CHAPTER – VIII

MARUMAKKATHAYAM AS CUSTOMARY LAW; MAINTENANCE ARRANGEMENT AND PARTITION
CHAPTER-VIII
MARUMAKKATHAYAM AS CUSTOMARY LAW:
MAINTENANCE ARRANGEMENT AND PARTITION

In all the islands the Karanavan is responsible to maintain the members of the Tharawad. This is the prime duty of the Karanavan. Almost all complex issues of Tharawads related to maintenance arrangement, partition and Maranavakasam are all emanating from this right. This includes providing proper shelter, food, clothing and proper education to the children, proper medical care for the members in times of necessity. The quantum of maintenance would depend upon the income and circumstance of the Tharawad. The wants of the members are also criteria for determining quantum. The junior members of the Tharawad will aid and assist the Karanavan in his functions in the management of the Tharawad and its properties. As a matter of duty, Karanavan and all the members of the Tharawad will have to strive for the common interests of the Tharawad and its members. Karanavan is not entitled to any remuneration for the management of the properties belonging to the Tharawad. Like any other member, he is also entitled to meet his maintenance claims, out of the Tharawad funds. All these general principles are applicable in all Lakshadweep islands.
Evolution of Thavazhi, maintenance arrangement and absolute partition

The principle behind the liability of maintenance under Marumakkathayam law is the co-proprietorship of the junior members in the Tharawad. As the Karanavan is in management of the Tharawad properties, he is collecting the income thereof. So he has a liability to support the other members of the Tharawad. Under customary law the duty to maintain the members of the Tharawad is the paramount duty of the Karanavan. In this capacity he is the protector of the members. Maintenance includes providing food, clothing, medical expenses and education of junior members. The expenses of various ceremonies in the family like the marriage of junior members, religious ceremony etc. are also to be met by Karanavan from the Tharawad income.

When the Tharawad grew in its membership with several daughters and descendents, it became difficult for all the members to live under one roof. So the daughters and their respective descendents began to reside separately. That marks the advent of Thavazhi system. As all the members of the Tharawad are entitled to be maintained from the common estate of the Tharawad, it is the duty of the Tharawad to maintain the separated Thavazhies. It is difficult to manage the affairs of the Thavazhies from the Tharawad house by the Karanavan of the Tharawad. So when different Thavazhies of the Tharawad started separate living, the Tharawad properties have been allotted among each Thavazhies for the purpose of maintenance. Thereby, the maintenance arrangement emerged.

1 Sreedhara Variar, Marumakkathayam and Allied Systems of Law in Kerala State (1969), p. 45
This latter evolved into a practice in Marumakkathayam Tharawad to allot specific immovable properties in lieu of maintenance arrangement. Irrespective of the allotment made to a branch or to an individual, the right of the allottee is to use the usufructs of the lands thus allotted for their maintenance. But they are not having any right to alienate that property.

In those days, in Lakshadweep, actually the criteria of wealth were the coconut trees. Thus allotting certain number of coconut trees to the Thavazhis makes maintenance arrangement. Such properties remain as the properties of the main Tharawad and the possession thereof by individual branch Tharawad was only for the purpose of convenient living.

The custom in the islands is that the holder of a maintenance allotment under the Marumakkathayam law has a right to the exclusive possession of the properties allotted. Even the Karanavan cannot disturb them from their possession and enjoyment of the allotted properties except under an alternative arrangement for maintenance or by giving their shares in absolute partition through Sammathagathram\textsuperscript{2}.

The major difference with the general law of the country and the Marumakkathayam is visible on the question of value of improvement. In Marumakkathayam maintenance allotted under a Tharawad cannot claim value of improvements effected in the property on legal grounds but only equitable

\textsuperscript{2} In the old Malabar set up of Marumakkathayam, similar law was followed. This practice had been reiterated in the Madras High Court decision, Damodara Menon v. Ramakrishna Aiyer, AIR 1925 Mad. 624.
considerations\textsuperscript{3}. Later the growing consciousness on their individual rights perfected the concept of partition, out of this maintenance arrangement

At first, the Thavazhi partition or partition per stripes slowly got its real hold in this remote island society. The changes crept in to this island society, later made the disputes between Thavazhies, on its maintenance arrangement a regular feature\textsuperscript{4}. That called for absolute, out right partition of Tharawad properties between Thavazhies. As a natural corollary of this development from a simple community oriented society to an individual oriented society, the Thavazhi and Tharawad partition reached a stage of per-capita partition. In this regard, the changes that crept into the mainland Marumakkathayam due to the legislative intervention has also made its reflection. Now due to the prevalence of absolute partition the question of maintenance claim is vanishing from the islands.

The liability of the Karanavan to maintain the members of the Tharawad arises out of the co-proprietorship of all the members of the Tharawad in the joint family property known as Friday swnoth. This is a legal duty of the Karanavan. The liability imposed upon a person to maintain his dependents under Hindu law is a moral obligation. It is emerging from the relationship. Manu mentioned in Mithakshara that the aged mother and father, the chaste wife and an infant child must be maintained even by doing a hundred misdeeds\textsuperscript{5}.

\textsuperscript{3} The similarity in the Kerala practice can be traced out in Parvathi Amma v. Padmanabhan 1951 KLT 347 and Narayana Pillai v. Narayana Pillai 1954 |KLT 340 (FB)
\textsuperscript{4} Most of the keenly contexted cases before Amin and monegar during the British period was based on this maintenance arrangement and the alienability of the property allotted.
\textsuperscript{5} Mayne-Treatise on Hindu Law and Usage, (1953), at p. 817.
Peculiarity of property system in Lakshadweep

At this juncture, the peculiarity of the property system of the island gathers importance. Until recently the islanders had no idea of property in the form of land, instead, the property consisted entirely of trees or houses upon the land. Any member could plant a coconut tree in any vacant space in the property, provided that he maintains certain minimum distance from any other person’s coconut tree. Within that minimum distance the right of planting is exclusively reserved for the owner of that tree. After the inception of Survey and Boundary regulation and the extension of Registration Act, now, their property concept is akin to that of mainlanders. In the olden days, when the idea of property was fully based on coconut trees, all the trees bear the property mark of its owners. This practice continues today also. In those days the coconut trees were mortgaged with usufructory rights. There were no fences or walls in the island. Any body could walk through any plot. Now, after emergence of Survey and Boundary Regulation and also due to the increased awareness on the right of land, people started fencing and constructing compound walls. The acquisition of land for road and other developmental purposes has also contributed to the increasing scarcity of land in the islands. Now the land has become a precious commodity and is very expensive. The old system of planting trees in another’s land has resulted in extraordinary mixing up of the properties. One’s trees that used to stand in another’s land or, got mixed up with another’s trees were a fertile cause for disputes. In those days each Thavazhi maintenance arrangement used to be done by allotting a definite number of coconut trees to each. And for this purpose of allocation, fertility of the land and quality of coconut trees were taken in to account and each was compensated accordingly. Usually one high yielding coconut tree was equated
with two or three low yielding trees. Even now, this practice of allotting trees in another’s land is common. Especially when a partition takes place for equalizing the number of coconut trees, one may be given or allotted coconut trees in another’s land. This allotment of trees is until the death of the tree or until the death of the allottee. This is the peculiar system of islands.

