims in the following words:

“This custom of excluding the immediate off-spring to inheritance has been adopted by most of the Muslims in Kannur and its neighborhood. They copied this custom from the people of Hindu even though there are among these Muslims some who study the Quran, learn it by heart, and recite it beautifully, besides their acquiring knowledge of other branches of studies pertaining to Islam, and busying themselves in religious worship”

It is a fact that Lakshadweep was under the Muslim Kingdom of Arakkal in Kannur. In that Arakkal family, the eldest in the maternal line, irrespective of the sex, succeeded to the throne. Some of the Hindu customs were preserved for centuries in that royal family. The line of succession was traced through the maternal side. That was contrary to the principle of primogeniture enjoyed in the Shariat.

Marumakkathayam in Lakshadweep – Why?

Compared to mainland the Lakshadweep has a different scenario. The total isolation of each island in olden days created a separate world for themselves. Each and every island has its own peculiarities in their custom. That has not been touched or

28 Mohammad Hussain Ninar, Tuhfat-al-Mujahidin, p. 44
29 This peculiarity is mentioned in a letter from Caliph of Constantinople to the Beebi of Arakkal dated 1st Shaival II94, Hijera, preserved in the Archives of Calicut University.
influenced by the custom of mainland or other islands. Since the island-mainland and the
inter-island interactions were rare, the statutory interventions in the mainland
Marumakkathayam never reached the islands. The Marumakkathayam is still preserved
in its pristine form in the islands.

Dual Property System

In the islands, property can be classified into two. (1) Velliazcha swoth (Friday
property) and (2) Thingalazcha swoth (Monday property). It is to be noted that the
concepts of Monday property and Thursday property are one and the same. With same
incidence and features following the Customary Shariat. In all islands except Amindivi
group of islands the property is called Monday property. For the purpose of discussion in
the following pages the term is used as Monday property which is meant to Thursday
property so as far residence of Amindivi are concerned.

The people of Lakshadweep have followed Matriliny under the rubric of Islam.
Its impact is clearly visible in their concept of rights related to property. They followed
Marumakkathayam for deciding the rights on the joint family property which is known
as Friday swoth (Friday property). Friday property belonged to the Tharawad. Its
characteristics are that this property cannot be partitioned, given away or sold without
the consent of all the adult members of the Tharawad. Originally this Tharawad property
was impartible in nature. This partition or sale with common consent was of later origin.

30 Hereinafter the Velliazcha swoth or Tharawad swoth will be referred as Friday property and
Thingalazcha Swoth or Belasha Swoth or Swontham Swoth will be referred as Monday Property.
The properties other than Friday swoth (joint family property)is known as Thursday property in
Amindivi group of islands, and Monday property in the Lakshadweep group of Islands.
The devolution of this property is in accordance with Marumakkathayam. Basically this system of devolution of property is based on kinship.

The self acquired property is known as Thingalazcha swoth or Belasha swoth (Thursday property). This Monday swoth (Monday Property) or Belasha swoth (Thursday property) is also known as Swontham swoth which means one's own property. For these properties they follow sharia, that also customary sharia. The importance of this division of property is that Monday property is descendable to his wife and children under Mohammedan law. Reason for this name lies in the nature of the power to dispose the property. This property is individually disposable. The various ways in which a person is acquiring Monday swoth are ones own efforts or through a gift deed or inheritance from ones own father or non-matrilinreal relative like father’s or mother’s father or father’s sister. At present an important mode of acquiring Monday swoth is through the conversion of Friday swoth (Friday Property) into Monday/Belasha swoth through Sammathapathram. In effect the devolution of persons intestate Monday swoth is to be governed by Islamic law. That is, sons will get two parts; daughters will get one part and the widow one-eighth share. The peculiarity of this Islamic law is that during a person’s lifetime he can gift away his Monday property to anybody he wished. The owner can also prepare a will indicating the beneficiaries and their respective shares.

While the concept of common property have its origin in the Hindu Marumakkathayam law, the concept of Monday property, which would be latter

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31 This concept of Sammathapathram is in direct conflict with in the impartible nature of tharawad property known as the Friday swoth.
describe as divisible and alienable, is an offshoot of the intermixing between Hindu and Muslim faiths. This is an adjustment for rendering specific identity based on Shariat Law.

