CUSTOMARY MALABAR SOCIETY - EIGHTEENTH CENTURY SITUATION

CHAPTER II

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Malabar, the southern territory on the west coast of India, destined to be ruled by the British since 1792 till the independence in 1947, was well known to the outside world from time immemorial. Its unique geographical peculiarities, outstanding commercial potentialities, coupled with the generosity extended by its chieftains to outsiders, made it a land of much temptation to the foreigners. How intense this fascination was is clear from the fact that the trade and cultural exchange which started in some dim, distant past well succeeded in stretching beyond centuries down to the modern times. And it was perhaps the outstanding qualities of the trade items of this region, which again tempted the Europeans in the modern times to select this part of the world as one of their coveted destinations in the process of expanding their colonial ambitions.

Even more wonderful to the European minds was the very extraordinary cultural peculiarities they happened to see in this region, which were quite different from the general Indian peculiarities. It was a great surprise to the early British enquirers, the Joint Commissioners deputed by the East India Company in 1792, to see that Malabar was not under the control of a single central political chieftain, but under several feudatory chieftains of varying degrees of power. This was not the only deviation Malabar had from
the other parts of India. While in the rest of India the ruler was looked upon as the sovereign of all lands of the country, in Malabar political authority and land control were two entirely different entities. While the political chieftains were never asserting any authority over the land except those lands which were allotted for their expenditure called the cherikkals, the so called janmis who were at the helm of land control were not claiming any political power for themselves.

A very unique peculiarity, which every foreign visitor noticed in customary Malabar, was the intense attachment of its people to their customs. The every day life of the people of Malabar was so strictly regulated by so many age-old usages, perhaps with almost dictatorial might. William Logan, Malabar collector in the 1880s, who approached the Malabar problems with a sort of sentimental attachment, gives a graphic account of it. There was no written authority to guide them; but the oral tradition was high, and nobody had the guts to violate or overrule the customs. Most of the customs, the roots of which could be searched somewhere in the post-perumal era, became gradually institutionalised, through so many centuries of continuous observance. The people of Malabar were not at all disturbed by whatever was happening beyond their geographical and cultural horizons. While outsiders took great fancy in visiting Malabar, the people of Malabar seldom went out to see the world beyond them. It was an extremely conservative, almost stagnant

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social set-up that the British enquirers happened to see in Malabar.

For a study of the customary Malabar society as it existed just before the British ascendancy, the most important sources are the early British Survey Reports\(^2\) and the innumerable Judicial Records available in the Archives and the Court Record Rooms. The early reports of the East India Company's officials were mainly based on the details collected by them from the local experts, as well as through direct observation. Beyond their official needs some of the company's officials were really enthusiastic to study the wonderful aspects of Malabar culture. We have a full glossary of the Malabar tenurial terms prepared by H.S. Graeme Esq., while as Commissioner of Malabar, prepared in 1820s and available in manuscript form\(^3\).

Along with the growth of British power in Malabar, so many official publications came out giving very exhaustive explanations on every minute aspect of Malabar society. The Manuals, Gazetteers, Statutory Reports, Statistical Atlas etc are invaluable sources for a student of Malabar history. The names of British officials and judges like Farmer, Graeme, Munro, Holloway, Strange, Wigram, William Logan, Henry Mayne, Innes C.A. and others are remarkable in this line. Buchanan's Travel Accounts, though with exaggeration of details

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\(^2\) British East India Company's officials started surveying the Malabar region even before its actual acquisition came in 1792. Detailed reports came out in almost every correspondence done in those days. A very substantial one which is an exclusive Survey Report was the 'Descriptive Memoir of Malabar' by Lieutenants Ward and Conner which gives in admirable way the details of the geographical and statistical surveys of the Malabar region undertaken during 1824-1830.

\(^3\) Graeme's Glossary (Manuscript), Regional Archives, Calicut.
here and there, give an attractive description of the Malabar of 1800.

The British compositions definitely had their limitations, since their authors were explaining the features of a civilization completely alien to theirs, but the painstaking effort expended over them by the early enquirers can never be underestimated. The Judicial Records are truly reliable sources for the very exhaustive way they have analysed and explained the customary truths of Malabar by collecting information from all possible sources. A true picture of the harm done to the customary maryadas of the land through the irrational and unjustifiable revenue settlement of the company too is obtained from the judicial sources. Indian Judges like Muthuswami Aiyar, Sadasiva Aiyar, Sundara Aiyar, Chandrasekhara Aiyar, Chandu Menon, Hidayatullah and others contributed towards explaining historical truths about Malabar social realities through judicial interpretations.

Attempts to study the cardinal features of customary Malabar life in a more scientific way came from the part of the native historians of Kerala in the pre-and-post-independent era. The source materials they relied most were the archaeological remains belonging to much earlier periods, the contemporary epigraphic records and the early foreign accounts. The process is still going on. The substantial contributions came from historians like Shankunny Menon, Elankulam Kunhan Pillai, K.P. Padmanabha Menon, K.V. Krishna Aiyar, M.G.S. Narayanan, Rajan Gurukkal, Raghava Variyar, Kesavan

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4 Buchanan Francis, op.cit.
Veluthat, K.N. Ganesh, M.P. Joseph, Ibrahim Kunhu and many others.

To anybody looking dispassionately at the customary Malabar society prior to British ascendancy the immediate striking impression would be an awareness of its projecting multiple socio-economic identities. Of these, the most important one definitely was the extraordinary importance attached to landed properties, whether at the tenurial or on the family inheritance level. Land, which was viewed with deep veneration, and recognized as divinely gifted to the Brahmans, was the chief binding force of Malabar social life between various classes. Land was never subjected to division or partition. Every human activity in customary Malabar was in complete subordination to their land concept.

Land relations and the system of production then existed definitely was not the continuation of the system existed in primeval Kerala, the growth of which might have been arrested at some historical turning points in the history of the region. Private ownership of land was familiar to the people of Malabar as early as the sangam age when land remained in the hands of the indigenous population, mostly cultivators who enjoyed customary proprietary rights till the sixth century A.D⁵. The arrival of the Brahmans to Malabar, which began during the turn of the Christian era from the northern regions,⁶ resulted in a wholesale change in the primeval

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communal ownership and the primitive agricultural system based on co-operative labour\(^7\). The Brahmans, by lavishly using their vocabulary, knowledge in the Vedas, wisdom and new techniques of agriculture prompted the people to donate their lands to the temple, the God’s abode. And through long series of land transfers called *attipper* grants, the whole land in Malabar, cultivated and uncultivated, including all its grass, stone, shrubs, snakes and everything else became the absolute property of the temples\(^8\). After achieving this, the temples in turn transferred the inferior right to cultivate the land to the original donors as *karalars*. In this land redistribution the Brahmans as temple *uralans* became the most superior class with their legitimization myth that the Kerala land was divinely gifted to them by the legendary divine hero Parasurama. The Tiruvalla copper plates speak of the great volume of wealth accumulated by the temples in the eleventh-twelfth centuries A.D\(^9\).

Divine claims of the Brahmans, called the Nambudiris of Malabar, gradually pushed down the other classes to social inferiority; the social status of any class in Malabar came to be reckoned according to the way it affected the Nambudiri interest. A marked change in the medieval social transformation was the birth of the *janmi* system, when the Nambudiris converted this title on the land to *janmam* or hereditary right. The complete authority over the

\(^7\) Gurukkal, Rajan, The Kerala temple and the Early Medieval Agrarian system, Kottayam, 1992, p.28.
\(^8\) Ibid., p.34.
\(^9\) Ibid., p.32.
temple lands and an equal authority over the agricultural lands made the Brahmans a power factor in medieval Kerala, giving the impression to an outsider that lands were under their absolute control.

