CHAPTER-I

INTRODUCTION

Many customs and institutions in the Union territory of Lakshadweep are perceptibly distinct from those in the mainland India. So also is the Lakshadweep legal system- a mixture of statutory laws and uncodified customary laws. The personal law that governs the people of the Union Territory of Lakshadweep Islands is the customary law with inter-island differences and intra-island variations. The uncodified customary laws also give rise to different interpretations.

Study of customary laws in modern period inevitably takes one to the legal history. On interaction with the laws from main land, an existing customary law based society gets a shock. The number of reported judgements of higher courts – Supreme Court and High Court on the laws of this territory are very few. Some of the earlier decisions were over-ruled later and diametrically opposite views were taken.1 The obscurity of customary law puts the law-abiding persons into a dilemma. What way have they to act to achieve conformity with law? The persons seeking justice is in a financial strain simply because of the effort required in proving ‘the custom’.2 Although uncertainty casts a shadow on the island from mainland perspective, the practices throw a challenge for judges, lawyers, academicians and administrators.3

1 For the decision of these cases, see infra Ch. IX.
2 On the extension of Indian Evidence Act of 1872 to the islands in 1965 along with the introduction of modern courts in 1967 it made imperative that the custom is to be proved in accordance with S.13 of Indian Evidence Act.
3 See infra Ch. IX.
Codification of law for a small territory should be simple and easy. But the past attempts to codify the customary laws of Lakshadweep during last 30 years did not succeed⁴. What does the failure reveal? The complex nature of the customary laws of the Lakshadweep or the complexes of the mainland reformers?

For the people of Lakshadweep, formal legal system is of recent origin. The first court with all the characteristics of present day mainland Indian legal system is established there in the year 1967. The mainland laws have been extended there only in 1965. The first police station of the islands came only in the year 1956. So it is wrong to approach this customary law in terms of central authority, codes courts and constables.⁵ One of the effective methods in identifying the customs handed down in regular succession from time immemorial is by scanning the method of handling disputes by a society. This common approach of today focuses not on law, but on the institutions and techniques for resolving conflict, whether or not they are deserved to be called as legal.⁶ This will give us a pathological picture of the society at a given period. The study of

⁴ In the year 1970 an expert Committee headed by Sri R. Sankarnarayanan Iyer, Sub Judge was appointed. The Committee submitted report in April 1972. Again in the year 1984 a Committee headed by Sri K. N. Radhakrishnan Nair, Sub-Judge was appointed. Both these committees were appointed by Lakshadweep Administration.

⁵ Malinowski who studied Trobriand islands of New Guinea come to the conclusion that it was wrong to define the forces of law in terms of “central authority, codes, courts and constables”. The ‘Trobrianders’ society was orderly even though they were lacking these. He found the basis of that in “reciprocity, systematic incidence, publicity and ambition”. See. Malinowski, Crime and Custom in Savage Society (1926), pp. 14, 67-68.

⁶ Hoebel E.A., Anthropology – The Study of Man (4th edn., 1972), p. 500. One of the advises given by Justice Holmes is “if your subject is law, the roads are plain to anthropology” and it was “perfectly proper to regard and study the law as agreed anthropological document”.
simple societies such that of Lakshadweep island helps to learn more about law and organization in a developed society.\textsuperscript{7}

**Location, Geography and People**

Lakshadweep islands is located on the southwestern frontiers of India between $8^\circ$ and $12^\circ 13''$ North latitude and $71^\circ$ and $74^\circ$ East longitude. These islands lie about 220 to 440 km away from the mainland, India. These are a collection of 27 islands. Of these 11 only are inhabited. The total area of this Union Territory is 32 Sq. km.\textsuperscript{8} The inhabited island are Kavaratti, Agatti, Amini, Bangaram, Kadamat, Kitan, Chetlat, Bitra, Androth, Kalpeni and Minicoy.\textsuperscript{9}