**Attaladukkam**

The discussions above revealed that the properties in the islands are classified into *Friday* properties and *Monday* properties. In *Friday* property the Marumakkathayam law governs properties - the joint family properties -. The important distinction between these *Friday* property and *Monday* property lies in the power to dispose those properties. The owner can dispose of the *Monday* property as he wishes. That will devolve on the personal heirs of the owner according to Mohammedan law. So the *Monday* property will go to the wife and children of the owner. But no branch *Tharawad* or *Thavazhi* is competent to alienate or otherwise dispose of the *Friday* properties belonging to the *Tharawad* without the concurrence of the other members of the *Tharawad*. On a branch becoming extinct the properties there of would devolve on the members of the main *Tharawad*. If the last surviving member of the branch *Tharawad* has to alienate the *Tharawad* properties, he has to obtain the consent of the Maranavakasis (reversioners). This particular right in the Maranavakasis is known as Attaladukkam. While dealing with Malabar Marumakkathayam’s partition and inheritance Herbert Wigram & in 1882 mentioned that “impartibility is the rule prescribed and community of interest can only be severed by voluntary separation and partition. He observed:
"Those who are members of the same family are said to be connected by Mudal Sambandham (community of property), whilst those who were once of the same family and have separated from one another are said to be connected by Pula Sambandham (community of pollution). On failure of former class who is termed Anandrarav, the latter inherit and are termed Attaladukkam heir."  

The reason for this is emanating from the distinction of the maintenance arrangements prevailing in Lakshadweep. This has to be differentiated from the mainland concept partition. The term Bhagam or partition in relation to the different Thavazhies is in the nature of maintenance arrangement. The divided branch is only having the right to enjoy the property. If the last surviving member of a branch Tharawad could not dispose of the Friday property without the consent of the reversioners, on his death the Friday property would devolve on the main Tharawad as Attaladukkam heirs.

This difference of passing of property on the death of a person is dependent upon the nature of the property. If it is Monday property, it would pass to a man’s own children under the ordinary Mohammedan law. If it is a Friday property, if a male dies the property should devolve on his sisters or their children. This distinction of the devolution of the properties is tempting the last surviving member of the family or the male members who got the properties on maintenance arrangement to convert the nature of the property from the Friday to Monday so as to give him the right of disposal over that. Generally the reversionary heirs or the Attaladukkam avakasikal is objecting this. These questions form the major portion of the most keenly contested cases even during the English rule. That is still continuing.

The inalienability of the Tharawad property, the restriction to convert the nature of the property (from Friday to Monday and vice versa) and the need to obtain the

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6 Herbert Wigram, P., Commentary on Malabar Law and Custom (1882), p.2
consent of the other members of the Tharawad are clear from the following decisions. In an Amini island case, Ummathumma, the last surviving member of Bappuchi Nallala branch of Asaroda Tharawad wanted to settle her house and 50 coconut trees on Asaroda Beeyasha. The Attaladukkam avakasikal (maranavakasikal), the reversioners – Beredam Saina of Beredem – (another branch of Asaroda Tharawad) objected. The Monegar followed the opinion of the assessors and found that the custom of the island did not permit the petitioner to direct that the Friday properties of her Tharawad should devolve a particular persons but that she could dispose of those properties with the concurrence of the reversioners known as maranavakasikal. This decision also gives insight into the problem how the custom is to be followed. In this case the last surviving member of Bapachinallala also held. Their rights still remained vested in the Tharawad and they would be getting their rights when they return to the Tharawad.

In 1932 two brothers who were the last surviving members of Hellala family sought approval of the Monegar of Amindivi for a partition of their properties. The assessors have given a report stating that the object was to convert the Friday properties to Monday properties which they could not do without the consent of the reversioners (Maranvakasies) of the family. Monegar accepted the assors opinion and held accordingly.

The Consent document (Sammathapathram or Razi)

The consent for conversion of Friday properties in to that of Monday properties and vice versa is known as Sammathapathram or Razi. In the conflict of interests

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7 The objections of Asaroda and Kaniyam were upheld and with their concurrence, the petition was allowed to dispose of twenty five coconut trees.
between the Friday property and Monday property as a compromise they used to allow the conversion of a portion of Tharawad properties - Friday properties - into that of Belasha/Monday properties. This Razi is a method devised by the islanders to convert the nature of the property from Friday into that of Belasha/Monday and vice versa. By using Razi they used to give disposable rights to the male members of the Tharawad by mentioning that, the member who is getting the allotment of some property may use it as his Monday property.

The use of razi and its impact on the impartibility Friday properties is clear from the Revenue case No 24 of 1927. In this case the Petitioners Konikkam Kadeesabi, the wife of Konnikkam Buharikoya applied for registering the Beredam house and land and the trees appurtenant these to in her name, on the ground that Konnikkam Buharikoya and his mother had gifted the same to her. But before that there was an order in another case by which it was held that the Konnikkam Buharikoya had no exclusive title in the item and no alienation could be effected without the concurrence of the reversioners.

On that matter Konnikkam Buharikoya, Asaroda Kadirkoya and Kaniyam Belasha and others signed a Razi. It is to be noted that they belong to different Thavazhies. In that razi it was stated that the first defendant would not do any acts in respect of the Beredem properties which would prejudice the maranavakasikal and that he would not put forward any claim to the properties of the Asaroda Tharawad.

In another case Ranakkal Kadirkoya and Ranakkal Kadisabi requested for the partition of their Friday properties. Subsequently they entered into a compromise and

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8 Civil Case No. 100 of 1932 of Monegar Amindivi.
9 Revenue Case No. 80 of 1928 of Amini.
they filed razi along with members of the Asaroda and Kaniyam houses for declaring the item as their Monday properties. The terms of the ‘Razi’ were not admitted by the members of the Asaroda house stating that they agreed to the conversion of 100 coconut trees alone as Monday properties. Another objection is filed by the Konica Buharikoya against the conversion on the ground that he was a reversioner of the petitioners.

The above cases indicate that how frequently in the very same Tharawad, the disputes are arising with regards to the nature of the property i.e. whether it is Friday or Belasha property. The effect of Razi or Sammathapathram on the conversion of the Friday property into that of Monday property and how it affects the reversionary right of marnavakasies is very important. To balance the interests of various parties the method of partial conversions i.e. just allowed to change some of the Friday properties into that as Monday properties, by keeping intact the nature of remaining properties as Friday is very important. We can identify this use of Sammathapathram as the first stage in the decline of Marumakkathayam.