However, the Nambudiris did not take direct possession of the land so donated; they directly controlled only those lands where their illoms situated. All the other lands, so scattered, were allowed to remain in the hands of the original donors, but as though leased to them by the Nambudiris, whose duty was just to cultivate them and pay rent to their Nambudiri landlords as divinely appointed guardians. Originally called karalars, in medieval times, cultivators gradually came to be called kanakkars with occupancy rights on the lands they were cultivating. By giving this right to the kanakkars the janmi found it quite convenient to manage the widely scattered landed properties about which he himself had no definite picture. Originally called karalars, in medieval times, cultivators gradually came to be called kanakkars with occupancy rights on the lands they were cultivating. By giving this right to the kanakkars the janmi found it quite convenient to manage the widely scattered landed properties about which he himself had no definite picture. The kanakkars, in whose possession most of the janmi’s lands were, did the cultivation work through their caste inferiors, the actual tillers of the soil, whose occupancy rights were limited to their habitats only.

Theoretically speaking, the kanom right and the occupancy rights following from it, were only temporary, subject to revocation or renewal after an agreed term, usually twelve years. Though redemption clause was included in the lease deeds, evictions etc. did not take place. In most cases renewals alone took place, which almost

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became a precedent, allowing the same family of *kanakkars* to continue for several decades and even centuries, with their occupancy rights almost becoming permanent. Renewal of the right took place on the expiry of the existing *kanom* deed or on the death of the existing *kanakkar* when his successor to become the next *kanakkar*. Hence, though the *janmis* were the customary proprietors of all lands in customary Malabar, the occupancy rights were always with the *kanakkars*\(^{11}\).

A very unique aspect of the customary Malabar tenurial relations was the right conferred upon each class in sharing the resources of the country. Land as a saleable item with any definite market value was never recognized in customary Malabar. Since the only purpose for which land was used then was for cultivation, the value of the agricultural produce from the land alone was considered for the full value of the lands. The produce of the land was divided among the various classes according to the social status of each class as their customary share of the produce. The right enjoyed by any class in customary Malabar was this share of the produce, and never an absolute right on land itself. The *janmi*’s share of the produce was the *janmam* right, the *kanakkar*’s share the *kanom* right\(^{12}\) and that of the inferior classes including the tillers of the soil, their *cherujanmam*.

The quality and quantity of the share of each class came to be decided according to their social status. The source of the *janmam*


\(^{12}\) Variyar Raghava (ed), Keralaolpathi Granthavari, op.cit., p.10
right, the most superior one, was the janmi himself, as the proprietor of all lands. The janmi's share of the produce was a permanent right, which the kanakkars were liable to pay. The right is hereditary too; it passes spontaneously from father to son. The right remains forever with the janmi, till he himself opts to give it up, which is possible through an absolute sale to an outsider, who is his caste equal, called attipper. Unlike the janmam right, all the inferior rights were only temporary, which could be revoked at any time at the pleasure of the janmi, though the same rarely happened in customary Malabar. In most cases the members of the same family of kanakkars continued; still their right could never become permanent; it could not automatically pass from a kanakkar to his natural successor; renewal of the old contracts was an inevitable aspect of the kanom interest.

For cultivating the land of the janmis as well as for occupying it, the kanakkars had to pay regular rent or pattom to the janmi which became the latter's share of the produce. At times either as security to the lands leased or as loan the janmi was taking advance from the kanakkar. Whenever the janmi was in need of money, it was the duty of the kanakkar to advance loans, which were refunded by the former with interest. Both lease and mortgage were in existence in Malabar. Out of the yield from the land in his possession, the kanakkar, after paying the rent, that is janmi's share of the produce, and meeting the expenditure of the cultivation, including the share of those working

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13 Ganesh, K.N., Keralathinde Innalekal (Mal), op.cit., p.84.
14 Indian Law Reports, Madras Series, Judgements on Malabar Law - Land Tenures.
under them as actual tillers of the soil, the balance became his share. Below the *kanakkars* were the actual tillers of the soil whose rights were far inferior to those of the upper classes. In *keralolpathi* the right of these inferior castes is referred to as *kizhkurs*. The artisans, craftsmen, astrologer, goldsmith, carpenter, washerman, barber, and the tillers of the soil working for the melody of the society had their own privileges, great or small\(^{16}\). Neither the *janmi* nor the *kanakkar* could deny the privilege of any other depending class, which would result in unpleasant happenings. In customary Malabar every class was entitled to enjoy its share of the produce inspite of the rigid caste practices, which definitely denied human consideration to a large majority.

The land rights enjoyed by the various classes in customary Malabar were transferable too. The *janmi* could effect an absolute transfer of his interest through sale called *attipper*, which terminates his *janmam* right on the land. Since the lands were recognized as divinely gifted to the Nambudiris in *janmam*, *attipper* grants could be made only to a Nambudiri who alone was found appropriate to keep its sacredness. The right so transferred was only the previous *janmi*’s share of the produce as rent, and in no way affected the *kanom* transactions effected by him. As the *janmi*, the *kanakkar* too could transfer or sell his interest to one willing to do the obligations to the *janmi* and accept all the tenurial encumbrances attached to the *kanom*

\(^{15}\) Vairiar, Raghava (ed), Keralolpathi Granthavari, op.cit., p.10.

\(^{16}\) Menon, K.P. Padmanabha, Kochi Rajyacharirthram (Mal), Ernakulam, 1914, p.121.
right. By the fifteenth century attipper etc. became rare, since most of the janmis became interested in keeping their janmam right intact instead of transferring it to anybody else\textsuperscript{17}. However, it was this buying and selling process conducted through attipper and the wording in the deeds in which such transactions were recorded, that misled the early British administrators and caused them to form erroneous views on the general subject of this malayalee land tenures\textsuperscript{18}.

Malabar society of the eighteenth century carried within it many of the feudal characteristics - private property in a customary sense did exist there. The local chieftains called the naduvazhis had lands belonging to their kovilakoms called cherikkal lands. There were hereditary janmam properties of the Nambudiris called brahmaswams with attipper rights. There were large acres of lands called devaswoms attached to temples. The lands under the kanakkars too appeared as their permanent property because of their continuous stay in them for so many years. Even the tillers of the soil had the consoling factor that they would not be expelled from their small holdings. It was a broad structure of co-existence and interaction based on dependence and obligation in the descending order\textsuperscript{19} from the janmis to the agrestic slaves. The customary tenurial co-existence is defined as kana janma maryada in keralolpathi\textsuperscript{20}. The paradox of the Malabar landed

\textsuperscript{17} Ganesh, K.N., Keralathinde Innalekal (Mal), op.cit., p.144.
\textsuperscript{18} Logan, William, op.cit., p.602.
\textsuperscript{19} Gurukkal, Rajan, op.cit., p.67.
\textsuperscript{20} Variyar, Raghava (ed), Keralolpathi Granthavari, p.10, Ola 11, Puram 1.
property was that the ownership was simultaneously absolute as well as non-absolute. While the title of *janmam* was absolute, the soil as such was never absolutely owned by anybody. Private property in Malabar was never in the Roman model. Roman landlord's right over the soil was absolute; the right he was giving the tillers of the soil was only for cultivation\(^{21}\).

