CHAPTER – X

WOMEN STATUS AND CUSTOMARY LAW
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The status of women in a society is an indicator of the modernity of a society. It is to be analyzed from her position in family and in society. That is intertwined with the system of family and the ideology of the social group to which they belong. It is inherited through historical institutions and culture. The structure of the family and its relations with other institutions is critical in determining the role and status of a woman in any society.

The position of woman in Lakshadweep society is trying to be examined in the light of practice of matriliny, monogamy, non-dowry marriages, marriage and divorce related practices and custom regarding the guardianship of children. The rolling back of customary law by converting the Friday property into Monday property is also a subject with consideration in relation to woman’s status. The really enviable is position of Lakshadweep woman in such a 100% Muslim society with a status different than their counter parts in other parts of the world is built up on three pillars, viz.:

1. Matriliny,
2. Monogamy and
3. Custom of no dowry

Matriliny

As discussed in Ch.VIII, under the Marumakhathayam (matrilineal) system of inheritance descent and succession to the property were traced through females. The mother formed the stock of descent and kinship Right to property also was traced through
females and not through males. In this system the child carries the house name of mother. The wives and children belonged to a different family and had no rights in the property left by husband or father.

Marumakkathayam Tharawad in Lakshadweep is indissoluble unit with no separate rights, living under one roof under one head. Partition can be made only through common consent. Otherwise all the divisions of properties are family arrangements only by which the males right is only the ususfructory right over the property. On his death that property would go back to the original Tharawad, not to his wife and children. The property of woman will go to her children.

The status of woman in a family and society is determined by their economic stability. No one can alienate her land without her consent. Apart from that till recently most of the property was inseparable common property, i.e., it could descent through female line only as common property of the family.

Another custom is linked with this concept of common property in Lakshadweep is that neither the husband nor wife dose leave their family on marriage. The husband was performing his martial duties through night visits\(^1\). The children of females are living with her in her Tharawad under the guidance of her Karnavan. The role of father was limited.

There were frequent divorces in Lakshadweep in the past. The children of divorced women were the children of her Tharawad. The Tharawad would take care of

\(^1\) See for details, *supra* Ch. VIII
his maintenance. Under this security net of Tharawad, the position of divorced woman was safe. She was having property of her own to maintain herself and the children. This landed property, which she got through the customary law of Marummakkathayam made her position safe and she need not worry about her or her children’s future. It is the duty of the Tharawad to maintain a divorced woman and her children. So unlike other Muslim societies there was no destitute or no waganacy in Lakshadweep. Impact of this has resulted in one notable phenomenon in the Lakshadweep that there was not even a single yatheem khana. This unique character of Muslim society is the outcome of customary law from its strong and more efficient institution, the joint family, which made it imperative for the Tharawad, to look after the children of divorced.

Monogamy

Under Muslim law, marriage or (Nikah) is defined as a permanent, immediate and unconditional civil contract (which is not contingent) between two persons of opposite sexes for mutual enjoyment proclamation of children. The Islamic reforms have limited the number of wife to four. This is subject to the condition that only one woman may be married if it is not possible to observe equality among wives. This four wives rule was not in practice in Lakshadweep. In islands the monogamy is the rule accepted by custom. Generally in islands the marriage is being performed within the Koya, Malmis.

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2 The house for destitute children who are a part and parcel of all other Muslim societies in the world.
3 Bail 1 4,10,16,18; head 25,33.
5 During 1960’s and 1970’s, out of 670 married men only six were practicing bigamy. A.R. Kurty, Marriage and Kinship in an Island Society(1972), p. 175.
and Melacheri called endogamous groups. The cross-cousin marriage was rampant there
the exchange marriages are rare.⁶

This strict adherence of monogamy is forming the very basis of the customs
related to divorce also. The system exhibits so many divergences from general Islamic
practice. Marriages between paternal parallel cousins are permitted by Islam. But this
practice is not prevalent there in Lakshadweep. By general Islamic law the Muslim wife
is duty bound to reside with the husband⁷. It is not open to her to refuse to reside with
him⁸. But under Lakshadweep custom this was not followed. Wife remained in her house
alone. This is a practice going against the beliefs patriarchy based Muslim religion.