As indicated by the above cases this has been started around 1900 A.D. During this period in island the importance was to the Tharawad properties. For this, a study conducted in the year 1967 has founded that at that period is the island about 67% of the total island property was impartible Tharawad property\(^{10}\).

Thus the accepted custom of the island during British period and thereafter till the formation of proper judicial courts was that in the Tharawad properties the absolute partition with right to alienation was not existed in the islands. The Tharawad bhagom is

only a maintenance arrangement. The member’s right is to enjoy the property and its usufructs during their life. They cannot alienate the property without the consent of all the members. In the case female members the properties will devolve on their children. In the case of male members after their death the property will revert back to the Tharawad. The last surviving member cannot alienate the property without the consent of the reversioners. After the death of the last surviving member the property will revert back to the original Tharawad or to the reversioners. The law prevailing during this period was the Regulation of 1912. Section 21 of the Regulation directed that all questions relating to any rights claimed or set up in the civil courts of the island should be determined in accordance with any custom not manifestly unjust or immoral governing the parties or properties concerned, and in the absence of any such custom according to justice, equity and good conscience. So the society and the courts followed the custom of the community.

**Partition of Friday property**

A close inspection with Lakshadweep society reveals that much of the civil and criminal cases originated from disputes relating to the partition of Tharawad Velliyazcha. The disputes arose from the central issue, viz.: whether the property is absolutely partible or not? One view subscribes the idea that the property of the Tharawad is not partible in its absolute terms. Their contention is that, in the olden days there was no partition as known today. There was only maintenance arrangement and nobody could alienate his or her property. The word Bhagom (partition) previously meant living separately away from the original Tharawad house with control over some of the Tharawad properties. Thus the community of interest in the Tharawad properties does not come to an end and
the separate Thavazhi converts itself into a Tharawad. The other view, which is of a recent origin, stresses that once there is division of property, the allottee gets an alienable right. At this juncture it is useful to compare the concept of partition in mainland.

Defining Vibhaga or Partition Mithakshara states Vibhaga (partition) means the allotment to individuals of definite portions of aggregate of wealth on which many persons have joint ownership\(^\text{11}\). This definition of Vijnaneswara is in accordance with the modern concept of partition. This concept pre-supposes co-proprietorship of all the members over the property of the joint family. There is unity of ownership while the family remains joint and no member can say that he is the owner of any definite share in the property. It is fluctuating with the deaths and births in the family. Thus partition is a process through which joint ownership is reduced to individual ownership. In effect each co-owner gets specific property in lieu of his rights in the joint properties. Each co-sharer is actually renouncing his rights in the other common properties in consideration of his getting exclusive right to and possession of specific properties in which the other co-owners renounced their rights. So the partition is a process in which the renunciation of mutual rights is taking place. So it cannot involve any transfer by one co-owner of his right in the properties to others\(^\text{12}\).

The important distinction between the ordinary Hindu Law of Mithakshara and the customary Marumakkathayam system prevalent in the Lakshadweep islands is the absence of a right to compulsory partition on the part of the members or joint owners. But

\(^{11}\) Yajanavalkya, 11, 114

law does not recognize any right in them to convert their joint ownership in parts of it. This was the state of affairs in the pristine Marumakkathayam\textsuperscript{11} in Kerala also.

Women’s consent was essential in property transactions. Men and Woman are having same usufructuary right in the Tharawad property. At the level of inheritance it is ensured that woman’s share devolve on her children; A man’s share reverted to his close matrilineal kin on his death. The customs allow men to add his share of property during his lifetime with wife’s property and enjoy the property till his death only.

**Methods of partition**

The act of partition consists of two methods. Partition by metes and bounds; in this after ascertaining the shares to which each individual coparcener is entitled, physical division of the family properties is made and the coparceners begin to enjoy their properties separately. Separation or severance in interest; In the case of partition by separation or severance of interest, the members of a coparcenary may after expressing their desire to separate continue to enjoy the family properties as tenants in common. In this behalf Vyavahara Mayukha states: “Even in the absence of joint family property, severance of interest takes place, by declaration by a coparcener to the effect that ‘I am separate from you, because severance indicates the intention of the coparcener and a declaration as aforesaid clearly brings about such an intention.” \textsuperscript{14} The Privy Council

\textsuperscript{13} Supra n. 2, p. 132
\textsuperscript{14} Saraswathi Vilasa lays down a similar rule, as cited in supra n. 1 at p. 138.
also upheld this view. But in Lakshadweep the second form of partition was not in practice.

**Conceptual inconsistency**

Islanders had understood Bhagom in the ancient times as the division of the Tharawad properties for enjoyment for life. A divided branch was having only the right to enjoy the properties allotted to it until the extinction of the branch. The other branches had no right to interfere with or question the enjoyment of the allottee branch. When the last member of the branch expires, the properties would go back to the original Tharawad. However, their may be people who have Maranavakasam — a right in reversionist in the branched out part of Tharawad, to inherit the property on the death of the last member of the particular branch. When one gives the term “Bhagom” its present meaning, prevailing in the main land legal system, this Bhagom and the Maranavakasam cannot co-exist. One of the major points to be resolved in such contingency is the inconsistency arising out of the “Bhagom” and the Maranavakasam. Therefore, the term Bhagom was used in those days to indicate a condition that each branch can manage and enjoy the properties allotted to it, without interference from other branches, so long as, last member of a branch is alive. The other branches are entitled to the rights in those properties only on the death of the last member of the branch. So the essence of these two terms as in ancient times can be summarized - Bhagom meaning, division of the Friday property to several branches with the right of enjoyment alone which is also known as maintenance arrangement. The other branches become entitled to claim

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possession of the properties only on the death of the last surviving member of that branch and that right to get back the properties in the other family is called Maranavakasam or Attaladukkam.