There was a triangular feudal relationship between the three-landowning classes in Malabar. These three classes, the Nambudiris, the *naduvazhis* or the Rajas and the Nairs had a sort of indebtedness to each other arising from their special requirements connected to land ownership, political status or social circumstances.

For getting complete recognition to their spiritual superiority and *janmam* claims the Nambudiri's indebtedness to the *naduvazhis*, the political chieftains of Malabar, was great. In gratitude, the Nambudiris were never claiming any political authority over the lands under their control, and during times of external threats quite readily helped the *naduvazhis* by sending their Nair militia. Nambudiri *janmis* were indebted to the Nair *kanakkar* for organizing the army as well as to get Nair concubines for the younger male members of the *illum*.

In the early stages of the Brahman settlement it was most likely that clashes took place between the tribal chieftains called *nattudayavar* and armed Brahmans. A modus operandi might have

\(^{21}\) Davies H.A., op.cit., p.304.
reached at a later stage, which helped some of the powerful tribal chieftains to become the *naduvazhis* in *swaroopams* with spiritual sanction and Kshatriya status granted by the Nambudiris and the Nambudiris became ready to recognize the *melkoyma* of the *naduvazhis*\(^\text{22}\). The *naduvazhis* were indebted to the Nair soldiers for military service in the process of defending the country.

The *kanakkars* were mainly the Nairs, whose social status was inferior to that of the Nambudiris, but superior to that of most other castes. In order to ensure the military service of the Nairs they were granted the *kanom* rights, which made them gradually the permanent occupants of most of the cultivable lands, and assured for them the status of a high caste. The peculiar system of family inheritance of the Nambudiris and the Nairs in which family property always remained impartible, Nambudiri men found it convenient to enter into loose marital unions with Nair women called *sambandhams*, which gave the former no liability.

The very large joint families of Nambudiri *illoms*, *naduvazhi kovilakoms* and Nair *tarwads* became the three active pillars upon which the feudal superstructure of customary Malabar was made to stand. Customs became so well established and almost institutionalized with so many socially inferior classes in the service of these three upper classes at the base. This was the actual picture of customary Malabar on the tenurial side at the time the Joint Commissioners deputed by the British East India Company started

their enquiry in 1792, though a little mutilated due to the Mysorean inroads.

A historical analysis of the customary tenurial relations of Malabar does not become complete without a reference to the much discussed composition in Malayalam, the keralolpathi\(^{23}\), which was offered to the British Commissioners by the Nambudiris as the written authority for a proper understanding of the Malabar tenures\(^{24}\). This historical treatise of unknown origin, but of a later compilation is supposed to be the Malayalam version of the Parasurama stories, which appeared in different ways in different parts of the country. Probably composed by the Nambudiris, its factual aspect tries to tell us that Parasurama brought the Arya Brahmans from outside to whom sixty-four gramams with water and flower were granted with janmam rights in the fertile lands of Tulunad and Kerala\(^{25}\). Sudras were brought, settled and instructed to obey the Brahmans, their protectors, and various rules of conduct were also prescribed for them. "He created adima and kudima in the desam, protected adiyans and kudiyans, established taras and sankethams, separated the Nairs into taras" and the supervision work over the land was given to them. To the kudiyans the kizhkur (inferior share) to the Brahman the melkur (the superior share); to the former the kanom, and to the latter the janmam; and so the law of kanom and janmam and the rules of conduct for the Brahmans and custom for the

\(^{23}\) Gundert, Herman.(ed.) Keralolpathi (Reprint) Trivandrum, 1961.

\(^{24}\) Joint Commissioners Report 3 Vols. Regional Archives, Calicut.

sudras were ordained. The morale of the tenurial relations of customary Malabar was kana-janma-maryada, that is the observation of brahmanacharam and Sudra maryada and the construction of illoms for the Brahmins.

The keralolpathi also tells us of how the perumals were brought from outside by the Brahmins to become ruling chieftains of Kerala. It is so stated that in order to settle the disputes among the several Brahman groups kazhakams were formed and even then when solutions could not be found, it was decided that henceforth protection and administration need not go well in the hands of Brahmins and that there should be a king to rule the country. This is being projected as the background of the origin of a political sovereignty in Malabar with the blessings of the Brahman priests. The reference to the akambadi soldier, the patamalai nayar is also obtained. Hints to the installation of seventeen naduvazhis in the seventeen nadus for giving happiness and satisfaction to the Brahmins are there. It is also hinted in the keralolpathi that after completing his political mission in Malabar cheraman perumal started for Mecca with the Arab Muslims who came to his kingdom.

However, the repeated stress in the keralolpathi is only to the Brahman domination over all the lands in Malabar; in almost every page it is done. All other social peculiarities explained are only

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26 Quoted by Innes, C.A., op.cit., p.305.
28 Ibid., pp.1-65.
agencies to safeguard the land, which was divinely gifted to the Brahmins. Perhaps keralolpathi might be exaggerated versions of some socio-political developments, which actually might have taken place. And whatever might be the truthfulness of this composition, the tenurial reality the British Commissioners happened to see in Malabar at the end of the eighteenth century was one well suited to the explanations given in the keralolpathi.

In the Proceedings of the Sudder Court, 1856, we get an account of the land tenures of Malabar with the conditions on which they were held at customary basis in pre-British India, that is the legal interpretation given to the tenurial terms as identified by the early British Surveyors.

Family Inheritance

According to William Logan, the most important of the customs in which the people of Malabar differ from the people elsewhere is that connected to the inheritance of property. Landed property in Malabar, whether on the agrarian or on the family inheritance side, was a mighty venerated institution of inestimable spiritual value. Its inalienability and impartibility became everybody’s concern; such divinity was attributed to everything connected to land, especially its

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29 Ganesh, K.N., Keralathinde Innalekal (Mal), op.cit., p.132.
impartibility on the family inheritance side, that all human relationships were so shaped as to do no harm to its undivided existence. This was responsible for the cultivation of so many very peculiar, extraordinary, social habits by the people of Malabar which went to the extent of denying to a great majority of them even the primary joys of human life, and the gradual stagnation of the society itself.

The Malabar family, irrespective of caste distinctions, was a joint family in which so many generations lived under the same roof sharing the fruits of the undivided family property in common. The system of inheritance was mainly of two types – makkathayam or patrilineal succession in which descent was traced through the male, that is from father to son, and marumakkathayam or matrilineal succession in which inheritance was through the maternal line, that is, from the maternal uncle to the nephew or the immediate younger male member on the female side. While the former was the system practised by the rest of India, the latter was something peculiar to Malabar. The Malabar counterpart of even those communities, who are absolute followers of the patrilineal system in other parts of India or world, came to adopt the marumakkathayam system in the inheritance of family properties.

The existence of such a system of inheritance in which a person’s natural successor is not his children but his sister’s children was a rare phenomenon in the eighteenth century world context. And so too, we could not hear of a Muslim community anywhere in the
world at that time following strict matrilineal succession, which is un-Islamic in character, as a section of the Mappilas of Malabar. And it was equally strange that in the whole of India the only matrilineal example of the Brahmans was that of the Thirumulpads of Payyannur Gramam in North Malabar. And nowhere in India was people’s attachment to the land so high as to forsake everything else for its sake.