The peculiarity is that the islanders are considering both these concepts as sacrosanct. Regarding the nomenclature of the properties behind some days of week, no reason could be traced out from the authors like Robinson, Ellies, Logan, Mannadiar and Leela Dube. Though all of them acknowledged the existence of concepts. It is submitted that one can deduce the sanctity and prominence to the Tharawad property i.e. the Friday property as the Muslims attach religious significance to Friday among the weekdays. So the common property named after Friday is to indicate the holiness or sanctity of this common property. Till recently, most of the island properties were Friday swoth and the proportion of Belasha or Monday swoth compared to Friday swoth was too small. In those days even the Monday property used to fuse with Friday swoth. From this we have to deduce that they have given much importance to the Friday property than Monday property. So the importance given to Friday by Muslims among other weekdays has also been attached to the joint family property.

This custom of two distinct laws of inheritance, the Marumakkathayam rule governing the descent of tharawad property and the Makkathayam rule governing the

32 Supra n. 10 at p. 75.
33 The etymology and significance of ‘Friday’ and ‘Monday’ are not known as Friday property could be interpreted as being collective, following the communal prayer characteristic of that day. The collective property of the tharawad is being justified by some persons as a form of wakf property created for the benefit of matrikin. This property is being kept in perpetuity for the lively hood of the members of the tharawad. It is well accepted principle that only the income of wakf property can be used the property shall not be disposed
34 Andrott island specificity, which recently modified by the custom itself. For discussion, see infra Ch. IX.
self acquisition prevailing in the same family is prevalent in Malabar. As regards Muhammadans this system of following two different set of rules for Tharawad property and self acquired property was allowed by Privy Council in Serumah Umah v. Palathan Vitil Maryaboothy Umma.

However this system of Friday property and Monday property is not prevalent in Minicoy. They are having only one set of property like other Muslims in the world who follow Shariat Laws for the devolution with some minor variations.

Tharawad

The basic unit of society in Lakshadweep is tharawad with inheritance and descent is traced through female line. A Lakshadweep tharawad consists of a mother, male and female children and the children of those female children and so on. As the membership of a tharawad is derived through matrilineal descent the children of females belong to the tharawad, they carry the tharawad name of the mother. The issues of male children do not belong to the tharawad of their father. The spouses of men and women, and children of men are excluded from its membership.

35 There were Muslim families in Tirur, Parappanangadi and Ponnani who had followed a mixed system of inheritance in the sense that their family property would descend to the nephews and the separate property goes to their sons and daughters.

36 Southland, Privy Council Reports, Vol. II, 418, The observations of the privy council in Murtaza Hussain Khan v. Muhammed Yasin Alikhan (I.L.R. 38 Allahabad, p.552) also supports the view that where it was admitted that the family was governed by the Marumakkathayam law as regards the Tarwad property, the presumption was that the self acquisition of the individual members descended according to that law. Their lordships said: “The Muhammedan law makes no distinction between ancestral and self acquired property and recognizes no principle of difference in the matter of lineal and collateral succession as is the case under the Mithakshara which divides inheritance into unobstructed and obstructed heritage. All classes of property, whether ancestral or self acquired follow one rule of devolution. If a custom governs the succession to the ancestral estate the presumption is that it attaches also to the personal acquisitions of the last owner left by him on his death; and it is for the person who asserts that those properties follow a line of devolution different from that of the Taluk to establish it”.

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A tharawad is joint in estate, food and worship. Traditionally, the members of the tharawad are living under one roof with ‘community’ of property, right by birth and right of survivorship. Tharawad membership arises by birth. Each member of the tharawad acquires an interest in the tharawad properties only by reason of his birth. When any member dies, the interest of that member devolves upon other members of the tharawad. The interest of every member in a tharawad is a fluctuating one. It increases by death of other members. It reduces by new births in the tharawad. The customary law, known as Marumakkathayam governs the inheritance to tharawad property (Friday swoth).