Island-mainland conceptual differences in partition

Maranavakasam arises only on the death of the last surviving member. Because of the presence of this Maranavakasam right vested in other branches, in order to preserve the property for this Maranavakasies or these reversioners, the branches that are enjoying the property at present have no right of alienation. This notion of Bhagom or maintenance arrangement is diametrically opposite to the notions on the partition prevailing in the main island, Kerala, for the last 60 years. It is to be noted here that Bhagom means partition in Malayalam. This is the language used in the island and also in Kerala though there are some variations. When one digs through the history of Marumakkathayam in Kerala, one sees a stage at pristine Marumakkathayam Law which is still remaining in this island. In the mainland also the impartibility of the Tharawad property was the rule earlier and by lapse of time the system of division of the property had emerged subject to the consent of all the members. 16

Alienation

The influence, fame and fortune of the Tharawad are mainly depends on the economic stability of the Tharawad. It was the duty of the Karanavan to conserve the property both movable and immovable. So the Karanavans were tempted to acquire more

16 1,Sud.December 118.
and more rather than to sell out properties. Each member in the Tharawad is having a right to see that the Tharawad properties are to the extent possible, conserved for the benefit of the Tharawad. But there are occasions in which the Tharawad is trapped in financial stringency. In such circumstances as the manager of the Tharawad - the Karanavan - is having the moral obligation to maintain the members of the Tharawad as against their legal right to be maintained by Karanavan. In such situations the Karanavan was having no other option but to alienate the properties belonging to Tharawad. Alienation include mortgage, lease and every other form of encumbrance.

There were days during past when the islanders had to undergo a myriad of pain and difficulties, lack of food and non-availability of other necessities mark the past of islands. This made life very difficult. Financial crisis was common. The only way to tide over these difficulties was to mortgage or sell coconut trees, which form the whole wealth. In those days the Karanavan was forced to sell or mortgage for the benefit of the Tharawad. The Karanavan can mortgage portions of Tharawad property for debts incurred for the Tharawad and also to repay debts out of the income derived from Tharawad properties. The litigation’s for and against Tharawad properties are to be conducted by the Karanavan and the expenses towards that have to be taken from the income of the Tharawad properties. The Karanavan in his capacity as manager did this action.

This right was to be exercised only at emergency, when there was a pressing need for a Tharawad. Otherwise, the whole transaction becomes void. If any member feels that the Karanavan has abused his right then he or she could file a suit for the recovery of possession on behalf of Tharawad. The member could also file a suit for injunction to
restrain Karanavan from the commission of any act, which is injurious to the interests of the Tharawad.

In the post-independence era where the economical and social setup has changed, one rarely sees these kinds of mortgage for necessity now. The credit facilities available in the co-operative societies and banks and the income from service sector also boosted this attitudinal change. The spread of knowledge about the fact that the joint rights of the Tharawad are not alienable has put an end to this practice.

In cases other than the above provision, alienation of Tharawad property could be affected only by consent of all members. Since there was no specific rights over any portion of the Tharawad property, neither the Karanavan nor any member could alienate or encumber his individual rights in the Tharawad swoth.

The fundamental principles relating to the law of alienation under the customary Marumakkathayam law of Lakshadweep are same as under Hindu Law. That is when distress affects the entire family. Earlier in Hindu Law of Mithakshara this limitation on alienation was applicable the joint ancestral property of the family and even to the separate property of the father. The reason for that was the son was having birth right over father's property.

In Lakshadweep a distinction is identifiable between the absolute sales at one hand and the mortgages and the leases on the other hand. The consent of all or atleast the major members of the Tharawad was an inevitable necessity for absolute sale. This was

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17 There was total prohibition against alienation of immovable property without the junction of all its owners. Vijnaneswara is pointing out an exception to this rule in Mithakshara. By which
very rarely done. The reason was basically the Tharawad Friday was a perpetual asset of
the Tharawad even for the benefit of future members. To change the nature of the
property from Friday to Monday the consent of all the members are necessary. That they
used to obtain in the form of consent agreement, that is, Sammathapatram. But in the case
of mortgages and leases the Karanavan could create that without the concurrence of other
members. The condition is that it can be done only for the benefit of the Tharawad or for
its necessity. Here the development in the mainland will help one to assess where the
Lakshadweep practice is differing. In mainland earlier the Karanavan could have sold the
immovable property for the benefit or for the necessity of the Tharawad. In the next stage
of development the consent of senior nephew, that is, Andandaravan was considered as
supporting the requirements of benefit or necessity. Later statutes made it compulsory to
get the written consent of other members also. In all transactions, whether it is sale,
mortgage or debt, the burden of proving necessity or benefit is on the alliancee or creditor.
The position under the Hindu law is very same. The question whether alienation was for
the benefit or necessity of the Tharawad depends upon the facts and circumstances of
each case. Necessity to be the ground of alienation, the pressure of the necessity should
be such that by acting prudently and reasonably there was no other source for the alienor
to raise the amount to get over the crisis.

any one proprietor is entitled to dispose of the immovable property by way of a gift, mortgage or
sale in times of distress for family necessity and for the performance of the acts of Sharma.
18 Earlier in Malabar Marumakkathayam also this position was upheld by the Madras High Court
In Kutti Mannadiar v. Payam Moothan, 3 Mad 288; Kombi Achan v. Lakshmi Amma, 5 Mad
201.
19 Supra n. 2, pp. 78 – 79 supra n. 3, pp. 68 – 70 and S. 25 of Travancore Nair Act Sec. 33 of
Travancore Kshatriya Act, Sec. 33 of Cochin Marumakkathayam Act, S. 33 of Madras
Marumakkathayam Act as Amended 1958.
One specialty of the Marumakkathayam Law is the absence of a right of inheritance to the father’s or the husband’s property. Under the customary law, the Marumakkathayee wife and children were not entitled to succeed even to the separate property of the husband or of the father. In Kerala, Statutes have modified this position in later period. A father, desiring that his Marumakkathayee wife and children should enjoy his property, had to give it to them in the form of gifts or wills.

Karanavans power to effect a partition

In this respect, the position of a Karanavan of a Marumakkathayam Tharawad cannot be equated with that of a father in Mithakshara Law. The father of a Mithakshara family has powers of father as provided under Hindu Law. This power entails him to bind the interests of his sons. This is in addition to his powers as the manager of the family. The Karanavan is not competent to represent the Thavazhi when the division is among the Thavazhies merely because the Karanavan is its head, manager and mouthpiece. The fact that division is among the Thavazhies only and not among the individual members does not make any difference, as regards the power of representation is concerned because the integrity of the Tharawad is destroyed and the status and rights of individual members are affected in either case. As the power of management of the Karanavan does not extend to this, the Karanavan of different Thavazhies of an individual Tharawad by themselves cannot effect a division among the Thavazhies. A position similar to this custom has been laid down by the Kerala High Court also is Kuriakko v. Ouseph.

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21 Supra n. 1 at p. 86.
Removal of Karanavan

The Karanavans position is his birthright. It is not derived from the other members of Tharawad. Though in some respects of his powers and duties resemble those of an agent, he is not an agent appointed by the members. Nor he is a mere trustee for them, himself having a proprietary interest in the family property. Here also Karanavans position towards other members in many respects analogous to that of a trustee. All the other members of the Tharawad joining together cannot remove him. If the other members have to remove him, they have to approach Civil Court. Only the Court can remove him that also on some specified grounds. The important cause for removal was gross and continued mismanagement of the affairs of the family. Some of other grounds recognized for the removal of Karanavan under customary law are:

a. malafides in his act,

b. incompetency,

c. misappropriation of Tharawad funds,

d. conversion or ex-communication from the caste and

e. Mental or physical disabilities which prevents from performance of the function of Karanavan.