On analyzing marriage from the angle of rights and liabilities also some
peculiarities can be identified. Earlier there was no change in residence, either for wife or
husband. Marriage was not bringing any change in the existing conditions of wife or
husband in terms of economic interests, domestic groupings and affiliation of children.
The marriage gives a man exclusive rights of sexual access to his wife. This union is
achieved through the night visits to wife’s house.⁹ The peculiarities of the island marriage
are coming out of customs they were following. So long as a man continues to visit his
wife he is duty bound to pay customary payments. These were in the form of rice, cloths
and coconuts. A husband is supposed to provide two or three bags of rice and twenty-five
to fifty coconuts during Ramzan to the woman’s Pira. The measure of cloths is two

⁶ Out of 670 marriages 2 were only exchanges. Id. at p. 178.
⁷ Out of the 670 married males 515 visit their wives at their residence. In 124 cases the husbands
settled down permanently in wives residence after few years of marriage. Only 8 cases have
identified in this women settled with husband family. Id. at p. 178.
⁹ See supra. Ch. VIII.
loincloths and few meters of cloth for blouses and headwear. He is also expected to present things like fancy cloths, ornaments cosmetics. This is to meet her personal needs. Husband has to send tea, sugar and spices also to the wife’s house. Depending upon the status the economic capacity of the ‘Tharawad’, position of the man, his individual income and his personal affection for his wife there would be variation in the nature and number of gifts and payments.¹⁰

In Muslim society wife does not have exclusive sexual right over her husband for the reason he can have four wives at a time. But in Lakshadweep there is equality among men and women in the respect. This plurality of wives allowed by the Islamic law has been downsized by the custom through matriliny and the system of night visits to the wife’s house. In enforcing monogamy, the property rights of the wives have a fundamental role. This has enabled the wife and their in-laws to stop the husband’s rights over her if he started visiting any other woman. Custom of monogamy is prevailing over the Islamic law of plurality of wives in the islands is a living example of how a local custom can enforce its supremacy over religion based laws. Thus the major disadvantage of Muslim law as against the dignity of woman has been safeguarded by the custom of monogamy in the islands.

In Lakshadweep, they have differentiated the first marriage and remarriages. The first marriage is known as Mangalam (Marriage). The remarriages, from the women’s side it is known as Firiyan Vekkal (Literally keeping the husband). Men are calling it as Kanoth (local term for Nikah).¹¹ In the earlier Lakshadweep set up the contributions and

¹⁰ A.R. Kutty, supra n. 5 at p.179.
¹¹ Id. at p. 184.
co-operation of the father and kin were obligatory in the first marriage. The Karanavans or the father generally is identifying the match. It was being celebrated in a way befitting to the status of the Tharawad. The subsequent marriages or remarriages known as Nikah is performed in a simple way. Guests were not invited except a very closest few. Generally besides the man, the kazi and the woman’s wali – the father of the girl on his absence her brother or fathers father – were the only outsiders present. Thus they were celebrating in a way that may suit to the status of the Tharawad.

Earlier the Islands were known for child marriage. The first marriage used to be solemnized at the age of 12 or 13 for girls and 15 or 16 for boys. Pre-puberty marriages of girls were common.\(^\text{12}\)

**Divorce**

Baillie used the term ‘divorce’ for all separations originating from the husband and ‘repudiation’ for Talaq in the limited sense, of separation effected by appropriate use of words.\(^\text{13}\) The practice prevailed there in Lakshadweep was broader in the implementation of these words.

In Lakshadweep it is seen that monogamy is the rule, that does not mean that there was no dissolution of marriage. The divorce in the islands was very easy and it was attached to remarriages and divorces. In one of the studies it was revealed that about 55 percent of the married males had married more than once. The number of marriages

\(^{13}\) Bail 1, 204
contracted by them ranged from 2 to 19. 51% of the total married woman were remarried more than once. Their number of marriages was ranging from 2 to 14.\textsuperscript{14}

In those days of high incidence of child marriages the divorce was initiated and executed at the instance of elders like Karanavan, mother, grand mother and sometimes by father. Simple quarrels, insults, family ego would work as valid reasons for more frequent divorce. The in law’s likes and dislikes are stigated divorces were working only till the age 20-25. There after the determinant factors were mal adjustment between couples or the attraction with other man or lady. In the beyond 25 age group extra – marital affairs were the one of the main reasons leading to divorce. Under estimating presents, neighbors rend remarks, rebuke towards a Tharawad or Pira, quarrel on trivial matters or insistence from old women or men were allscarom for divorce.\textsuperscript{15}

\textsuperscript{14} For details of age-wise frequency of divorce and marriage of men and woman, see the Table’s of Kutty, supra n. 5 at pp. 181-82.