In order to understand the agrarian relations of customary Malabar we have recorded evidence in works like keralolpathi with proper explanation to the tenurial terms. On that aspect mistake came on the part of the early interpreters, who misinterpreted those terms in a way they did not mean. But to understand the family inheritance system of customary Malabar no such written authority was available as to form a clear picture immediately. Only through constant observation of the existing situation could the early British enquirers, mainly for judicial purposes, enter into their chequered history kept alive through oral tradition.

Social Order

Malabar is famous for its wide variety of castes and communities, consisting of those who originally occupied it and of those that migrated to it from other countries. The aborigines of

33 Aiyar, Sundara, Malabar and Aliyasantara Law, Madras, 1922, pp.1-2.
Malabar are possibly represented by the Cherumans and Pulayans, the agrestic slaves of the soil, and by the jungle tribes of the Kurumbans, Kurichiyans, Paniyans\textsuperscript{34} etc. Beyond these original inhabitants, who were later pushed down to the lowest rungs of society by the socially superior classes, all the different castes and communities of Malabar were the offspring of the immigrants from various parts of India as well as outside. This was the case with the Nambudiris, Nairs, Tiyas or Ezhavas, Ambalavasis, Mappilas, Christians and all other major or minor social classes.

The post-perumal period, that is from the twelfth to the end of the sixteenth century, witnessed the expansion and re-organisation of the nadus of which Kozhikode and Kolathunad became prominent in Malabar. Their political importance began to diminish from the seventeenth century and suffered the first major setback at the hands of the Mysore Sultans. The naduvazhi swaroopams were greatly indebted to the temple and Nambudiris for their origin and growth. The ritual authority of the Brahmans legitimized the political authority of the swaroopams, while the term melkoyima signifies the latter's overlordship, which helped the latter to take up the role of kingship in their political and juridical authority\textsuperscript{35}.

The temples, which began to play a vital role as an economic


and ideological power centre in the *perumal* period itself, later became associated with the *nadus*. That the *nediyirippu swaroopam* became associated with the Guruvayoor temple under the Zamorins of Calicut is symbolic of it. The spiritual submissiveness of the political chieftains to Godhead, Gods' abode, that is temples or *devasthanoms* and the God's voice spoken through the tongue of Brahman priests could be seen in their every day activities. Including the *ariyittuvazhcha* of the *naduvazhi*, which was conducted very ceremoniously, every auspicious function in the *naduvazhi* family took place with the blessings of the Brahman priest. The first pledge taken by the *naduvazhi* was to protect the Brahmans, temples and cows. Doing anything against the spiritual authority of the Nambudiris was considered a sin for which the *naduvazhi* would be appropriately punished. However, the role of the Nambudiri priest was only to spiritually guide the *naduvazhis* and not to make any political interference into the *nadus*.

The family abode of the *naduvazhis* was called *kovilakom* and their authority was entitled *koima*. The ‘*jati*’ formation took place in the post-*perumal* period on the birth of a new class of ‘*Kshatriyas*’. It led to the dominating position of the Nairs. The Zamorins of *nediyirippu swaroopam* were an aristocratic Nair sect of Malabar and so was the Kolathiris of Chirakkal, and many other lesser *naduvazhis*, attaining kshatriya status. The *naduvazhi swaroopams* followed

matrilineal system of inheritance. The royal properties attached to the kovilakoms were called cherikkals; ankam, chunkam etc. were known as contributory revenue source. Though no regular revenue was collected, varom, pattom etc. occasionally came from their subjects. Nair soldiers were giving akampadi to the chieftains. The naduvazhis like Zamorin had relations with the Arabs, Chinese and later the Europeans. The fight with the Portuguese, Dutch etc. gradually weakened the power of the naduvazhis. With the English ascendancy it was completed. The British settlement of 1792 agreed to pay a share of the revenue of the naduvazhi’s territory to him on submission. Those, like Zamorin, Pazhassi Raja etc. who opposed it were soon suppressed.

In the Malabar kovilakom properties, which formed a tenure by themselves, certain portions were set apart for the individual enjoyment of the Senior Rajas, called the sthanom properties. The ‘sthanom’, also called ‘kuruvazhcha’ was a dignity attained by the senior Rajas in Malabar kovilakom in the order of rank as first, second, third, fourth etc. Those who attained any of these ranks were allotted separate properties called sthanom properties and do not share in the general kovilakom properties, though the sthanis role in the management of which would continue. As the sthanom is a personal title, accumulations made by the sthani were at his absolute disposal but if undisposed of during his lifetime would merge into the kovilakom properties. For his personal debts also he alone would be liable.

The multiple castes of Malabar are classified into two broad divisions on the basis of the twin systems of inheritance. The Malabar Gazetteers of the British period furnish a list of the Malabar castes in which twenty-two are recorded as governed by makkathayam, and twenty-seven as by marumakkathayam39.

Of the makkathayam Hindu castes of Malabar, the most dominant and the socially superior class was the Nambudiris. Only a section of the Nambudiris in North Malabar, the Payyannur Brahmans, became the followers of the marumakkathayam system. According to the Parasurama legend in keralolpathi it was in obligation to the desire expressed by Parasurama that they accepted the matrilineal system of inheritance, which the other Brahmans did not consent to do, on which the former brought the Sudras to act as akambadi to the Brahmans etc40.

The Nambudiris, that is the indigenous Brahmans of Malabar, are the descendants of the Rig-Vedic Aryans whose system of inheritance was basically patrilineal. The Brahmans came as immigrants from Konkan to the South in the early centuries of the Christian era and founded their first settlement at Cellur, Taliparamba in North Malabar41. By using their trustworthy behaviour, scholarship and vedic background the Brahmans succeeded in well persuading the indigenous desavazhis and

40 Variyar, Raghava (ed.) Keralolpathi Granthavari, op.cit., p.6, Ola 4, Puram 2.
41 Veluthat, Kesavan, op.cit., pp.11-17.
cultivators to donate their lands to the temples in Gods' trust, by accepting the Nambudiris as their uralans or governing agents\(^42\). In this way most of the riverside lands in Malabar passed into the hands of the Nambudiris, while their original donors correspondingly became just recipients of inferior rights from the former. The temples, acting as nerve centres of life in medieval Kerala, prepared the ground ready for the Nambudiris to transform their interest on land as hereditary right, that is janmam, and their caste status as the most superior one.

The Nambudiri chapter of Malabar history is abounded in themes of Nambudiri exploitation of all the other socially inferior classes as customary landlords. But behind the outward spendour of their janmam pretensions, an exploitation of a worse kind thrust upon their own community through the observance of a few intensely conservative and irrational customs was the inside picture of the Nambudiri caste. The result being that a large majority of their males and the females as a whole were put to inescapable agony for so many generations was a story little known to the outsiders till modern times. The Judiciary established by the British became largely responsible in bringing out from oblivion some of the most unpardonable customs of the Nambudiris to the public attention to be treated sympathetically\(^43\).