In Varanakot v. Varanakot 1880 ILR 2 mad 328 it is held that “even if the management of the Karanavan of one Tharawad was not as prudent or beneficial as that of another manager, unless he acts malafide or with recklessness or with utter incompetence, he cannot be removed from management”.

Sreedhar Wariar supra n. 1 at pp 63-64, see also Sundara Aiyer p. 25. some of the earlier decisions of Madras High Court throws some light on the customary “Marumakkathayam” is the main land are in Govindan Nair v. Narayanan 1912(23) MLJ 706 – it is held that if the Karanavan becomes a lunatic or idiot, he cannot function as the Karanavan and he will ipsofacto cease to be a Karanavan. In Kanaran v Kunian 1888 ILR 12 Mad 307. Karanavan was removed due to blindness. In Ukkandan Nair v Unnikumaran Nair 1896(6) MLJ 139, the “Karanavan” was removed on the basis that he was convicted of murder of a member of “Tharawad”. A passage from the judgement will reveal the inter relationship between members and the “Karanavan”. “The position of the Karanavan requires him to be brought into intimate association with the
Fusion of Monday property with Friday property - an Andrott specificity

This is a unique custom prevailed in Andrott Island. By this custom the self-acquired property will merge with the Tharawad Friday property, if it’s was not devised by writing during a person’s life time. This natural death of such a custom was of recent issue. In 1971 the Committee Appointed for Unification of Customary Laws noticed the existence of such a custom in Andrott and Kalpeni Islands. It should be assumed from the information given by the islanders that this custom had last breath in the early 90’s or during the end of 80’s. It was an important question in Andrott Island in the past and served as ground for so many litigations. After the communication facilities and the improved inter-island interaction the Androth Island is identified that this custom is peculiar to them alone. Later by the realization that this custom will cause too many difficulties they have stopped this custom by themselves. Earlier when this custom

members of the Tharawad. He is the guardian of the minor children’s and in other respects is in the position of the father of the family. It would be monstrous for the Court to compel the family to submit themselves to the authority of man who had been convicted of murder, especially, to a murder of a member of the Tharawad.

25 A report of the committee appointed as per proceeding of the administrator F No 18/41/70 Gen. III dated 30-6-71 p.7. While discussing on the customary law of Islands. It is mentioned that “Originally the islanders acquired the properties for and on behalf of the members of his Tharawad only. It was never intended that such of those acquisitions should ever devolve on his wife and children. The question as to self-acquisition had for their nucleus the Tharawad properties never arose because family, as is now understood was known to the people at that time. All acquisitions were for the benefit of the Tharawad. That is why some of the preachers of the religion, who have spoken before us say, though the Islamic tenet in its strict interpretation does not permit the owning of the institution as wakf, in effect it has come to stay so, as the intention of the acquirer has been that the acquisitions shall be enjoyed by the descendants through the female line only. That, such has been the intention and that such has been the nature of acquisition are what some of whom, we examined also have given us to understand. They even oppose division of properties on this sole ground. When the original acquirer never intended his acquisition to be enjoyed, after him by else one other than his own sisters and their children, it is little wonder that even self-acquisition as in Andrott and Kalpeni should, on the acquirer dying, evolve on Tharawad and not on wife and children, irrespective of the question as to what formed the nucleus for such acquisition.”
emerged, the society was giving importance to its community rights rather than individual rights. In those days this custom was harmonious with their social outlook. When the Lakshadweep islands entered into modern era where the individual liberty and individual rights replaced the old community consciousness this particular custom caused lot of difficulties to make them feel that the custom is unreasonable in the present day context. Apart from that religion is also against this practice. In short for modification of custom and even to stop a custom the society has its own mechanism. That is based on the convenience of a society and the reasonableness or unreasonableness experienced by the society as a whole. Being a small island and the people having face to face relations the Andrott Islanders could effect this modification of the custom or repealing of custom in a short span of time.

Thavazhi partition and per capita partition

In Lakshadweep Islands there is no unanimity as regards the custom on the mode of division of property whether it is for maintenance arrangement or absolute partition. The custom, which followed in Andrott and Kalpeni Islands, are Thavazhi partition or Perstripes divisions. In all other Islands the custom followed is the per capita division. Only because of this divergence in the mode of division an earlier attempt to unification of a customary laws in 1971 met with the failure. The Kalpeni and Andrott Islanders enmass objected vehemently any change in the existing Perstripes division in their islands. They were very much anxious to preserve the unity of Tharawad. When the

26 Supra n. 101 p.16. "An examination of the evidence recorded by us bears out that an overwhelming majority of the people at Kalpeni and Andrott Islands are anxious to retain the existing mode of enjoyment and inheritance of the Tharawad properties. Even the younger generation, represented by members of Youth Club, have strenuously canvassed for the retention (f.n.contd)
author conducted his interviews and public meetings in 1995 and 1996 it is found that the majority of Kalpeni and Andrott Islanders are even now supporting the persistence of joint family Tharawads and also the perstripes divisions.

The property belonging to the Tharawad is the property of all the males and females that compose it. Karanavan is the person who is the senior most male member entrusted with the administration of the affairs of the family. In the capacity as manager, the Karanavan cannot impose partition, unless there is consent of the members. Every one is proprietor and has equal rights for enjoyment. Whether all the members are entitled to equal right on partition or as maintenance depends on the mode of division, the family is adopting.

A Tharawad is, no doubt, that consists of so many Thavazhies, i.e., "lines of mothers". When a division takes place, it generally splits up according to Thavazhies i.e., those descended from the same mother or it may be from the same grand-mother, while separating themselves from the Tharawad as a whole, form themselves into a new group instead of living separately as individuals.

While separating from a joint family, how are the rights of the individuals calculated? Two methods are there. One, is taking per capita which insist each and every member in the Marumakkathyam family, how low so ever his position in the family, is entitled, to equal share, i.e., whether minor or major, whether male or female, each person is entitled to get one share each. This is otherwise called a per-capita division. In contrast to this there is yet another mode of division, which is popularly known as per

of the present system of inheritance as different and distinct from the system that, of late, being followed in the other islands."
stripes division or Thavazhi partition. Each Thavazhi is entitled to get equal share irrespective of the number of persons in each Thavazhi. When we are discussing the Lakshadweep Marumakkathayam, it is to be noted that males also are entitled to get a share equal to that of female only with the condition that after his death, the property allotted to him should revert back to the Tharawad. Therefore for the purpose of partition of Friday swoth at Andrott and Kalpeni islands, the term Thavazhi also includes a male member entitled to get a share in the Tharawad swoth. So in Lakshadweep, we can differentiate a male Thavazhi from a female Thavazhi.