\textsuperscript{15} Kutty observed: “At the age of nine Ego was married to a boy (10) who was not in any way related to her. After about a month the ceremony of sending presents from the boy’s to the girl’s household took place. Ego’s mother and mother’s mother were not pleased with the clothes that were presented. They thought that the things were inferior in quality. These clothes were displayed deliberately in the presence of neighbors and rude remarks were passed. When the news reached the matrilineal group of the boy his people felt offended. His Karnavar again restricted the boy from visiting the girl. He and the father of the boy arranged another girl for the boy and shortly afterwards the marriage was performed. After a few days, Ego’s people secured a divorce for her and afterwards she was married to another boy belonging to the same Tharawad as her former husband but from a separate Pira. The members of these two Piras though belonging to the same Tharawad, were on bad terms. The members of the Pira of the new husband of Ego and her Karnavan found in this alliance a fitting rebuke to the Pira of the new husband of Ego and her Karnavan found in this alliance a fitting rebuke to the Pira of her former husband. The relationship lasted, however, for only seven months. The member of the households of the boy and the girl quarreled over some trivial matter and the boy’s mother insisted on and obtains a divorce for his son. After two months Ego was married to another man who was about twenty years old. This marriage lasted hardly for ten days for the girl did not like her new husband who was politely asked by her mother not to visit the girl again. The man stopped visiting Ego but deliberately delayed the pronouncement of divorce. A few days later, through the mediation of some elders, he agreed to divorce her after taking back the ornament which he had given. By this time Ego had attained puberty which forbade her remarriage for three months after divorce. After about ten months she was married to another man who divorced after five months since he began to love another woman whom he later married.” Id. at p. 187.
The islanders are following Islamic law and injunctions in divorce and remarriage. Divorces are effected through the pronunciation of the formula of Talaq, or repudiation, three times in immediate succession\textsuperscript{16} by a man. By this the husband is giving up his rights over his wife. He is also repudiating his obligations towards wife. The formula may be pronounced in the presence of wife and or before Kazi for legal sanction, or the man may give his pronouncement in writing with attestation of two adult witnesses to the kazi. In Lakshadweep, earlier, on taking decision to divorce one’s wife the man may pronounce the formula of Talaq immediately. Another method was that he might simply indicate his intention by discontinuing his visits to her. In the second case he informs her or her mother or Karanavan through somebody that he do not want to continue the relations with her. In this monogamous society a man marrying another woman also is regarded as an indication of his intention to divorce his previous wife. This is also known as Valakepokal (literally, going upon quarrel).

The divorces initiated by the wife’s were common in Lakshadweep. When a woman wants a divorce she or her mother or her Karanavan informs her husband he need not visit her further. This is known as Valakevidal the literal meaning being sending upon quarrel. The security provided by the Tharawad is the strength, which helped this Muslim woman to attain the equality with men in affecting divorce. This gives an option to her to stop an unbearable living with husband. If the relation of the husband and wife is strained, generally the man waits for a few days to declare divorce before kazi. Since the

\textsuperscript{16}This third pronouncement makes the Talaq irrevocable. As per Muslim law Talaq is revocable if the formula is pronounced only once or twice. In such cases the husband can take back the wife before the expiry of Idda the period of compulsory waiting for the divorced woman which three menstrual periods.
pronouncement of divorce is men’s exclusive privilege, the men used to delay the
pronouncement for making a bargaining point for demanding cash. If the wife is keen on
marrying some one else this tactics will work well. Earlier on divorce, all the matters of
settlement like return of the ornaments given by the husband and the payment of the
arrears of the customary annual expense known as *chila* as done on mediation in
presence of some elders or the *Amin*. The girls side was being represented by Karanavan
of the girl, sometimes father of the girl also may join. The man repeats the formula of
divorce three times before the mediators. The pronouncement is given in writing to the
kazi with the attestation of two witnesses 17. In special circumstances a woman is having
the legal right to sever a marital relationship. Under this procedure which is known as
*Fasag*, the woman utters the formula of divorce dictated by the kazi 18.

The remarriage among the very same divorced couples was not uncommon in the
old Lakshadweep society. Here they were following the Islamic law dictate that a man
may remarry his divorced wife only after she has been married and divorced by another
man. In such case a man is arranged who would marry the woman and then divorce her
after sleeping with her for a single night. This procedure is known as ’voyyath’. The
woman who agrees for a remarriage with her former husband may ask her current
husband not to make any further advancement to her. In such an eventuality the current
husband may refuse to divorce her and compensation in cash may be demanded 19.