\(^{43}\) Indian Law Reports, Madras Series, Judgements on Nambudiri Law.
The Nambudiri customs were very extraordinary in character. The most important custom, which distinguished them from the Brahmins of the rest of India was their insistence to keep the family property impartible. Unusual divinity was attached to the *illom* properties, the protection and impartibility of which became the chief concern of all the family members. This dissuaded them from entering into any other profitable profession, which would have given mobility to the community. Including marriage, every other custom of the Nambudiris was adjusted for the sake of this prime purpose of safeguarding the family property impartible. While in other parts of India gradually the idea of partition came to be recognized among the Brahmans, the Nambudiris, as the followers of the ancient patriarchal set-up of the Vedic Aryans continued to stick on the custom of the younger members of the family remaining under the absolute control of the eldest male member of the family, under whose absolute control the family properties were.

A Nambudiri joint family or *illom* consisted of both males and females, each of whom was entitled to a share in the family property. The oldest male member of the *illom* the *karanavan*, became the manager of the properties from whom the title passed on to his eldest son from a legal marriage. In the absence of a male, the senior female member of the *illom* enjoyed this right; any member of the *illom* other than the *karanavan* was called the *anandaravan*. The old patriarchal set-up in which the son was a mere appendage to the father, with no right of property as opposed to him continued more or less in its
original form in the Malabar Nambudiri illoms$^{44}$.

Though the karana\'s authority in the management of the illom properties was almost absolute, he too, like all the other junior male members and unmarried female members of the illom, was only entitled to maintenance out of the illom property. A married woman had no right in her parental illom, but in the illom of her husband. The widow continued to live in the husband\'s family and without liberty to appear in the public. When an alienation of the property became inevitable the karana should get the consent of at least the senior anandara\n, and for division of illom into separate houses to suit the growing number of the family members, he should get the consent of all.

Legal marriage formed the basis of succession among the Nambudiris, as in the case of the rest of the Brahmans of India. But in the context of the impartibility of family property, the growth of the numerical strength of the illom had to be restricted, which compelled them to allow only the eldest son of the family to customarily marry a Nambudiri woman in the typical caste endogamous practice. The junior male members were forced to seek women outside their own community, especially in the warrior caste of the marumakkathayam Nairs. The children of these alliances belonged to their mother\'s family with no liability to the Nambudiris. Only the descendants of

the eldest male should perform their obsequies and became their heirs.

The condition of the junior male members of the Nambudiri family in this regard was far from happy, but that of the females was really pathetic. A Nambudiri woman had no right to marry a person belonging to any other caste; she must be ready to accept any Nambudiri of her illom's choice, at times a person as old as her grandfather with many other wives. A married Nambudiri woman's rights were only in her husband's illom even after becoming a widow; even if very young, she was not allowed to remarry once widowed. Only very few among the Nambudiri women got married, that too only to become one among the several wives of the eldest male member of an illom. Even with so many eligible bachelors in their own caste, but without the fortune of getting married to them, the majority of the Nambudiri women were fated to lifelong spinsterhood. The only consolation to her was the equality she enjoyed along with the males in the family property, whether married or unmarried, and as marriage usually took place on puberty many infant widows were not there in Malabar\textsuperscript{45}.

There was an extraordinary type of marriage among the Nambudiris called the *sarvaswadanam* marriage. It took place when a father, whose line was under threat of extinction in the absence of a male heir to succeed, chooses to give a daughter in marriage exclusively for the purpose of raising up an heir for it. A son born of

\textsuperscript{45} Vasudevan v. The Secretary of State for India, ILR 11, 157.
such an alliance would be considered as the real son of her father, that is the appointed daughter comes back as a son and becomes a member of his mother’s illom. He was not entitled to have any right in his father’s illom, where he could become only an attaladakkam heir. In most cases it might be an already married person who was accepted through the sarvaswadanam marriage, whose only mission was to become the father of a male child to save the father-in-laws’ illom from extinction.

An age-old custom among the Nambudiris was the system of adopting heirs to the illom when the family was in danger of extinction. There was no limit to the age or number of persons adopted, but the same varna or tribe was insisted. The widows too could admit such an outsider to perpetuate an illom or for the purpose of begetting issue through marrying for illom as in the case of sarvaswadanam marriage. In the case of the widows, not the one who was senior in age, but the one who was married first to the illom got the upperhand in the case of the management of properties. Individual possession of lands, self-acquisitions etc. were rare especially in the absence of family formations through valid marriages by the younger male members of the Nambudiri illoms.

A custom, which may seem quite undignified to the ethos of a civilized society, prevalent in the Nambudiri community from the early days, was the so called smarthavicharam, which was an enquiry made by the caste tribunal into the charges of immorality brought
against a Nambudiri woman. The suspected woman, who was referred to as sadhanam, or thing, was subjected to continuous questioning in a torturing way into the details of her sexual irregularity by the Panchayat under the smartha, its president, till she admits her guilt. When found guilty, her funeral rites were performed; she was outcasted and purificatory ceremony was held in the illom. Along with her, those males who had a suspected share in her offence were also deprived of the sacred caste privileges.

The Nambudiris of Malabar were extremely conservative in their social habits, which gave no room for any progressive ideas to make entry. Their janmam pretensions though put them at a social status of unimaginable height, their irrational customs were capable of pulling them down to the abyss. This was where the Nambudiri community reached at, at the end of the eighteenth century.

A system of inheritance, which had no parallels in the Indian context, was the marumakkathayam system practised by a great majority of the people in customary Malabar. The term 'marumakkathayam' is applied to that system of kinship, which regulates succession through the maternal line, that is from the maternal uncle to the nephew, and in which fathers are practically ignored. A marumakkathayam family consisting of all the descendants in the female line of one common female ancestor was known as tarwad. The urge and effort of every member of the tarwad, to keep

47 Panikkar, T.K.Gopala, Malabar and its folk, AES Reprint, Delhi, 1983, pp.17-34.
the prestige of the impartible, inalienable tarwad property had been recorded by the early foreign visitors like Sheik Zainuddin48.

Though marumakkathayam system of inheritance was followed by certain sections of all the castes in Malabar, the Nairs, who were the possessors of most of the agricultural lands in Malabar as kanakkars, as a whole were its followers; and for that reason the most typical example for a case study. In the exceedingly complex marumakkathayam family set-up of the Nairs, a mother and all her children by her daughters, male and female, all her grandchildren by her daughters, all her brothers and sisters and the descendants on the sisters' side, in short all the woman's relatives on the female side, however distant their relationship, lived together in the same block of buildings, sharing everything there in the property, and share it after her death in common with one another, sometimes the number of members even exceeding two hundred49.

The property belonging to the tarwad is the property of all the males and females that compose it. The individual members of the family had no right to anything but maintenance. Though the individual members were not entitled to enforce partition of tarwad properties, at times division was made inevitable due to the uncontrollable growth of the number of the tarwad members. On such occasions division was effected through the common consent of the tarwad members, diverting a share of the property to those who were

49 Panikkar, T.K.Gopala, op.cit., p.18.
desiring to form a new branch; any member in the original *tarwad* was at freedom to join with the new branch. The branches hence formed from the root *tarwad* were called *tavazhis*, which keep up the original tradition of their common descent, that is community of pollution, but enjoy their proportion of the *tarwad* property separately; that is the community of property no more exist\(^{50}\).

A Malabar *marumakkathayam tarwad* spoke through its head, the *karanavan* who was the senior most male member on the female side in charge of the management of the family properties. It was his right and duty to manage alone the property, movable and immovable, of the *tarwad*, to take care of it, to invest the movable ones in his own name either on loans on *kanom* or other security or by purchasing in his own name lands and to receive the rents of lands\(^{51}\). Though in theory all property was vested in the female members, their natural incapacity for family management authorized the eldest male member to act as the life trustee. The authority of the *karanavan* in the *tarwad* was almost absolute, with full control over the family members. However, in some of the *kovilakoms*, like the Zamorin’s family, the eldest female managed with the same power as the male *karanavan*.