To explain the difference between the Thavazhi [per-stripes] partition and the per-capita partition, the following illustration will be useful: Suppose a family with a common ancestress A. B and C are her daughters and D is her son. This B is having three daughters B1, B2 and B3. C is having two daughters C1 and C2. If property is to be divided per-capita. A, B, C and D, B1, B2, B3, C1 and C2 all will get one share each. If the property is to be divided per-stripes A, B, C and D alone will get one share each. Their progenies B1, B2, B3, C1 and C2 will not get any share under this system. (See figure 1, below).
Suppose a common ancestress X has six children A B C D E are sons and F is a daughter. This F has 5 children F1 F2 F3 are sons and F4 and F5 is daughter. This genealogical tree can be described as in Fig. 2 given below. If a division perspires is effected, X A B C D E and F are entitled to get one share each. If the division is per-capita all this A, B, C, D, E, F, F1, F2, F3, F4 and F5 will get one share each.

(Fig. No. 1)

(Fig. No. 2)
If the division is a maintenance arrangement on the death of males' i.e., A, B, C, D and E, the entire property will devolve on the females who are to continue the family. Otherwise the female who is to continue the family will get only one share. The basis of per-capita partition is that, every individual born in the Tharawad are equal and that there is no difference in the extent or quality of beneficial enjoyment to which the individual members are entitled.

Earlier in Kerala also we could see this difference. In Travancore area the mode of division was per stripes where as in Malabar it was per capita. As far as Malabar is concerned law of the highest Court has laid down impartiality ever since 1814.

**Inter-island differences**

In Kalpeni and Androth islands, they are following per stripes division. In all other islands, they are following per capita division. A difference, identifiable in the Androth island alone is that, if the Monday swoth is not bequeathed that will devolve on the Tharawad members as Tharawad properties. Another difference noticed is with respect to the Karanavans additional share in case of partition. In the allocation of shares to an unborn child there was some divergence.

**Effect of non-registration**

In Lakshadweep, generally the maintenance arrangements or the partition used to be registered. Some of the specialties of the system of registration, which was prevailing there also has to be highlighted. The registration Act was extended to these Islands only with effect from 1/11/1967. Even before that, there was a system of recording the partition and maintenance just like the present system of registration. There was no stamp
duty or registration fee in that system. After the extension of the Registration Act, a partition of property valued at Rs.100/- or upwards may be effected orally, but, if a partition is effected, by way of deed, it must be registered. Oral evidence regarding partition on the strength of an unregistered deed is of no consequence. When a dispute arose there is nothing in law against an oral partition, but it is the duty of the person, who is canvassing such a position to prove from the attendant circumstances that actually there was a partition. Since maintenance arrangement or partition is not a conveyance of property, the Transfer of Property Act will not apply. There is no other provision in law requiring a partition to be evidenced by writing. As early as 1856, the Privy Council in Rewun Persad v Mst. Radha said that it is undisputed that a division of joint property might be effected without an instrument in writing. The rationale behind this is that the partition is only mutual renunciation of rights. Therefore it can be made orally.27

**Deemed transfer**

Partition is not a transfer inter-vivos. But, for the reason that through partitions, the property though not transferred, is “dealt with” by parties, for the purpose of attracting the doctrine of lis-pendens it is deemed to be a transfer.

**Partition of course of conduct**

Very basis of the partition by course of conduct is the consent of the dividing branches. That consent has to be inferred from transactions which show that the branches agreed to become divided. There should be some definite act or transaction on the part of the representatives of the different branches indicating beyond doubt their settled intention to conduct themselves as members of divided branches. The common consent

has to be traced out for this sort of transactions, it can be seen that concurrence or consent is obtained by a series of transactions by the units separately or joint transaction of all the units. For example there were two Thavazhies in a family and they have got separate properties by way of maintenance arrangement. Later when one branch alienated the property, the other branch did not make any protest. Subsequently, the remaining branch also alienated their property and the other group did not raise any objection. In such cases we can infer their consent for partition in the absolute terms. This is rarely occurring in Lakshadweep because, in Lakshadweep, the consent is usually obtained in writing, which is known as Sammathapathram or razi. This is prevalent there for more than 100 years. Though under “Marumakkathayam” oral partition has been recognized, in Lakshadweep, they used to write down the partition or maintenance arrangement in the form of a deed. One of the fundamentals of the “Marumakkathayam” law is that unless there is proof of partition, the presumption is that the Marumakkathayam Tharawad remained joint.

Partitions and Minors

Generally the partition entered on the consent of major members will be binding on the minors also. In Lakshadweep, generally mothers of the minor children are signing on behalf of minor. In some cases Karanavan also is seen to have signed on behalf of the minor. Now the trend of judicial decision is that, when there is participation of the natural guardian, mother, in the partition process, a special representation for minor is not insisted. So long as there was no fraud or collusion, and the partition was just and fair, it would be binding on the minors. On attaining majority if the minor can prove that he has been seriously prejudiced then the court will interfere in partition. In this regard it has to be mentioned that generally courts follow the presumption that the documents were
executed without fraud or prejudice to the minor. It is a refutable presumption. When it is proved that the partition was unjust and unfair and prejudicial to the minor, whatever be the time that has lapsed after the partition, the court would interfere.

But, if on attaining majority minor are able to show that they have been prejudiced, partition could be re-opened. So far as they consent they will be provided the share which have been set apart for them. But subject to this the partition is final as between those who are parties to it. The question, how is to determine the share is causing some problem. Because, there is no rule laying down the definite share of each individual and the partition depends entirely on mutual consent. Is it open to separate, intention to be divided from actual allotment of properties and to up-hold the one, while rejecting the other. The consent is to partition as arranged and not to a divided status and the particulars of arrangement, if possible, where it is not possible to arrive at such fair share or where the other parties are not willing to an allotment at variance with the original allotment, the result would be reversion to the original joint status. It has been held that persons who are not on the first instance consenting parties there to may ratify partition. In Lakshadweep, those who were not in island during partition used to ratify that through deeds at Registration office on their arrival.