17 *Supra* n. 5 at pp. 183-184
18 In one case of recorded *Fasag* the husband was suffering from serious mental disorder. In
another case the husband was unable to be present for the pronouncement of *Talaq* as he had been
sent into exile by the administration. *Ibid*.
19 *Id.* at p. 184
The marriage in Lakshadweep involves very limited rights and responsibilities. No new social units were created nor there any reshuffling of the units. Man and woman were having their permanent roots and base at their own respective Tharawad. So the easy and inexpensive system of Islamic divorce when coupled with the safety and security provided by the matrilineal Tharawad made divorce and marriage for this society a casual event. It is generally true that in all the known matrilineal societies marriages were unstable. From 1962 onwards due to the initiatives of Administration with the help of Amin, elders of the society started imposing annual fine, which would go towards the maintenance.

Present Scenario

Apart from this the old custom of frequent divorce has got a major blow from the decision of the modern courts. This came from the decisions pronounced under the Muslim Women's (Protection of Rights on Divorce) Act of 1986. The court has given

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20 This was true in the case of early Kerala Nairs, Khasis and Gharus of Meghalaya also.
21 Supra n. 5 at p.201
22 The question of maintenance to Muslim divorced wife is a complex issue. S. 488 of Criminal Procedure Code 1898 (as amended by Act XXVI of 1955) did not provide maintenance allowance a divorcee beyond iddat period. The Sections 125-125 was introduced in the code in 1973 provided maintenance to the Muslim woman even after the iddat period. This benefit of S. 125 of the Code was extended to a woman who has been divorced or who has been obtained divorce from her husband and has not remarried. The divorcees right to maintenance were restricted to the cases where she is unable to maintain herself. This Ss. 125-128 was applicable to all irrespective of religious distinction and has no relationship with the personal laws of the parties. When the Muslim community objected this on the ground that this is against the spirit of Islamic Law, Section 127(3)(b) was added to the Code.

This provision empowers the magistrate to cancel the order of maintenance passed under S. 125 of the Code if the divorcee has received whether before or after the date of said order; the whole of the sum (dower in case of Muslims) which was payable under customary or personal law applicable to the parties under Section 127(3)(b) of the Code. In Shah Bano Case (AIR 1985 SC 945) restored the Muslim woman's right to get maintenance as provided in S. 125 of Cr. P.C. When the Muslim community objected Muslim Women (Protection of Right on Divorce) Act 1986 was passed.
orders to pay Rupees seventy thousand, one lakh or like\textsuperscript{23}. It is to be noted that in the customary law of island there is no mandatory provision for giving maintenance to woman. This may be due to the island custom that the Tharawad Friday property is supposed to be utilized for the maintenance of the members. Because of the new relief of getting lumpsum amount under section 3 of Muslim Women (Protection of Rights on Divorce) Act 1986 the earlier custom of settling matters relating to divorce before elders and Khasi is a vanishing tale from the island. Women are seeking the assistance of the courts, where they are getting lunpsum amount in a big way. Later development of the society through high literacy, individual income, new jobs and separate income for spouses, and their constant interaction with the mainland culture made the divorce a rare thing now. In short due to governmental jobs, constant interaction with mainlanders, and the inflow of mainland ideas, the frequency of divorce has reduced. This Muslim Women (Protection of Rights on Divorce) Act changed the easy and casual character of divorce into an expensive and serious one. The society is in the process of adjusting this. In this adjustment the male group is devising method to shift the burden of divorce to the girl by

\textsuperscript{23} Section 3 of this Act provides:-

"(a) a reasonable and fair provision and maintenance to be made and paid to her with in iddat period by her former husband;

(b) where she herself maintains the children born to her before or after her divorce, a reasonable and fair provision and maintenance to be made and paid by her former husband for a period of two years from the respective dates of birth of such children.

(c) an amount equal to the sum of ‘Mahr’ or dower agreed to be paid to her at the time of her marriage or at any time of her marriage or at any time thereafter according to Muslim law; and

(d) all the properties given to her before or at the time of marriage or after her marriage by her relatives or friends or the husband or any relatives of the husband or his friends.

(e) Where a remarkable and fair provision and maintenance or the amount of ‘mahr’ or dower due has not been made or paid or the properties referred to in clause (d) of sub section(1) have not been delivered to a divorced woman on her divorce, she or any one duly authorized by her may on her behalf make an application to a magistrate for an order for payment of such provisions and maintenance, mahr or dower or the delivery of properties as the case may be."

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demanding amount for payment of that money ordered by court from the newly remarrying woman.