Though as manager of *tarwad* properties *karanavan’s* authority was absolute, he too was entitled, like all the other members of the family, only to maintenance out of the joint property. He could not misuse his authority for personal interest, or alienate the *tarwad* properties

\(^{50}\) Moore, Lewis, op.cit., p.1.

\(^{51}\) Mayne, John, D., op.cit., Appendix III, p.973.
properties without the unanimous consent of the family members. His self-acquisitions too, if any, would merge into the tarwad property after death as those of others. Buchanan in 1800 wrote, "A man's movable property, after his death, is divided equally among the sons and daughters of all his sisters. His landed estate is managed by the eldest male of the family, but each individual has a right to a share of the income. Any junior member of a marumakkathayam tarwad was equally a co-owner and co-proprietor of the family properties, and deserving proper maintenance from the karanavan. But in the marumakkathayam tarwad nobody could demand for his separate share. On the death of the existing karanavan, the next eldest among the juniors, a brother or a nephew, that is anandaravan, becomes the next karanavan.

Though the marumakkathayam system of inheritance gave enough life security to the male and female members of the joint family, one tragic aspect of the system was, especially in the case of the Nairs, the almost complete denial of the right to legal marriage to a large section of the Malabar population. The military importance of this class was partly responsible for the absence of legal marriage in this caste. The support of the Nair militia was highly essential for the existence of the naduvazhi swaroopams. The Nair men were liable to be called at any time for active military service, which deprived them of their opportunities to settle down, except in old age, to look after the family property. A Nair soldier's life was completely attached to the

52 Buchanan, Francis, op.cit., p.96.
battlefield in obligation to the Nambudiri *janmi* and in service of the *naduvazhi*, which would be dulled once his greater affection was allowed to go to his wife and children. However, the high status the Nairs enjoyed in their military capacity came to an end with the East India Company taking away the military powers of the *naduvazhis* through an order after the acquisition of Malabar in 1792.

The absence of legal marriage and the absence of the Nair males in the *tarwad* on most occasions gave the younger male members of the Nambudiri *illoms*, who were denied of the privilege of marrying in their own caste, an opportunity to enter into conjugal relations with the Nair women, and without encumbrances. The children in the *marumakkathayam* family belonged to their mother’s family, claim and caste. They were Nairs, not Nambudiris, so the Nambudiri could not touch them without pollution. The Nambudiri relation helped the Nairs to enjoy the status of a superior caste, and to become the permanent occupants of the soil as *kanakkars*.

Promiscuity is ascribed to the *marumakkathayam* community, especially to the Nairs, by almost all the European authors from Fernao Lopez de Castinheda to William Logan, whereas contemporary indigenous folk literature or ballads do not speak about them. But the early foreign authors do not give hints to the

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existence of a customary marriage among the Nairs called samhandham, which, however, did not carry much meaning in a society which just ignored the paternal parent, and in which children grew under care of the maternal uncle. Still, their studies admit the fact that for over three hundred years Nair women of North Malabar had been living with the households of their husbands. The opinion is shared by Fawcett too, who had noted the existence of polyandry in South Malabar\(^57\). However, the right of a marumakkathayam wife in her husband's house was only till his death, after which she had to return to her own tarwad with her children and without much chance of visiting there again.

In a polyandrous society where paternity could not be determined, male inheritance of property became meaningless, leaving the option to the safe, unobjectionable method of female inheritance, by which nephews, and by necessary consequence sisters became the rightful heirs to a man's property instead of his wife and children\(^58\). It is graphically portrayed that the odd feature of the marumakkathayam system was that a man had his nephews about him in the house, while his wife and family lived in another tarwad\(^59\). In a marumakkathayam Nair family everybody was a victim to this custom, which took away from them the spice of family life.

Attempts to trace the origin of the marumakkathayam system

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\(^57\) Fawcett, F. op.cit., p.237.
\(^58\) Panikkar, T.K. Gopala, op.cit., p.39.
\(^59\) Fawcett, op.cit., p.237.
have not met with great success; the absence of any native written authority stood in the way. However, the travel accounts of the foreigners as eyewitness reports guided the early British enquirers. It was through constant observation and enquiries that an outline of these customs could be prepared, when became necessary for judicial purposes. A more wonderful aspect of the marumakkathayam system in Malabar was the circumstances, which helped its perpetuation here such as the Nambudiri factor, the insistence on the impartibility of properly, the military factor etc., the like of which was not in existence anywhere in India or abroad. Nevertheless, it had some good aspects too in the sense that it denied nobody's right and provided a life of security to the female members of the family.

The tarwad was the nucleus of all the multiple activities of the family members, cultural and intellectual. It had its own temples with separate property for their maintenance. The kalarippayattu, the martial art of Kerala, was an important aspect of the life of a Nair male through which his soldierly qualities sprouted. However, as part of their policy, the British after becoming masters of Malabar, immediately took steps to disband the Nair militia and to stop the military training of the Nairs through kalari. Another custom of the marumakkathayam Nairs is connected to their girls was the thalikettu kalyanam. It was a function in which the Nambudiri tied a thali round the neck of a Nair girl before the attainment of puberty. It was a sort of a mock marriage, which ends with the end of the ceremony itself.

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Among the other marumakkathayam followers of Malabar a branch of the Brahmans called the Thirumulpads of Payyannur, the Thiyas of North Malabar, the Mappilas of the coastal Belt of North Malabar etc. were important.

Mappilas, the Malayalam speaking Muslim community of Kerala was another prominent segment of Malabar population. The Mappilas were the descendants of the Arabs, one of the several non-Indian religious communities welcomed to Malabar in some remote past, from their union with the local Hindu women of this region. "The Moplah community of Kerala is undoubtedly descended from settlers and converts long before the days of the Muslim invasion of India". Malabar became one of the chief centres of the trading activities of the Arabs as early as the fourth century A.D. leading to its permanent settlement by a few of them by the seventh century A.D., mainly in the coastal belt. The first mosques were founded in Cranganore soon after the death of the prophet in 643 A.D. when a group of twenty Muslims led by Malik Ibn Dinar reached Kerala. Gradually, several Muslim settlements developed around important trading posts, particularly Cannanore, Pandalayini Kollam (Quilandy), Calicut and Quilon.

European domination over Malabar trade led to the shifting of the Mappilas to interior regions to become rural peasants and later to

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63 Panikkar, K.N., op.cit., p.50.
64 Koya, S.M., Muhammad, op.cit., p.5.
become victims of *janmi*-colonial exploitation in the days of the British rule. The expulsion of the Mysore Sultans and the conferment of absolute proprietary rights on the customary *janmis* by the East India Company led to the worsening of the living conditions of the poor peasants of Malabar, especially the Mappila tillers of the soil. The wholesale conversion of the low caste Hindus like the Cheruman, Pulayan, Vettuvan and Mukkuvan gradually raised the number of the Mappila population in Malabar. The statistical reports of the early twentieth century state that Muhammadans were more numerous in Malabar than in any other district in the Presidency and make up 30% of the total population, especially due to the conversion from the lower castes65. The community consisted of pure Arab settlers, of the descendants of Arab traders and women of the country, and of converts to Muhammadanism, mainly from the lower Hindu castes66.