The natives are classified as Scheduled Tribes. They are 100% Muslims. More than 93% of the total population are indigenous people. Though they are Muslims they are following some sort of caste system.\textsuperscript{10} According to the Scheduled Caste and Scheduled Tribe\textsuperscript{11} Lists (Modification Order, 1956) “the inhabitants of Lakshadweep who and both of whose parents were born in those islands are treated as Scheduled

\textsuperscript{9} Island-wise population and land area is shown in Appendix B, Table 1.
\textsuperscript{10} See *infra* Ch. II for Religion and Caste in the Islands.
\textsuperscript{11} The Scheduled Tribes account for 7.76 percent of India’s population. They are grouped into 426 tribal communities numbering 51,628,633 individuals. 98.3 percent of them still lives in villages. The tribe–non-tribe dichotomy is not so sharply focussed in India as in the western conceptual framework. In India, generally, tribal populations live in a continuum with the non-tribal groups. It is on the basis of different modes of economy that Indian tribal groups may be differentiated from non-tribal groups. The economies of the tribes are relatively primitive vis-à-vis the now tribal groups. Dependency on natural resources are important character of that economy. Food gathering, fishing and animal husbandry are successive stages of primitive economy. See B.R. Rizvi – “Tribal Land and Changing Economies of Indian Tribes: An overview”. XXXVIII/No.2 *The Administrator* 1 (April-June 1993).
Tribes.” There is no specific name for this tribe. No caste has been scheduled in relation to Lakshadwee.

According to the 1991 census, the total population was 51,707 with males 26,618 and females 25,089. Comparing to the 1981 population 40,249, the decadal population growth rate for 1981-91 was 28.47 percent, indicating an annual growth rate of 2.84 percent against the all India growth rate of 2.2 percent. The density of population was 1,616 per Sq. Km. It is third highest for the whole of India.

Language

Malayalam is the language in all the islands except in Minicoy. In Minicoy people speak Mahl which is written in Divehi script. Literacy, which is increasingly, acknowledged as a key mechanism for development as well as reliable indicator of it. As per 1991 census data 81.78 percent were literate with male literacy rate 90.18 and female literacy rate 72.89. When Lakshadwee became U.T in 1956 the percentage of literacy was 15.23.

History

The lack of old written documents kept the history of the Laccadive, Aminidive and Minicoy islands in obscurity. The earliest reference about Lakshadwee was by an

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12 Males 20377 and Females 19872.
15 This is the language in nearby Maldives Islands.
Anonymous author of the first century A.D. These islands which lie in the trade routes from Arab and African parts to Malabar must have been a resting-place for the Arab trading vessels. Interesting legend on the discovery and settlement of the islands is linked with Cheraman Perumal. It is to be presumed that after initial settlement and inhabitation, the islands had been to a great extent, autonomous. A clear picture emerged later, is about the Kolathiri’s controlling the entire north Malabar and the Laccadives at the beginning of the tenth century from their headquarters at Ezhimala near Cannannore. About, later part of eleventh century A.D. or early twelfth century, the administration of the Laccadive islands was under a principality known as the Ali Rajahs of Cannanore till their sequestration by the English Company in 1908.

In 1509 the Portuguese commander declared the islands to be Dominions of the King of Portugal by conquest and ordered the Mammalis to stop their trade with the islands. The Portuguese regime was one of extreme oppression. Around 1543 the Portuguese rule in the islands ended.

It was to be presumed that Kolathiri transferred the islands to the full control of the Arakkal House after the Portuguese period on a tribute. The Arakkal Administration of the islands was effected through Kariyakkars appointed in each island. In those days there were monopolies on several articles such as coconut, cowries, tortoise shell, jaggery

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16 Local traditions assign the first settlement of Lakshadweep to a shipwreck members of Keralites who were on the way to bring King Cheraman Perumal from Mecca in ninth century. Therefore originally inhabitants were all Hindus, later converted into Islam. See N.S. Mannadiar (Ed.), Gazetteer of India: Lakshadweep, Administration of the Union Territory of Lakshadweep, Kavaratti (1977), pp. 35-37; R.H. Ellis, A Short Account of Laccadive Islands and Minicoy, Madras (1924), p. 9. A. Sreedhara Menon, A Survey of Kerala History, Kottayam (1970), pp. 135-136.
etc. An enormous profit, even about 200%, were used to be realised by the Arakkal Kings from the monopoly.