The divorces are precipitating the difficulties of the divorced woman in all societies in the form of anxiety about the children born out of the divorced man. In this regard the practice of this island society is far more effective than any other Muslim society in the world which could even rule out even the existence of Yatheeem khanas in the islands. This relief from the mental worries about the safety of children enabled the woman also to remarry as and when marriage bond is broken just after observing 'idda' period.

**Divorces and Children**

The island has shown a peculiarity in their approach to the children of the divorced wife. Since the children are members of the mothers matrilineal family, they used to stay there only. So the divorce between father and mother was not disturbing their residential set up. After the father divorced their mother they will continue to stay with mother. They will be under the protection of Karanavan and mother. There is no custom that maintenance to be given to children by the father. But depending upon the family status, some are giving maintenance to children, some are not. But by the new enactment providing maintenance to the children is a must.

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24 Under Muslim law the primary obligation of maintaining children is on the father. Any person maintaining children or incurring debt for maintaining them can recover the same from father. If father wilfully neglects or deserts his children or refuses to maintain them, when he has means to do so, then he can be punished. The fathers' obligation terminates on children attaining majority. Father is required to provide maintenance to children even when the are in the custody of the mother or any other person entitled to it. Even after divorce, the father's obligation exists. For details see Paras Diwan and Peeyushi Diwan, *Law of Maintenance in India* (1990), pp. I to xi.
Though there may be some hard feelings at the period of disruption of a marriage, in the island situation they are not going to continue forever. Generally, father will continue his relations with children. Depending on the personality of the father and his matrilineal group and on the diversions in his interest and affection, gradually the children may become less and less attached to him. In the island situation such severance of father children relationship is not inevitable. This is due to the fact that the responsibility of maintaining the children rests in the woman's matrilineal kin group. In their traditional set up in the islands, one can identify the supremacy of the matrilineal ties over marriage, paternity and affinity.

Father children relationship continue in respect of formal responsibilities of the father in the children's marriage, circumcision etc even after divorce. Similarly, the children's right on the death of the father are also the proof of this recognition. This is quite contrary to the mainland ethos of severance of father-child relationship on the divorce between father and mother, whether it is among Muslims or other religion.

**Marriage**

The first marriage consists of two ceremonies Kannoth and Mangalam. Generally they were performed separately with sometime gap between the two. Kannoth is the Islamic religious rite commonly known as Nikah. Mangalam is mainly a social ceremony. Both are being celebrated at the girl's home; only in very rare cases it is conducted in boy's home. The bridegroom and the bride are summoned to the Khatibs house on the
day prior to Nikah. The Khatib asks the bride whether she is prepared to marry the bridegroom. Then the khatib announces her willingness for a fixed amount of Mahr.25

On Kannoth ceremony day, the brides father along with the people who assembled in the girl’s home go to fetch bridegroom. Singers and dancers will accompany this. This is known as puyyapalaye the dippokal and entertained there with light refreshment. The bridegroom is then brought in a procession to the bride’s home for Nikah. The brides father sits facing the groom. The Kazi makes the two holds each other’s right hand. The bride’s father and the groom repeat the formula of the Islamic marriage contract, the boy agreeing to give Mahr and the girls father in turn consenting to give his daughter in consideration of Mahr.

After marriage, the groom’s household sends a few bags of rice and few other essentials items to the bride’s household. This is to share the expenditure incurred during different feasts held at bride’s residence. This is known as moodakodukkal/chilavukodukkal.

Mahr

Mahr or dower is a sum that becomes payable by the husband to the wife on marriage, either by agreement between the parties or by operation of law. It may be either ‘prompt’ or differed.26

Earlier this Mahr was ranging from Rupees 21 to 101. That also conditioned by

caste and islands. Now this **Mahr** amount is going Rs. 501, 1001, 5000 and even more. In this matter depending upon the status of the family and the island in which the marriage takes place the amount of **Mahr** varies. **Mahr** is the bridal price paid by the groom to the bride. It is decided between the parties before the alliance and is paid in cash on the day of **Nikah** or on a subsequent date. The **Mahr** amount once paid is never taken back. A person who has not paid **Mahr** cannot demand divorce. In such cases Khasi orders the **Mahr** to be paid before he grants divorce.

In Islam marriage being a civil contract, it exhibits traces of having developed out of the purchase of the bride; the bridegroom concludes the contract with the legal guardian (**wali** of bride) and he undertakes to pay nuptial gift (**Mahr**, **Sadaq**) or dower not to the **wali** as was customary in the pre-Islamic period, but to the wife herself.

