CHAPTER – XII

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The scarce resource base in Lakshadweep made it necessary to evolve a community oriented economy and life pattern. The dependency on land and agriculture compelled the people to live together and use scarce resources economically. The joint family was a security net. Their interaction and techniques of linkages with the mainland were moulded on these premises.

As a society governed by customary laws without tyranny of enacted law, the people were ready to rewrite their legal relations and aspire for land reforms. In the history of democracy it is found that land reforms —social reform legislation— ignite a litigation explosion creating several phases of impact by statute amendments. The Indian comedy of errors in land legislation is a specific example. But the community orientation of a small society within the larger Indian society, namely, the Lakshadweep stands different. Over the centuries islanders fruitfully channelised and formulated the customary system. As a result the systematic customs went down in history as unprecedented social acceptance of land laws to govern themselves. This shows how a customary law can solve its own problems peacefully by modulating legal relations in a society, separate and independent.

The forms of punishment are always related to the need and purpose of the ruler or administrators. At present the fear psychosis created by Rajas is not existing. The form of transaction between the government and people decides the degree of
government control over the people. The new system of punishment falls in tune with that of the mainland. Thus the general penalty on the family of the guilty and the fine in kind were all things of the past.

When the administration of old society had gone out of the traditional assemblage of local people, called Kootom, corruption crept into the society under the cover of various new practices. The advent of British rule was a blessing in disguise in more ways than one. The British brought laws in the form of Regulation. But they did not touch the personal laws. Nor did they encroach upon customs that were particularly needed for the community life. Justice, equity and good conscience became the watchword of the island legal system in the absence of custom. The old offices that were fountain of corruption were done away with. The technicalities of mainland laws were kept away from the island system. Even now people who are not legally qualified but well versed in customary laws of the islands are allowed to pursue legal profession.

The post-independence period marks a notable change. Mainland law and legal institutions came to the island during this period. Legally qualified judicial officers from mainland started hearing and settling disputes. This has led to various problems of inconsistent and diverging interpretations on the customary law. Impartability and inalienability of the joint family property — called as Friday property — which tied the islanders together, are now in a fluid situation. Confusion clouds on the mode of partition of properties in Androth and Kalpeni islands. The question is whether the property be partitioned on per-stripe or thavazhi mode or should it be on per-capita pattern. Decisions are also conflicting on the validity of customs as such which are the
nuclei of the Lakshadweep society. An example is in the Nallakoya’s case where the custom was declared void. Thinking the practice of following customary law is against the Constitution, the islanders entered into absolute partition with power to alienate. In this process a major portion of joint family property was converted into individual property by using the instrumentality of consent taking. The decision has uprooted the very basis of the strong community feeling. Twelve years later Buharikoya’s case validated the custom on the ground that the Impartability was for the benefit of reversioners. A rejuvenation of the customary law is visible. But it was too late. By that time disintegration of major portion of joint families took place. Conflicting decisions continue even after the Buharikoya’s case. This resulted in confounding confusions. Non-assimilation of the island cultural ethos seems to be the reason why this confusion on customs arises. The burden is now imposed on the islanders to prove custom again and again. The cases on all these aspects are pending still at the Supreme Court. No decision has come out yet.

Monogamy, non-existence of dowry system, enjoyment of right to divorce the husband and maintenance on their exclusive prayer halls keep the Lakshadweep women in an enviable position. This is so because basically the property rights of the society were concentrated on women and devolution of the joint family property in female line on the basis of custom.

After two or three generations the women’s property right in the society will become negligible as far as partition is allowed by judicial pronouncements. Apart from this impact, the so-called progressive reformists in religion were responsible for
generating a trend towards conversion of joint family property into individual property. Another disturbing trend is visible as a bye-product of the decreasing property rights of the island women. The diminishing status of women pushes the island males to go over to mainland in search of female partners. This may ultimately end in cursed dowry system, which has not yet come to the islands. The vagrancy of women and children may not be ruled out in such eventuality.

The presence of legally non-qualified Mukthys makes the islands’ legal system to stand own its own. Now that island legal system is as technical as mainland with more laws and regulations, the practice of Mukthys may turn out to be an anachronism. At present there is no rules governing Mukthys. Anybody who claims as Mukthys can appear in court. The non-implementation of the provisions of the Legal Services Authorities Act fully, has resulted in the denial of islanders’ right to free litigational assistance. When this Act is implemented fully, the legal services are to be provided only through the state sponsored lawyers and not through Mukthys. By the time the customary laws are codified, the system of Mukthys has to wither away.

Suggestions

The study leads to some suggestions that can be summarised as follows: -

1. Customary law is to be codified urgently. Excessive emphasis on uniformity is unwarranted and undesirable. The emphasis should be to legislate the Code. No steps to undo matriliney shall be taken.
2. Customary Marumakkathayam has to be saved to safeguard the women property rights in the society. This is to protect a very unique healthy system from extinction.

3. The Legal Services Authorities Act is to be implemented in full.

4. State machinery for free legal services is to be formulated utilising the community oriented attitude of the society for settling disputes amicably. Free legal services should be given only through lawyers.

5. Pre-litigation settlement of disputes in accordance with earlier Kootam concept of the society is to be implemented with necessary modifications utilising services of the vanishing group of Mukythars also.

6. Specific rules for Mukthyars are to be framed. The present Mukthyars are to be given certificate of registration after training in various new laws so as to equip them to meet the challenges of a new legal order.

7. Special courts and tribunals are to be established for the family dispute resolution taking into account the special position of the island system.