**Guardianship in respect of Tharawad properties**

As regards Muslims the natural guardian is father. Mother is never recognized as a guardian, natural or otherwise, even after the death of the father. In Muslim law the mother is not a natural guardian even of her illegitimate children. Against this general principles, in Lakshadweep as regards the Tharawad properties when a family arrangement or partition takes place mother is the person who is signing on behalf of the
minor children and not the father. Very rarely, Tharawad Karanavan is seen to be representing for and on behalf of the minors. In Hindu Law also a natural guardian of a Hindu minor in respect of the minor person as well as his property excluding his or her undivided interest in joint family property is the Father and after him the Mother. In the case of a boy or unmarried girl Section-6 of the Hindu Minority and Guardianship Act. Generally, the courts are not appointing a Court guardian in respect of the undivided interest of minor in the joint family property because the interest of the minor is not in respect of the individual property. Therefore, the position is that with respect to Tharawad or Thavazhi properties the father is not the guardian. The Karanavan who is in management at Tharawad or Thavazhi properties will be the guardian of the minor also. But the custom that the mother is to act as the guardian in relation to the Tharawad or Thavazhi properties of her minor children lies only in theory. In actual practice she is signing in accordance with the wishes of her husband or the Karanavan.

High Court on Guardianship

On analysing the high court decisions in this aspect one can identify a perceivable shift in approach. In 1965 in Krishna Pillai v. Siva Rama Pillai, it was strenuously contended that in so far as the first plaintiff 2 to 6 were represented by their natural guardians, they must be held to be parties to EXT HI. But so long as the Tharawad is joint and undivided, its Karanavan is the guardian of minor members. (EXT III held as not binding on plaintiffs). But this 1965 stand of Kerala High Court has witnessed a shift in 1994. In this case it is contended that the Karanavan who is in management of the

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28 1965 KLT 160.
29 Laxi Amma and others v Rajalakshmi, 1994(2) KLJ 149.
**Tharawad** or **Thavazhi** properties will be the guardian of the minor also. But there is nothing in the Madras Marumakkathayam Act preventing the mother from acting as the guardian in respect of the Tharawad or Thavazhi properties of the minor children. In respect of such properties the father is not the guardian. It is held that in the partition deed the plaintiffs were properly represented by their mother.

**Re-opening of partitions**

Reopening of partition is very rare in the islands. If a partition is proved unfair unjust or detrimental to the interest of minors then it can be reopened. Yet another instance of the reopening of partition of a Tharawad property is on the ground of coercion, undue influence, misrepresentation or fraud.

**Family arrangements**

Family arrangements are an agreement between the members of the family intended generally and reasonably for the well being and harmony in the family. Thereby disputes are avoided, the honor of the family safeguarded, at the same time the morally binding obligations of the members are also taken care off. The factual existence of a dispute is not a sine qua non, for the validity of a family agreement.

**Share of unborn child**

In the olden days as regards the share of unborn child there was some inter island variations. Over the period of years now a consensus is seen arrived among all the islanders is that if any member is pregnant at the time of partition, an additional share will be allotted in the name of mother. If the child expired before six months after its birth, that share will go back to other members.
Additional share of Karanavan

This additional share allotted to the Karanavan while the division is effecting for maintenance arrangement or partition is also known as Mukthiar amsom in Amini Group of Islands. There is no unanimity in the practice of allotting additional share to the Karanavan. This practice was prevalent earlier, especially before land reforms. After the economic base of the society had shown a shift from land and coconut to service and other sectors the importance of Karanavan has reduced. The basis of additional shares is in a way a recognition of Karanavan’s efforts to uplift the family. When that role has been reduced the system of allotting additional share to Karanavan is fading away from the island. Even now in some families they are giving additional shares to Karanavan. That share also vary as one share; half share and so on. So we can conclude that, the allotment of additional share to Karanavan is dependent on the consensus in that particular family. We can not ascribe any particular custom in that regard now or we can say that custom on that point is vanishing. The practice of keeping some property as Tharawad property and dividing the remaining property alone, among the individuals or the Thavazhies, as the case may be, is a custom from the inception of partition in islands.

Partial partition and incomplete partition

There is a general presumption that every partition is a total partition. The burden of proof that the partition is partial or that there has been a prior partition is on the party who asserts that is so. There is nothing in law to prevent the members of a Marumakkathayam Tharawads from entering into partition of some items of the

30 Nademmai v. Marippa, AIR1951 Mad 635.
properties, keeping apart another set of Tharawad properties. At this stage of disintegration of joint families the important question to be answered is about the impact of partial partition on the sustenance of the customary laws. It is to be deciphered from what happened to this custom when the new legal system was introduced. Order 11 Rule 2 of CPC is applicable only in cases where the claim is based on the same cause of action. That could apply only to joint tenancies where the cause of action is same and to tenancies in common where the cause of action is distinct and separate.

The rule of partial partition is one of prudence and convenience. The law does not compel any party suing for partition, to include all the property to which he is entitled. The question related to this gathers greater importance in the present day Lakshadweep. Lakshadweep has crossed the first phase of disintegration of Tharawad property. Presently there is not even a single Tharawad in Lakshadweep, which has not undergone any partition. My attempt to identify such a family in island met with absolute failure. The changing pattern of the society and its outlook is raising severe challenges to the basic institution of the society - Tharawad. The problems arising out of the gradual metamorphosis of joint family to nuclear family are of serious concern. Previously under the joint family system there was no homelessness in Lakshadweep. Anyone without a shelter was voluntarily given permission to build one in another person's property. The custom of impartiality and maintenance arrangement helped a lot to maintain such a healthy atmosphere. With the disappearance of taboo against alienation and sale of property that healthy custom also made its exit from this society. When the joint families are partitioned some of the properties allotted to parties are not having enough space to construct shelters. The law is preventing the non-islanders to hold landed properties in
islands. This could have saved the island being divested to the hands of no islanders. In
the wake of new purchasing capacity of the emerging business and service classes, is
there any law or custom which can save the poor among the islanders. The answer is an
emphatic "No" The severity of this problem can easily be identified at glance the on fact
that the total land use area for the 51,707 people [as of 1991 census] is only 26.32 sq.km.
The alarming proportion in which the population is increasing can be assimilated from
the following tables.\footnote{See \textit{Infra} Appendix B (1), (2) and (3).}

There is no scope for the expansion of the land area. The natural accretion also is
not much there. In this static availability of land that we have to realize that the
population has increased from 40,249 in 1981 to 51,707 in 1991, recording a percentage
increase of 28.46. The number of houses, which were 6,326 in 1981, reached 8,124 in the
year 1991.

To make things worse, the pattern of housing also recorded a remarkable change.
Instead of coconut leaf thatched houses, after passing through an intermediate stage ;of
tiled roofs now the new houses are of RCC roofing. The size and amenities of the
houses are inflated by the replacement of community living with that of individual liberty
and privacy. In this no fenced islands, at first fences came, and now big boundary walls
are coming up. This destroys not only the marvelous beauty of the islands, the long
stretched sands with the shadows of coconut trees with small houses among it ;but also
the intimacy, love and affection among the people. They are moving towards the urban
culture of alienation from neighbors.
This emergence of boundary walls around houses necessitates more land for road, pathway etc. Now after the arrival of motor vehicles in the islands, the two wheelers have become so common. It requires motorable roads. The result was that earlier pathways under the shadows of coconut trees, through coconut gardens and house plots have been replaced by motorable roads. This also snatched a major portion of the land. After this bike and scooter age, now the islanders are entering into auto rickshaw and car age. The result will be that the administration has to widen the roads. But the problem is scarcity of land.