Apart from **Mahr** the husbands are obliged to provide certain customary contributions like rice and dress, to the wife and children in the family. In accordance with the economic growth of the islanders this customary gifts have grown into a big thing. Due to the competition among the families the cost of those gifts has reached even up to Rs. 25000-50000 in some cases. Now the marriage has become a costly affair for males in the island. Actual marriage is an elaborate ritual extending from 4 to 7 days depending upon the status of the family. Though the functions are taking place in brides residence, the bridegrooms family is supposed to make contributions towards the expenses. In the Laccadive group of islands it is known as **Kalyanappanam**. There it is to

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27 Supra n. 25 at p.102


29 Supra n. 25 at p.100.
be given on the date of marriage. In Amindivis it is known as Bir. There it is to be given after one year. The amount varies from family to family depending on the capacity of the family. Earlier it was ranging from Rs 500 to Rs 5000 \(^{10}\) and now it has shot up to Rs 50000 and even more in some cases.

**No dowry land**

Lakshadweep is a no dowry \(^{31}\) land, in deciding the women status in Indian context, the first question emerging is how the system of dowry is operationalised in that society. The evils that has been distressing our Indian culture and civilization is dowry in cash and kind demanded by the boy’s family \(^{32}\). Though Article 51-A of the Constitution provides for ‘fundamental duties’, that it shall be the duty of every citizen of India to renounce practices derogatory to the dignity of woman. Dowry, the deep-rooted social evil, lead to thousands of dowry death every year \(^{33}\). It is a vice, which has not been spared the rich, cultured and educated masses. The urban elite and the rural poor are torturing their wives for dowry. Various enactments and the amendments effected in various statutes itself indicates how deep noted this social evil are \(^{34}\). Even today, in the

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\(^{10}\) Ibid.

\(^{31}\) Section 2 of the Dowry Prohibition Act defines dowry as follows: “Definition of dowry :- In this Act “dowry” means any- (i) property, or (ii) valuable security, given, or agreed to be given, either directly or indirectly- (a) by one party to a marriage to the other party to the marriage, or (b) (i) by the parents of either party to a marriage or, by any other person, (ii) to either party to the marriage, or to any other person (iii) at, or before, or anytime after, the marriage;(iv) in connection, with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim personal law (Shariat) applies.”


\(^{33}\) According to Mr. M.M. Jacob, the Minister of State for Home, the number of dowry deaths had showed an increasing trend from 4,195 in 1989 to 4,837 in 1990 and 5,157 in 1991. For details see R.Dayal, ibid.

\(^{34}\) In 1961, the Dowry Prohibition Act (Act No.28 of 1961) was passed, prohibiting the taking or giving dowry. By the Criminal Law (Second Amendment) Act, 1983 (Act No. 46 of 1983), Chapter XX-A was introduced in the Penal Code with Section 498-A creating a new offence of (f.n.coutd)
mainland, people could not even reduce the alarming inflation of dowry deaths and related offences.

In the backdrop of the above national picture, the islands system of no dowry for marriages is a relief to this society. The major reason for this is nothing but the matrilineal set up in which the women are holding the major portion of the economic assets of this society.

**Women’s religious rights**

In Lakshadweep the women go to mosques for prayer. This is a deviation from other Muslim societies. It shows the real equality between men and women in all spheres. The customary law of the society shows this, which provide that the women are not equal but superior to man. The foundation for this higher status may be traced in the law of Marumakkathayam. Only on comparing this status with women of other matrilineal groups alone can one identify the merits of this system which are more equitable and just

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35 In Kavaratti, Agatti, Amini and Kiltan there are separate Niskarapurais (prayer houses) for women, where the person leading the prayer is a women. See Mannadiar supra n. 25 at p.93.
to females. This is contrary to the system among Graos of Meghalaya where female owns an entire property of the matrilineal group.\textsuperscript{36}

Whether or not the enviable position of the women in the Lakshadweep islands will be sustainable one is the major issue to be addressed. The society has undergone lots of changes, some of which go against the interest of women in this society. They are:

1. the conversion of Beiliazcha property into Belasha/Thingalazcha property through Sammathapathram,
2. disintegration of Tharawad,
3. new wave of Islamic fundamentalism and
4. growing male dominance.

Before sixties, most of the properties in the islands were Friday property, namely common property. Men do have only ususfructory rights during lifetime. On their death, the property has to revert back to Tharawad. In the case of females the property will go generation after generation through their females. After Nallakoyas decision and also due to the new individualistic pattern of social living now the impartibility of the Tharawads have bidden good bye to the islands except in Andrott and Kalpeni islands.