The coir monopoly ultimately led the people of Amindivi group to revolt and to approach Tippu Sultan of Mysore. In 1787 these five northern islands, Amini, Kadamat, Kiltan, Chetlat and Bitra came under Tippu, while the rest continued to be under the Arakkal Rule. These northern groups of islands are known as Amindivi group of Islands. Tippu put an end to the traumatic Kariyakkar administration. He appointed a Manegar at Amini to look after the five Amindivi Island's affairs. The post of Manegar continued during British period also. Under Tippu, the islanders got a more benevolent administration.

In 1799 with the fall of Tippu Sultan, these five islands known as Amindivi Islands were annexed by the East India Company and they formed part of the South Kanara District. Meanwhile, in 1791, the southern islands also went into the hands of East India Company by the conquest of Cannanore along with other possessions of the Beebi of Cannanore. The British control was nominal, and the Beebi retained the administration for an annual tribute. When the British sequestrated the islands for arrears of revenue and took over the administration on 1875, it was attached to the Malabar District. This division of islands into two groups: northern or Amindivi group of islands or South Canara islands and southern or Laccadive and Minicoy islands or Malabar islands continued till the grouping of the islands into a union territory on 1st November 1956. On 1st November 1956, states of the Indian Union were re-organised on linguistic basis. Then two groups of islands were separated from the south Kanara and Malabar Districts of the erstwhile Madras State to form a separate Union Territory of Laccadive,
Minicoy, and Amindivi islands. On 1st November 1973 the names of the territories were officially changed into Lakshadweep.

Administration

In the olden days nearly for six months in a year this territory was totally inaccessible.\(^{18}\) This is due to the risk in crossing rough sea by using unmechanised boats. The peculiar customs and the life of the inhabitants of Lakshadweep are recognized throughout centuries. By a notification dated 19.2.1889 the British India Govt. declared this territory as a Scheduled District under the Scheduled Districts Act of 1874. The peculiar customs and life of the inhabitants also gave them a separate status. Thus the territory had been declared as a scheduled District under the Scheduled Districts Act. In the Government of India Act of 1919, this protection was preserved and the territory was declared as a “backward tract” under section 52A of the Act. Under that section, only Acts specifically declared as such were to be applicable to the territory. Under the Government of India Act of 1935, again the islands were declared as “excluded areas” and were subject to the same immunities until the framing of the Constitution of India in 1950. When the constitution of independent India is framed, the islands are treated separately by including this into Scheduled Area. The spatial and cultural isolation and the resultant disabilities and lack of opportunity compelled our constitution framers also to give a special status to the islands. The Laccadive, Minicoy and Aminidavi islands, as per original constitution 1949, was part of the state of Madras. In 1956 when states were

\(^{18}\) Now the situation is changed. The islanders are having daily flights connecting with main land and they are having all weather ships. They are having internet connections in all the islands. Lakshadweep is having highest number of telephone per 1000 of population in India. Almost all the houses are having TV.
reorganised, it was constituted as a separate Union Territory. In 1973 the name has been changed into Lakshadweep. Though this is a Union Territory there are differences in the actual system of Administration. Article 239 (1) provides that save as provided by Parliament by law, every Union Territory shall be administered by the President acting, to such extent he thinks fit, through an Administrator to be appointed by him with such designation as he may specify. Thus Lakshadweep is administered by an Administrator as the agent of the President of India and not by a Governor acting as the head of a State. In the case of Lakshadweep Islands, being a Union Territory, Parliament has exclusive legislative power including matters, which are enumerated in the State List.

Constitution has made special provision for the Administration of Lakshadweep on the basis that it is a Scheduled Area. President has got a legislative power, namely, to make regulations for the peace, progress and good governance of this territory. This power of the President overrides the legislative power of the Parliament. As regards Lakshadweep he may repeal or amend any Act of Parliament, which is for the time being applicable to the Union Territory.