The Mappilas of Malabar, as the Muslims anywhere in the world, were strict followers of Islam in their everyday spiritual life, being in complete submission to the injunctions of the Quran. And Islamic rules guided them in matters connected to the mosque, charity, marriage, and responsibilities of the partners in life, duties of every earnest Muslim and almost everything else. But in shaping the family laws and the laws of inheritance Islam was agreeing to grant a certain amount of liberalism in the case of its first converts by allowing them to continue their pre-Islamic usages. It was for the

66 Innes, C.A., op.cit., p.25.
purpose of making the new faith less hostile to the new converts, even while fully conscious that they were in direct contradiction to the Muslim ideology. This explains the background of the observance of the very extra-ordinary marumakkathayam customs by a section of the Mappilas of Malabar, especially of North Malabar, inspite of the strict father-right system of Islam.

Matriliny in Islamic setting is a paradox. The Islamic law of inheritance runs parallel to the matrilineal principle\textsuperscript{67}. Perhaps, the marumakkathayam of the Mappilas arose from the reluctance of some of the early converts to Islam to give up their pre-conversion Hindu matrilineal habits which was not objected by the Arabs who themselves had some mother-right ideologies\textsuperscript{68}. It was also a convenient arrangement for them, since their stay with the local women had a temporary nature. The great bulk of the Mappilas of South Malabar followed the patrilineal system of inheritance according to the Shariat law. Matrilineal customs were followed by a few wealthy families in the coastal towns of North Malabar like the Keyis of Tellicherry, the Ali Rajas of Cannanore, the Mappilas of Laccadives etc.

Contrary to the Islamic law of inheritance, in the Mappila marumakkathayam families, succession was traced through the females. In the Arakkal swaroopam, the only Muslim royal family in Malabar, succession was through the females, the Beebies, with

\textsuperscript{67} Dube, Leela, Matriliny and Islam, Delhi, 1969, p.78.
\textsuperscript{68} Koya, S.M., Muhammad, op.cit., p.17.
sometimes the senior most ladies even acting in the capacity of the ruler. In South Malabar too, though the property was divided according to the Islamic law, the mother-right was recognized, and the parental home became the common property of all the members. While the daughter's interest in the parental home was permanent, the interest of the son ceased with his death.

While on the inheritance side Mappilas followed the twin systems like the makkathayam by those of South Malabar and marumakkathayam by those of North Malabar, on the marriage rules all the Mappilas followed the Muhammadan rule. There was no restriction for the follower of one system to enter into matrimonial alliance with a person following the other system. Marriage was a substantial social institution with the Mappilas. As followers of the Muhammadan law, in South Malabar the girl after marriage was going to the husband’s home; in North Malabar, in most cases, she continued staying in her parental home even after marriage. However, although the children of the Mappila marumakkathayam were brought up in the mother’s tarwad, the father had to contribute towards the expense and the maintenance of his children. In the matrilineal set-up, matrilocal residence too existed. The wife stayed in her own tarwad unless the husband provided her a separate house for her and her children, and the husband, often going out as sailor, rather was a visitor to her house.

69 Ibid., pp. 68-69.
70 Ibid., p.70.
In all other aspects the general characteristics of the marumakkathayam system persisted in the Mappila families too. The members of a tarwad lived in a common house, had a common kitchen and enjoyed the tarwad property in common. The eldest male member of the tarwad, known as the karanavan, managed the tarwad property, directed its affairs and conducted its social and religious ceremonies. The karanavan was succeeded by the next senior-most member, who is either the brother of the former or the nephew71. Among the marumakkathayam Mappilas the practice was for the husband to take his residence permanently in the wife’s home, his and his wife’s expenses being met by him. He would pay only rare visits to his parental house. In the Arakkal palace the custom was for a Beebee’s consort to be maintained by the royal household. If a prince married outside royalty, the wife had to live in the palace, it being considered infra dig for a prince to live in the wife’s house72.

One marked difference between the marumakkathayam Hindus and the marumakkathayam Mappilas was that the latter practised marriage as a perfect legal institution in accordance with the Islamic law. And the fact that the husband was under obligation to protect his wife and children necessitated his having some means of livelihood for himself. Hence the impartibility of tarwad property, the inevitable aspect of the marumakkathayam system, did not affect much the individual life of a Mappila. So too his attachment to tarwad

72 Vasudevan, Churiya, The Keyis of Malabar, Tellicherry, 1930, p.11.
property was not so thick as in the case of the marumakkathayam Hindu whose only means of livelihood was his right to maintenance in the tarwad property.

However, the marital ties were not so strong among the Mappilas of Malabar. Divorce rules were not very rigid, which gave the males of this class chance to easily get rid of their wives. Muhammadan law also permitted the males to keep more than one wife, though the females were not allowed to have more than one husband, till death or divorce interferes. Mappila widow too could remarry after completing the funeral duties to her deceased husband. This peculiarity resulting in the birth of children from multiple marriages to Mappila couples often belonging to the makkathayam and marumakkathayam systems of inheritance simultaneously, became a matter of great concern to the Judiciary, based on the British rule of law, once started functioning in Malabar.

Of the other castes, the Thiyas or Ezhavas were the numerically largest caste in Malabar. According to tradition, the Ezhavas came from Ceylon. They were mainly engaged in coconut pulling and toddy tapping. Many of them were engaged in the cultivation work under the kanakkars. Thiyas followed marumakkathayam in the North, and in a few parts of Ponnani fraternal polyandry was practised. In social status they did not enjoy upper caste privileges in the Nambudiri dominated caste hierarchy in Malabar. But even in the old

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74 Ibid., p.125.
social organization there existed some privileged groups among the Thiyas, like the chekons of kadathanad. By the eighteenth century the economic position of the Thiyas considerably improved, especially in North Malabar by engaging in various professions like agriculture, trade or clerical service under the East India Company.

The condition of the socially inferior classes, which found hardly any place in the institutional history of Malabar, was far below the normal standards of human existence. But the condition of the most depressed class, the so-called agrestic slaves, was most deplorable. This deteriorated condition of theirs was not a heritage from the very ancient past of this region, but one directly contributed by the new system of agriculture introduced by the Nambudiri Brahmans later. The genesis of the institution of slavery in Malabar, like all other social institutions here, is attributed to Parasurama, who is supposed to have organized the slave caste as a provision for agriculture, when he gave the country to the Brahmans. Historically, there can be no doubt that it arose out of conquest of the original owners of the soil by invaders and settlers from the north. In course of time, children born of the slaves naturally became slaves of their parents' masters. In times of acute famine the slave parents were selling their own children.

Every landed proprietor in Malabar possessed a community of Paraiahs to cultivate his folds who were actually his slaves and

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formed an integral part of his property\textsuperscript{76}. The master could sell, let out, pledge or mortgage them when necessity arose. A \textit{janmi}, while transferring or selling his \textit{janmam} right to another one, was transferring, along with the landed properties, the agrestic slaves attached to the property who were the actual tillers of the soil. The slaves had no right to go away from the existing master, whether \textit{janmi} or the \textit{kanakkar}. They were agrestic slaves and not domestic slaves, since the law of caste pollution barred their entry into their master's house\textsuperscript{77}.