\textsuperscript{36}Indian Law Institute, Customary Law and Justice in the Tribal Areas of Meghalaya (1982), pp.133-134. Initially it is the mother who owned it. Later, it is the wife and thereafter the youngest daughter known as Nokna. The most important position in the scheme of inheritance is given to the Nokna. In a family, one of the daughters is selected by the parents to own her mothers property she is known as the Nokna (her husband is the Nokrom). The choice depends upon the parents. In the event of the father and mother disagreeing as to the choice, the mother has the right to insist upon her selection i.e. the one whom the mother chooses must be considered as Nokna. The importance of 'Nokna' is revealed from their inheritance system. No Garo male can inherit property in the matriarchal system which exists in Garo Hills whatever a Garo boy may earn or receive (whether he be of age or not) is really the property of his mother or sisters. If he marries, whatever properties he acquires will become his wife's property. After the wife's death that of her daughter. In the event of the death of his mother, wife, daughter or sister (as the case may be) the property will become that of nearest maternal relation.
The common trend is to convert the Friday property into Monday property. Its impact is very heavy on the women.

If the property is converted into Monday property then the law applicable is customary Shariat. This takes away the impartibility concept of the Friday property or the common consent required for the absolute partition away from this society. On the property becoming Monday property it is also subject to the gift and will. The Lakshadweep practice does not observe the limits imposed by Islamic law in giving away the property by will and gift. They are even bequeathing the entire property and even to the heirs. In such situation there is no guarantee that women will be getting proper share. Muslim society generally being a patriarchal society, the trends in Lakshadweep clearly move slowly towards religious fundamentalism. The male dominance in the inheritance of property is a growing trend in the islands. In some cases during the lifetime of a person he is giving the property as gift to males only, excluding all females. Under Lakshadweep practice nobody can question this. In the case of death, the properties are to follow Islamic law. In the present practice of Lakshadweep, the woman as mothers, wives, daughters and widows do not have equal rights, while the Khuran gives equality to them. This inequality is seen as that husbands always inherit half if there is no children and one fourth if there are children. Wife always inherits one-fourth if there are no children and one-eighth if there are children. Daughters always inherit half the property, which is getting to son.37

37 How it effects cumulatively the women property right of the society will be coming out from the simple example. In X's family X is having a son A, and a girl B. when X's properties are dividing the girl B will be getting only half of what is getting to son A. Suppose B is having B1 and B2 sons and a girl C. then C will be getting only 1/5th of what B got from X. In the next (f.n.contd)
After the conversion of Friday property into Monday property, if no will or gift is made by the owner, then the property should follow Shariat. In that case on reaching the second or third generation the woman’s property rights will be very negligible. If that happens in Lakshadweep the enviable position and status of woman vanish. The economic independence of women in the society will go. When the independent source of income is common, almost all islanders are moving to nuclear families. In nuclear family the woman does not have as much weight and voice in the decision making as in the Tharawad. If the divorce occurs that will spoil her entire life. In the absence of no Tharawads to take care of their children, there will be destitutes and vagrancy in the islands. Definitely that will pave the way for opening vatheemkhanas.

The present trend of island males marrying mainland woman is also a major threat to woman status. This is because of two reasons: (1) If a marriage is to be celebrated in island, with island lady, he has to spend a huge amount. If he is marrying from mainland he will get very good dowry. (2) The major reason for this new trend is that in island the woman’s interest in the landed property is reaching to a negligible level. So if he is marrying an island lady the earlier safety net provided by the Tharawad will not be available in future.

The new marriage trends will be appearing with in short span of time. It is pertinent to note that generally the island woman does not marry mainlanders. The number of females per 1000 males as per 1991 census is 959. Monogamy also is very important in assessing its impact. It reveals that if mainland marriage becomes common generation suppose C is having two sons C1 and C2 and a daughter D. In this case D will be getting only $1/5^{th}$ share of what C has got from B.
and it crosses the 41 per thousand marriages, the ladies in the islands will find it difficult in getting husbands. Another development in the Lakshadweep society, i.e. high literacy and higher education proved in mainland for the islanders as doctors, engineers, master of computer application, engineering diploma and other various job oriented skills degrees and diplomas. No doubt, recoil to the disadvantage to the common woman in the island Lakshadweep society cannot fully absorb them. Being Scheduled Tribe people, due to reservation in government jobs, their chances for getting job at mainland is high. In this mainland migration girls are placed in the backyard. The general trend of Lakshadweep males marrying mainland woman will increase. Along with this trend is in the near future, the practice of dowry may also have an opening in the islands.