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19 See State Reorganisation Act, 1956 and the Constitution (7th Amendment Act), 1956.
20 Heterogeneous designation have been specified by the President in the case of different Union Territories:
   (a) Administrator — Chandigarh, Dadra & Nagar Haveli, Daman & Diu, Lakshadweep.
   (b) Lieutenant Governor — Andaman and Nicobar Islands.
22 The power to declare any area as a 'Scheduled Area' is given to the President by Schedule V of the Constitution of India and the President thus issued the Scheduled Areas Order, 1950 in pursuance of this power.
23 Constitution of India, Art. 240(2).
Present Administrative Set up

The headquarters of Lakshadweep Union Territory is at Kavaratti Island. Administrator is controlling functions of all the administrative and executive machinaries in the district. The district administration, law and order and development programmes are under the purview of the Collector – cum – Development Commissioner who functions under the direct control of the Administrator. He is also the District Magistrate and under him functions an Additional District Magistrate and nine Executive Magistrates. The Settlement Officer is the Additional District Magistrate and the Deputy Collector and Sub-Divisional/Additional Sub-Divisional Officers are the Executive Magistrates. The Superintendent of Police controls the police force, while Administrator is the Inspector General of Police.

To bring the administration closer to the people, the islands are divided into 4 major sub-divisions and 5 minor sub-divisions. For the administrative purpose the islands are classified into major and minor islands. The Major circle includes Kavaratti, Androth, Amini and Minicoy. All other inhabited islands are minor islands. The island Bitra comes under the jurisdiction of Chetlat minor sub-division and Bangaram under Agatti minor sub-division. The uninhabited islands attached to each of the islands also include in the respective major/minor sub-division. The major sub-divisions/minor sub-divisions are under the charge of Sub-Divisional Officers/Additional Sub-Divisional Officers respectively.

For the first time, the islands were linked with a democratic set up on 6th April 1990 when the island councils under the Lakshadweep Island Councils Registration, 1988 were constituted and came into force. A Pradesh Council is also constituted for the Union
Territory with 21 members elected from the island councils. The representation is limited to three from the major islands of Minicoy, Androth, Kavaratti, and Amini, two from Kalpeni, Agatti and Kadmat and one from Kiltan, Chetlat and Bitra. In addition to this 21 members, Members of Parliament from Lakshadweep, Administrator and Collector – cum – Development Commissioner of the Union Territory are also the members of the Pradesh Council.

Abolishing these Island Councils and Pradesh Councils, the Panchayat Raj system was introduced and elections were conducted to Dweep Panchayat and District Panchayat in December 1997. Now devolution of powers to Panchayat Raj institutions are being put into practice.24

**Restriction on Entry**

Though Lakshadweep is a part of India any non-native of Lakshadweep islands can enter there only with the prior permission of Lakshadweep Administration. For that visitor should obtain sanction by submitting written application in a prescribed perform.

Similarly only the persons whose both parents are the islanders alone can hold property there in the Lakshadweep islands. This is to preserve the culture and identity of the islanders.25 The study comes with similarities and dissimilarities between

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24 Lakshadweep India 50, pp 70 and 76.
25 In the 1912 Regulation, the Collector was authorised to enforce reasonable restriction on entry of outsiders of into the territory. After independence ‘The Amindivi Islands (Restriction on Entry and Residence) Regulation (Madras Regulation 4 of 1949)’ came into force. It was only in 1967 that the rules applicable to the entire territory [Lakshadweep, Minicoy & Amindivi Islands (Restrictions on Entry and Residence Rules)] were framed and issued under Section 9 of the L.M. & A. Islands (Laws) Regulation 1965.
Lakshadweep and mainland in many fields-religious practice and personal law property, land tenure and land reform, women’s status, legal profession and social control. However, with the difference in language, ethnic stock and culture Minicoy is not having any similarity with other Lakshadweep islanders. They are not having the joint family system of Lakshadweep. They are following customary shariat. This study does not that system, which require more thorough investigation as a separate study.
CHAPTER –II

RELIGION AND CASTE IN
THE ISLANDS