Tharawad is having continuity through its members. The tharawad name and its joint property are valued as a great asset by the islanders. It is the property of all the males and females that compose of it. Its affairs are administered by one of those persons, usually the eldest member, called the Karanavan, who can be a man or a woman, if there is no major male member. The individual members are not entitled to enforce partition, but a partition may be effected by common consent. The rights of the junior members are stated to be:

1. If males, to succeed to management in turn,
2. To be maintained at the family house,
3. To object to an improper alienation or administration of the property,
4. To see that the property is duly conserved,
5. To bar an adoption and
6. To get a share at any partition that may take place.
These are what may be called as effective rights. This is applicable to the present day Lakshadweep Marumakkathayam also. The tharawad is essentially a matrilineal exogamous unit. It need not always be an economic unit owning all property in common and acting as a production unit. Members of tharawad may form one Pira or domestic group. They are at liberty to form several domestic groups also. It may be one consumption unit or it may be of different consumption units.

**Thavazhi**

When the tharawad grew in its membership with several daughters and descendents, it became difficult for all the members to live under one roof. A tharawad no doubt is said to consist of so many Thavazhjis or lines of mothers. When a division takes place, it is generally split according to Thavazhi. That is, those descended from the same mother, or it may be from the same grandmother, while separating herself from the tharawad as a whole form themselves into a new group instead of leaving separately as individuals. So the daughters and their respective descendents began to reside separately. This marks the advent of Thavazhi system. A Thavazhi in relation to a female is “the group of persons consisting of that female, her children and all her

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38 A. R. Kutty has described this on the basis of the branching away of different Thavazhjis from the tharawad. Marriage and Kinship in an Island Society, National Publishing House, Delhi (1972), p. 117.
39 A Lakshadweep Tharawad corresponds pretty close to what the Romans called a gens. But in Rome all members of the gens traced their descent in the male line from a common ancestor. In Lakshadweep the members of a Tharawad trace their descent, in the female line only, from a common ancestress. The Tharawad of the Marumakkattayam is equivalent to the Mithakshashara joint family. But with the basic difference that the Mithakshara joint family is based on patriarchal system. Another difference of Tharawad from the Mithakshara coparcenary is that, every member whether male or female has equal right in Tharawad by virtue of being born in that Tharawad. But in the Mithakshara joint family the son, grandson, the greater-grandson have the right by birth in the joint family property Supra n. 1, p 418-419. See also Paras Diwan, Family Law, Allahabad Law Agency (1991), pp. 418-419.
descendants in the female line”. A Thavazhi in relation to a male is “The Thavazhi of the mother of that male”. Thus Thavazhi is a segment descended from each woman of a tharawad. This term is flexible in the sense it is used to denote both an intermediary segment in the context of a larger group and a minimal segment of two generation’s depth.

Marumakkathayam tharawad, a legal entity capable of holding properties, a family corporation and every member has equal rights in property by reason of his or her birth in the Tharawad. A Tharawad or a Thavazhi comes into existence only by the operation of Marumakkathayam law. It can not be created by the acts of parties.

Karanavan

The expression Karanavan denotes the managing member of a Marumakkathayam tharawad or Thavazhi. In Customary Law, the oldest male member of the family becomes the Karanavan. The oldest male in the group, irrespective of the kinship status of his mother, is known as Karnavan. The Karnavan is the person, in whom, actually, all the properties, movable and immovable, rest. Marumakkathayam Law vests in him exclusive right and duty to manage the property of the tharawad. He can in his own name acquire lands, invest tharawad funds and to devise tharawad properties to its advantage. Customary law recognizes him as the Guardian of the property. Property includes

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40 Supra n. 24 at p. 973 and supra n. 3 at p.31.
41 Supra n. 38 at pp. 87-88. See also Leela Dube, Conflict and Compromise, Devolution and Disposal of Property in a Matrilineal Muslim Society, Economic and political Weekly may 21, 1994, p.
45 Supra n 3, p. 36.
cultivable land, trees (mostly coconut trees), houses, house sites, stores and sheds, pits for soaking coconut husks, fishing boats or odoms fishing channels, fishing nets, ornaments and utensils. The Karanavan is the linchpin in the tharawad. The authority of the Karanavan was unquestionable. He was the manager of the family. The property was vested in the head of the family, not merely as agent or principal partner, but almost as an absolute ruler.