How has this gone unnoticed? On interviewing women in the island, the scholar has noticed that all women do not want nuclear families. But they want to live under Karanavan. However they were not fuse when they were interviewed in the island whether they should support and oppose in the conversion of Friday property into Monday property. But they enmasse opposed38 this conversion of Friday property into Monday property when the Lakshadweep woman were asked about this, at mainland, in peculiar in an exclusively woman situation39. But till now there was no public resistance voiced from the side of woman in the islands. The interview in the mainland was conducted days after the first interview. The reason for the change of attitude may be that after the first interview they were enlightened on the implications of this property

38 When the mahilasamajam, social workers and balawadi teachers of various islands reached Rajagiri Institute of Social Sciences, Kalamasseri, some of them were personally interviewed and they were also addressed as a group.
39 First all these women were interviewed in their concerned islands during the researchers visit at each islands. Later they were examined as a group at Rajagiri Institute of Social Sciences.
conversion. Then they watched the changes coming around them in a critical manner. So they have mentioned that due to the conversion of Friday property into Monday property their landed property rights are decreasing in a geometric proportion. One more reason they have assigned for this change in the answers was that in islands all are not at liberty to speak against male interests. As far as the governmental jobs are concerned Lakshadweep has reached a saturation point. Till the present generation is retiring the scope for increase in governmental jobs for the island woman will be marginal. Apart from this due to the formation of nuclear family, many husbands do not like to send their wives for job. They want full time housewife. So the women in the Lakshadweep is progressively taking out of their economic assets and economic contributions. They are being cornered as mere housewives. This new change has to be assimilated in the century old situation where the women hold almost entire landed property rights. Mainly ladies were doing the manufacture of coir the major economic activity in the island. In the changed new world of nuclear families, man is the breadwinner. Islam is also basically a patriarchy oriented religion. When the grip on the economic assets is losing from the woman’s hands, the special rights which these woman floc enjoyed for centuries like special mosques and prayers, equality in divorce, obtaining woman consent for partition of property also will definitely be vanished from this society.

To accelerate this anti woman move of the society, the new trend of island males marrying mainland girls is to be viewed seriously. This has to be appreciated in the light

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40 According to Islamic law, the legal position of women in some respects considered inferior to man. She has less rights and duties from religions point of view. As regards blend money, evidence and inheritance, she is counted as half a man. In respect of marriage and divorce her position is less advantageous than that of man. For details, see Alka Singh, Women in Muslim Personal Law(1992), pp.165-166
of sex ratio. At that point if the present trend of effecting her out of economic assets of
the society is progressing in present phase; the Lakshadweep woman will be most
harassed. To precipitate this there is one more factor. In order to protect the separate
identity in a secular state, the Indian Muslim community — a minority community — is
turning towards the revival of islamisation. In this process the society has to follow
rigid socio-religious code where woman are regarded to have a subordinate role to men.
That is clearly visible in islands today. Till few years ago Purdha was alien to the island
woman. They used to appear at all places. Now the Purdha is becoming common and
women are not so active as their predecessors in their social roles. The status of woman
in a society is dependent on the social, political and economic changes and religious
moorings of a community. The Constitution of India, being a secular one, does not allow
the state to interfere with any religious faith of the citizen. All citizens are free to profess
their personal laws. When the islamisation is growing up the set up of the island society
is identified with that of a male dominated social set up. By the decline of the customary
law in the island women’s landed property rights diminished progressively; the net result
is that Lakshadweep women is becoming an “Indian Woman” supposed to suffer the
oppressions. One cannot rule out the entry of dowry also in this society in the near future.
There are ministries for the protection of social welfare and women welfare. There are so
many schemes, which are specifically targeted to improve the lot of the women in this
society. So far no woman’s bodies or other voluntary organization or male group has

41 Sex Ratio is defines as the number of females per 1000 males. Lakshadweep shows a declining
trend in the islands though the ratio slightly fluctuating among the islands, male
out number females in all the islands. Only in Minicoy Island the sex ratio is in favour of females
i.e. 1049 females for 1000 males. For details see District Census Handbook, Part XII A & B
Lakshadweep (1993), p.37 which is given as Table (3) in infra Appendix B.
taken up this issue seriously, not even government. Before the last pieces of a unique culture where women are having pivotal role in social organization are eroded completely, it is the duty of government of India, social organizations and men and woman all over the world to come forward to save this social set up that safeguards women and woman perspectives.