To precipitate this difficulties further, now the islanders are bound to observe the coastal zone regulation which prohibits construction within hundred meters from the coast, which also bars construction of buildings more than nine meters high. In this circumstance is it possible to provide separate housing for each and every nuclear family? This factual impossibility which is leading to homelessness in the island will definitely confuse the peaceful and serene atmosphere of this island community without much delay, unless the society is carving out a permanent device or institution to guard the society from this disastrous impact. Sometimes, joint families may be a solution. The configuration may be changed. The working principles and the modalities may be changed. Ultimately there may emerge another type of community life. So now we are getting one more answer why the ancestors of Lakshadweep Island preserved the joint family and Marumakkathayam, which are against the social structure in Islam even after they embraced Islam. Those are future issues. But for the time being, to keep the Tharawad house intact and to divide other property among the members are the only
solution available in short run. More people and families are now moving in this direction of partial partition.

**Customary shariat: conflict and compromise with**

**Marummakkathayam as customary law**

Lakshadweep islands property rights are governed by dual legal systems. Customary *Marummakkathayam* laws govern the *Tharawad* properties. Shariayat governs the *Monday* *swoth* (individual property). In such a mixing up of totally contradictory legal systems whether one system will keep its identity is a debatable issue. Leela Dube has highlighted the arguments projected by Benda Beekman in the context of the Minangkabau.\(^{32}\) He canvassed, even then Islamic terms are used the legal reality may be different from what is found in Islamic law. An analysis of the interrelationship ancestral property (*Tharawad* – *Friday* property) and individual property (*Monday* property) the making of wills and gift deeds and their execution will unravel the complexities at that level.

Islamic law of property does not recognize the notion of ancestral property. Whether it is received from ascending generations or acquired by one own efforts individuals are having full control over their property. The heirs are no claim upon it during his lifetime. But in Lakshadweep islands the sanctity given to the matrilineal property is deep rooted in the customary law. This property has been created or acquired by the matrilineal ancestors for the benefit of all the matrilineage in perpetuity. It is for

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the benefit of the members of the Tharawad. They are all have equal right. This concept of property is beyond the purview of Islamic law. Some islands are trying to reconcile this contradiction by equating the Tharawad property as wakf property.

The conflict between the two systems can be perceived when realizing the fact that the property allotted to a male member for his maintenance will not devolve on his wife and children. After his death that will revert back to his matrilineal family. But his Monday swoth (Monday property) will devolve on his wife and children on his death as heirs under Islamic law. The options of men to whom the property should go is the determinant in the Lakshadweep to convert the nature of property from Friday (Friday) to Monday (Monday) and vice versa. As discussed already the conversion of nature of property is a major ground for litigation from the very old days itself.

In Islamic law gift deeds can be executed during a person’s lifetime. This is subject to he/she is in full command of his/her senses. If that be the condition he/she can gift away even the whole of his/her property to any person or persons. But in the case of a bequest or will there are some limitations. (1) Only one-third of the property can be bequeathed, that also after the repayment of debts, which is the first charge on it. (2) It cannot be bequeathed to one’s natural heirs, that is, those who are legally entitled to inherit. In Lakshadweep island wills are used to execute even bequeathing the testators entire Monday swoth (Monday property). This is against (1) above. They are also violating the Islamic law (2) above by bequeathing properties to his wife and children, who are the natural heirs according to Islamic law. These are being done by the persons who are well versed in Islamic law. So we have to come to the conclusion that the Shariat following in Lakshadweep is not the Shariat as such. That is why they are calling this as
customary Shariat. This deviation from the Shariat may be emerged due to their consciousness that religion permits children right over the Monday Swoth or Monday property of their fathers.

The question of natural heirs is important with relate to the nature of property and its devolution. In the case of the devolution of the matrilineal Tharawad property a man’s children were not viewed as his natural heirs. That man’s matrilineal kins like his sisters or sisters children are regarded as natural heirs for that property. In the case of the devolution of Monday property the wife and children are treated as natural heirs.

Generally on the allocation of matrilineal property to males, they used to look after this property along with his wife’s property. His wife and children also get the usufructs of that property through the male. As per the custom, on the death of the male member that property has to revert back to his matrilineal kin. So to prevent the going back of such property to matrilineal kin, the males used to make gift/ will that property to his wife and children. The basic dispute on many of the matrilineal property cases is this illegal devising of matrilineal property to the wife and children by preventing the rightful claimants - the matrilineal kin. While writing will or gift deed the male will mention the matrilineal Friday swoth (Friday Property) as his Monday swoth Monday property. In islands the nature of the swoth can be converted from Friday to Monday by common consent. That also through written Sammathapathram.

Earlier in islands the Friday property was the rule and the Monday property was exception. In 1962-63 Kutty had identified only 9% of the coconut trees on the Kalpeni island coming under Monday property. Now the common property is less than the
individual property. The reasons are the dependence on the landed property was reduced when the service sector and the individual income gone too higher level. The concept of nuclear family also helped this shift in the nature of property.

**Legalisation of customary laws**

In the past the islands had only one form of property, namely the Tharawad swoth. The advent of Islam and property system of shariat, caused emergence of a new system of property based on the concept of individual possession of property as opposed to joint family property. But this individual property system never came into vogue in the island until the advent of nuclear family system and modern life, which is of a recent origin. This phenomenon has serious social problem, which has called for a basic structural adjustment in the social and legal framework. The naturally slow response of customary law could not handle this pressure. As a result, confusion over matters of property prevailed over litigation. The judicial decisions only added to this melee. This confusion coupled with the great cost of maintaining litigation caused rapid readjustment of the social fabric, which modified many customs. The modified customs were repeatedly questioned before authorities like Amin, Monegars, Inspecting Officers, and Collectors who had in-depth knowledge of these changes and the forces that caused it. They by their decisions have also added the dimension of the change.

But even the modified customs failed to completely redress the basic conflict posed by two systems of property, where one system believed in joint ownership and inalienability and the other believed in individual ownership and alienation. This conflict has echoed itself in various cases. They questioned whether Tharawad swoth are practicable at all?
After 1956, Deputy Tahsildar, Collector, Administrator and High Court had occasion to verify the legality of the changes emerged from the society. After 1967, the tedious duty to verify the legality of custom was given to professionally qualified judges. The fact is that in the eagerness to prove custom, the litigants who were confused produced hundreds of documents of which few were of no evidentiary value.