In all the islands of Lakshadweep it is the right of the Karanavan to possess all the properties of the tharawad and to pluck the fruits of the trees and also to cultivate on the tharawad properties in his possession. A junior member has no right to dispossess the Karanavan. If so, the Karanavan can recover possession with mensne profits. Customary law enables the Karanavan to grant lease of trees for a limited period to meet the exigencies of the tharawad. In the olden set up of Lakshadweep when poverty and difficulties were the rule of the period, this lease of coconut trees was very common and there were lots of disputes.

The rights and duties vested in Karanavan by Customary Law necessitate that the Karanavan should be a person having contractual capacity. Karanavan is the person in whom the right of management vests. To succeed to the office of the Karanavan, is a

46 Usage does not preclude a female member from managing the affairs of Tharawad when there is no male member of that family capable of taking up the management in earlier Kerala joint family setup also. There was a custom in some families of Kerala in Kovilagams of the Zamorins family that the oldest female member manages. See supra n. 2 at p. 33 and supra n. 3 at p. 36. Section 11 of The Indian Contract Act, 1872 That prevents a minor becoming a Karanavan. So in such contingencies the senior most female member of the family has to assume management of the Tharawad. As per the Indian Contract Act, only a major can contract. Indian Contract Act, 1872 has been extended to Lakshadweep with effect from 1-11-1967. Whenever a woman succeeds to the Karnavanship, she does so in her own right and not in the right of any other member. This right of the senior female member operates only till the male member attains majority. Then the Karnavanship will go to him automatically.
birthright recognized by the customary law. His position is analogous to the position of Kartha in Joint Hindu Family. Karnavanship cannot be created by a contract and his position is not that of a mere trustee or office of a Corporation. He used to stand in a fiduciary relationship with members. The property is in the name of tharawad or Thavazhi.

If for any good reason the Karanavan is not able to discharge his duties in respect of management of tharawad property, a delegation by way of power of attorney would be valid. For example, when a Karanavan is leaving the island for a long period, during his absence from the Island, a Mukthiar [member of the family], can exercise the managerial powers. As and when original Karanavan returns, he can resume the management of the tharawad. But the person to whom this delegated power has got would not be called as a Karanavan.

It is the duty of the Karanavan to look after the affairs of the tharawad. He has to repair the house and other properties. The Odam (mainland going boats) and other boats and properties of the tharawad will also be under his control and he has to maintain it. In all the transactions of the family, he alone can represent the family. The entire executive authority of the family is vested in the Karanavan and any restrictions on his powers in such matters will not be given affect to against stranger without a notice. In all the islands he is responsible for collecting income from the tharawad properties.

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47 Supra n. 2 at pp. 34-35, 38.
48 Earlier Kerala system also permitted such delegation of powers to the members of the family case of urgency. Aappan Nair v. Assenkutty 1889 ILR 12 Mad 219
In the olden times avenues for individual earning were very limited in the islands. Except for those who engaged in certain individual activities such as carpentry, sowing, work on metals, fishing for sale and so on. Men do not have any established ways to make an earning which they would keep to themselves for personal use. The authority of Karanavan is maximum when the tharawad is a compact property group forming one single household. Conversely, it is minimal when the tharawad is having a number of households grouped into different property groups. If the number of generation is increasing the authority of Karanavan also is getting decreased. In tharawad which is having more Thavazhies with separate houses the authority of Karanavan is mostly limited to acting as formal head on ceremonial and religious occasions of the Tharawad, settling minor disputes arising in his tharawad or any of its Thavazhies.

In Kavaratti, if the Karanavan becomes bodily incapacitated to manage the affairs of the Tharawad due to illness, old age or other reasons, the next junior male member used to perform the functions of the Karanavan on the responsibility of such incapacitated Karanavan. But he can claim Karanavanship only on the demise of the original Karanavan. If the Karanavan finds it difficult to appear in court in suits conducted by himself, he can employ or he can engage a Mukthiar to conduct the civil suits.