The English East Company’s Records tell us that when their commercial activities progressed in Malabar they too became active participants in the slave trade\textsuperscript{78}. Buchanans’ travel accounts explain its existence in Malabar, who were termed \textit{cherumacal}, and in which were included the Pariahs, Pulayas, Kuravas etc\textsuperscript{79}. These were treated as polluted castes and subjected to inhuman practices like untouchability, unapproachability etc. Even the primary requirements of life were not provided to them. The nature of the slavery as practised in Malabar is well explained in the Malabar commission Report prepared on the question of slavery from the answers collected through a questionnaire put to the local people\textsuperscript{80}.

\textsuperscript{77} Nair, Adoor K.K. Ramachandran, Slavery in Kerala, Delhi, 1986, p.16.
\textsuperscript{78} Ibid., p.17.
\textsuperscript{79} Buchanan, F, op.cit., pp. 491-496.
\textsuperscript{80} Malabar Commission Report, Correspondence on the subject of slavery in Malabar from May 1819 to August 1822, Vol. I. No.4055.
Though caste discrimination became an integral part of the social observances of the Malabar people, there also existed a unique type of harmony and adjustability among the various classes and castes of Malabar, both at the tenurial level and in the every day life. Even while caste pollution existed, there were times when the so-called superior castes were made to depend on the inferior castes to remove the formers’ pollution. The Malabar interpretation of purity-impurity concept required the service of the polluted castes during polluted periods connected to birth, death etc. - vannathimattu, the cloth washed in a sacred way by the polluted caste called vannathi was required to terminate such pollutions; so too, during upanayana the Nambudiris consent to the barber class to touch their head for shaving. But in all spiritual activities the Nambudiris kept utmost pollution from all other classes.

Pollution was observed by all castes and classes in Malabar - coming from the other world or going to the other world were observed with pollution\(^\text{81}\). The paradox of the Malabar pollution concept could be seen in the very extraordinary way the caste sufferers reacted to the extremities of the caste superiors. Some of the concepts like yakshi, chathan, koodothram, pulappedi, mannarpedi etc. arose from the unrest of the lower classes to terrify the superior classes during some seasons\(^\text{82}\).


\(^{82}\) Ganesh K.N., Ibid., p.205.
The status enjoyed by the females in customary Malabar society was positive as well as negative. They enjoyed property rights along with males both in the makkathayam and the marumakkathayam systems. While the females of the upper classes could boast of their caste superiority, many of the simple joys of life, which the women of the inferior classes could enjoy, were denied to them. Women of the upper classes were fated to lead a life of seclusion, those of the lower classes could freely move in the public, subject to caste restrictions. Though female education was not very popular, women of the Nair caste got some traditional type of education, but most of the women of the Nambudiri caste remained illiterate. Beyond the right to maintenance in the impartible family property, female dignity got little recognition in customary Malabar society. While the marumakkathayam Nair women did not get the privilege of getting legally married, the Nambudiri women became the tragic victims of their orthodoxyism, whether married or unmarried. Mappila women too became helpless in front of their too flexible divorce rule, which gave them no option to decide.

Temples played a vital role in the day-to-day life of the people of customary Malabar. The different kinds of temples in Malabar were: (a) Ancient temples alleged to have been founded by Parasurama (b) temples founded by Rajahs, and (c) temples founded by devotees from alms received. The first two groups were usually public institutions and with properties attached to them, with large

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83 Moore, Lewis, op.cit., p.359.
paraphernalia of *devaswam* tenures and connected temple employees. The right of the sovereign to superintend all religious endowments has always been recognized in Malabar and was called *melkoyima*. The temple or *devaswam* property was a corporation sole with its ownership vested in the *uralans* or managers who were Nambudiris. The office of the *uralan* was called *uraima*. The *uralans* had no authority to alienate temple property. The temple servants the Ambalavasis, whose social status was between the Nambudiris and the Nairs, were allotted one or other function in the daily activities of the temple based on caste status. Subordinate service tenures of temple lands were created in order to provide accommodation to the temple servants, the Ambalavasis. They could not be ousted from those lands so long as their service was ensured.

Customary Malabar was also familiar with a system of justice suited to its requirements - it was primitive in several respects\(^84\). There was no written code of laws, nor one law for all; but the punishment assigned by the tradition usually fitted the crime and justice was dispensed according to the qualities of the person\(^85\). Justice was administered strictly based on the *chaturvarnya* ideals suited to the society of those days\(^86\). For legal matters the Hindu rulers of those days, with the assistance of the Brahmans, were mainly depending on the oral tradition set up by the *smriti* rules of

\(^84\) Menon, A. Sreedhara, (Compiled and edited) Kerala District Gazetteers Cannanore, Trivandrum, 1972, p.563.

\(^85\) Innes C.A., op.cit., p.363.

\(^86\) Bhaskaranunni, Pathonpatham Noottandile Keralam (Mal.), Thrissur, 1988, p.455.
Manu, Yajnavalkya and Parasara as is evident in the *vyavaharamala*\(^7\). Besides judicial matters the book also treats the division of the produce between the cultivator and the proprietor. On the judicial side, it lays down specifically the grounds, properly numbered eighteen of them, on which one can go for a *vyavahara* that is case.

It was Manu’s dictum that while people should take utmost care to avert such circumstances, their commitment to speak nothing but the truth as the caste rules permit was insisted in the event of such an occurrence. The importance of eliciting eyewitness accounts, and the qualities needed for a witness are laid out\(^8\). While penalty of death was reserved for the more serious offences, mutilation and fines were common forms of punishment.

Justice in customary Malabar was not equalitarian. To safeguard the respectability of the Nambudiris was one of its chief concerns. While the lower castes had to undergo severe punishments even for slight offences, such and even bigger offences on the part of the Nambudiris were treated light-heartedly.

Caste offences were generally tried by caste tribunals, a striking example of which is to be found in the *smaarthavicharam*, or enquiries into charges of immorality against Nambudiri women, resulting in the conviction of the offender as an outcaste\(^9\). Trials by

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\(^8\) Bhaskaranunni, *op.cit.*, pp.364-365.

ordeal\textsuperscript{s} were common in the Malabar system of justice\textsuperscript{90}, and continued to exist even after the establishment of the British rule. The legal usages of Malabar, capable of outweighing any written authority on law, succeeded to a great extent in giving justice to the people, though based on caste status, and at times even cruel. Taking from the modern judicial standards, the system of justice practised in customary Malabar was not highly appreciable but the decision of the \textit{gramapanchayat} based on their own dharma was not altogether uncivilized. And it was perhaps for this reason that foreign visitors like Sheikh Ibn Betuta, Abdur Razak, Varthema, Pyrard de Laval, Durate Barboza as well as the Joint Commissioners deputed by the English East India Company in 1792 marked their admiration about this aspect of Malabar life\textsuperscript{91}.

It was to such a geographical zone and to such a cultural heritage that the British East India Company decided to introduce their own Rule of Law, the remarkable outcome of the British legal experiments through centuries. Very few could then realize the very substantial role this foreign agency was going to play in the process of the Indianisation of law based on that system of justice, in perfect harmony with the customs of this country in recasting a custom\textsuperscript{r}idden society to one awakened to the modern standards of life.

\textsuperscript{90} Jayakumar, N.K., \textit{Niyamam (Mal)}, Kerala Bhasha Institute, Thiruvananthapuram, 2000, pp.87-88.

\textsuperscript{91} Innes C.A., op.cit., p.362.