Being the head of the family, Karanavan has to manage and conduct marriages, other customary and religious ceremonies and other festivals and functions of the
tharawad. It is his duty to manage the affairs of the tharawads for the common beneficial interest of all the members. The number of mosques in islands were quite disproportionate to the population and the physical space. The islanders were very particular about prayer and fasting, the giving of alms on specific occasions, and discourses by visiting religious dignitaries. Haj was considered difficult on account of expense, but those who had performed the pilgrimage were given special respect. Matrilineal groups undertook most important that activities related to religion. The practice of religion thus appears to have been a reaffirmation of the relationships and values of the existing social structure.

Customs Vary from Island to Island

In Androth and Kalpeni Islands, Karanavan is responsible for the upkeep of the trees in the land and planting of saplings. He is responsible for effecting improvements to the tharawad properties with the assistance of able-bodied members of the tharawad. If the Karanavan finds it difficult to look after the properties personally, he can entrust the management to any other elder member of the Tharawad.

In Amindivi group of Islands (Amini, Kadmat, Kiltan, Chetlat, and Bitra) the management of the tharawad properties vests with the Karanavan (the senior most male member of the family). If there is no male member in the tharawad, it is customary that the senior most female member can assume Karanavanship of the tharawad. This will remain in existence only till any of the male member-attaining majority. This change in Karanavanship will operate automatically. The authority of the Karanavan over the properties is supreme. The members or Marumakans have no right to manage the properties or to take the income out of them without the permission or consent of the
Karanavan. The members are supposed to work in the property in accordance with the directions of the Karanavan. If the Karanavan acts against the interests of the tharawad or there is any mismanagement, the members can sue him. It is the prime duty of any Karanavan to maintain each and every member of the tharawad having due regard to the status and capacity of the tharawad.

**Suit against Tharawad**

Only a Karanavan can institute any legal action by a tharawad. There is an exception to the above rule that the junior member’s can to conserve property wrongly alienated when the Karanavan neglects to do so or where the Karanavan is incapable or behalf of the tharawad. A suit by the Karanavan so as to bind the other members need not be framed as a representative suit. At this point two decisions of the Kerala High Court are very important. The first one is Gopala Menon v. Kalliani Amma. Where in it has been held that a junior member can not sue for the redemption of the holding from the tenant, unless there are circumstances disabling the Karanavan from filing the suit and in such a suit, all the members are to be brought on record. The other decision was Velayudhan Nair v. Janaki, which acknowledge the well-settled position of law that once a Marumakkathayam Tharawad has become divided, a divided member cannot institute a suit on behalf of the Tharawad in respect of properties that have been left undivided.

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50 1964 KLT 243
51 1957 KLT 241
This is very much important in the light of present Lakshadweep practice of effecting partition through the operation of common concept, which is termed as Sammathapathram.

The Karanavan is a necessary party in all-legal proceedings against the tharawad. In all the islands, any omission to bring tharawad Karanavan would entail the proceedings absolutely void. A decree obtained against the Karanavan representing the tharawad is ordinarily binding on the other members. In this regard, earlier the approach of Amin in the Laccadive group of islands and Monegar in the Amindivi group of islands were the same. Whether a decree was obtained against the Karanavan as representing the tharawad or not is an important question in such cases. The courts have not insisted upon any specific form of words in the frame of the suit but the importance is being given to the nature of the debt and the substance of the claim. In Kerala and Madras when the Marumakkathayam statues drawn up, conditions have been laid down for a decree on the tharawad to be valid and binding.

53 The requirements under the Cochin statutes in general are (1) all the members of the tharawad should be made parties. (2) The Karanavan should be on the party array and (3) the omission to implied any member other than the Karanavan should not invalidate the decree against the tharawad if it is proved that the omission is not on account of any negligence. Under the Kerala statutes major members alone are sufficient and the omission to implead any member other than Karanavan shall not invalidate the decree if it is shown to be other wise binding on the Tharawad see S. 36 Cochin Marumakkathayam Act, S 56 of Cochin Nair Act and Sec 12 of Cochin Namboodhiri Act and also see Sreedhara Variar, supra n. 3, Ch. II