WOMEN AND PROPERTY RIGHTS: A STUDY OF LAND-TENURE STRUCTURE AND PERSONAL LAW IN MALABAR

Dissertation submitted to the University of Hyderabad for the award of the degree of Doctor of Philosophy

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1998

To Achen, for all the love.
To Innamma, Amma, Achi and Poopiachi
for being together, for being my strength.

CERTIFICATE

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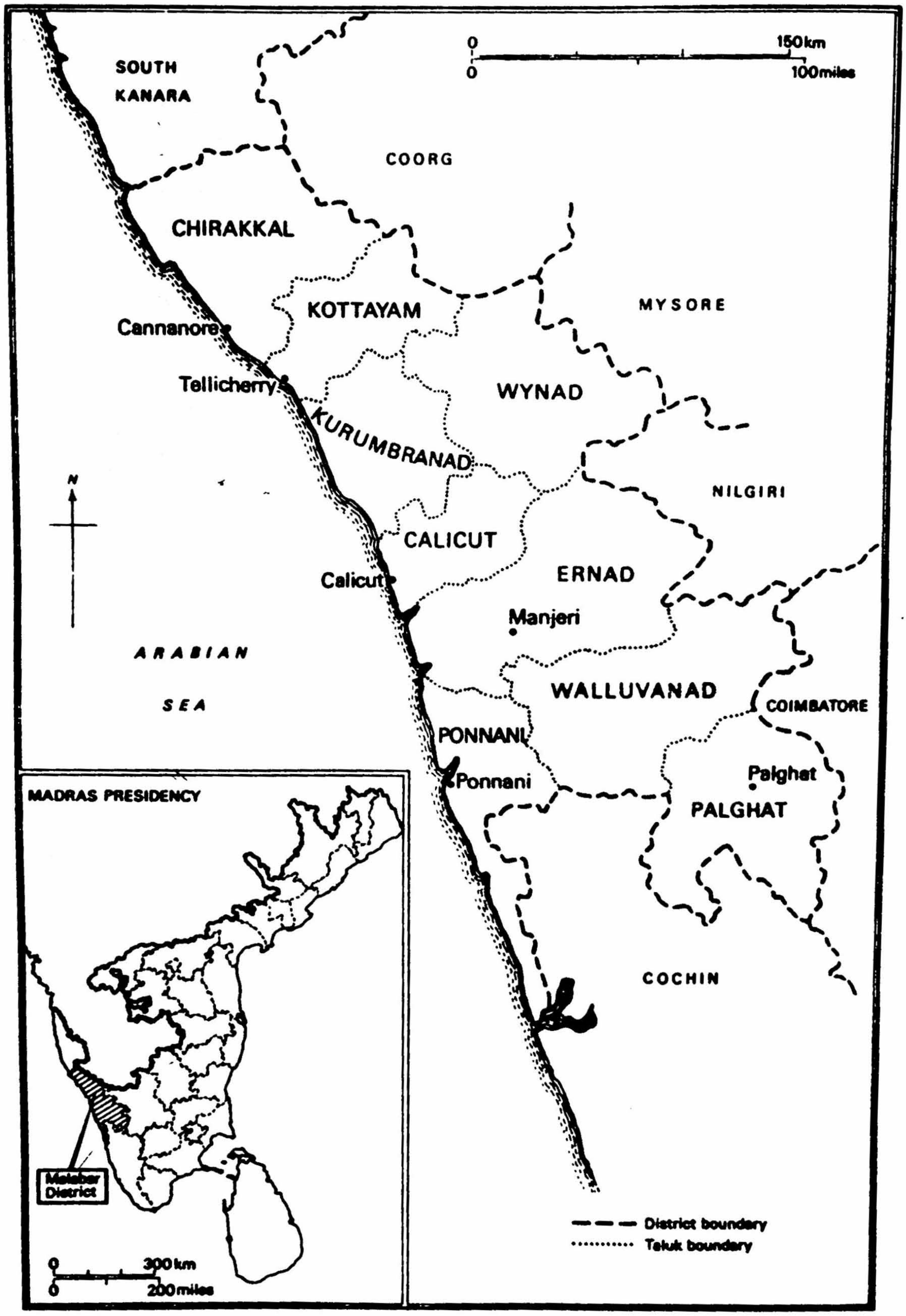

Map of Malabar District administrative divisions

SOURCE : MENON, 1994

ABBREVIATIONS

ILR: Indian Law Reports

KRA: Kerala Regional Archives

KSA: Kerala State Archives

MHCR: Madras High Court Reports

MLJ: Madras Law Journal

MLTR: Malabar Land Tenures Report

MWN: Madras Weekly Notes

MNNR: Madras Native Newspaper Reports

NAI: National Archives of India

NMNS: North Malabar Nair Samajam

NSS: Nair Service Society

PMLC: Proceedings of the Madras Legislative Council

RMMC: Report of the Malabar Marriage Commission

RMSC: Report of the Malabar Special Commission

SNDP: Sree Narayana Dharma Paripalana Yogam

TNA: Tamil Nadu Archives

ACKNOWLEDGEMENTS

I am grateful to very many people and various institutions for, in different ways, having made this dissertation possible.

Dr D. Narasimha Reddy, my supervisor, for his commitment, his unfailing optimism and for the ideas and comments that have in many ways shaped this dissertation.

The Dean of the School of Social Sciences, Dr T. R. Sharma, the Head, Department of Economics, Dr Atchi Reddy, the faculty, specially Dr Madduri, the staff, and the students of the Department of Economics, University of Hyderabad for the convival work place.

The University Grants Commission for a generous fellowship.

Prof. M.G.S. Narayanan, Prof. M.P. Sreedharan and Prof. K.K.N. Kurup in Kozhikode who so generously shared their knowledge, experience and research material with me and not the least for their hospitality.

Dr Maithreyi Krishnaraj, Dr D. Narayana, Dr G.N. Rao, Dr Nata Duvuury, Dr K. Saradamoni, Dr Nagaraj, Dr Padmini Swamınathan, Dr M.S.S. Pandian, Dr Jean Dreze, Dr Mary John, Dr Dilip Menon, Dr Sanjay Palshikar, and Dr Surinder Jodka for valuable discussions. Dr P. Rajani for his affection.

I. Priyadatta, K.T. Gopindranath, V. K. Nayanar, Murkkoth Ramunni, E.M.R. Krishnana, K.K. Marar, K. Madhavan, and K.K.S. Nambiar in erstwhile Malabar and Andalat in Trivandrum for so generously sharing their experiences with me. Kunhikoman Maash and Dr Chitra Panikkar for guiding me through some difficult Malayalam prose and verse.

The Indira Gandhi Memorial Library and the Computer Centre at the University of Hyderabad both of which I tend to take so much for granted. In particular, I would like to thank Mr Gangaji for his invaluable help.

The National Archives of India in New Delhi, the Tamil Nadu Archives in Madras, the Kerala State Archives in Trivandrum and the Kerala Regional Archives in Kozhikode for allowıng me to use their material.

The Sahitya Academy Library and the Appan Tampuran Smaraka Library in Trichur, the libraries at the Centre for Development Studies, the A. K. Gopalan Center and the Kerala Secretariat in Trivandrum, Calicut University Library, Kozhikode, Connemara Library and the Madras Institute of Development Studies Library in Madras, Nehru Memorial Library, and Centre for Women's Development Studies library in New Delhi, the Anveshi Research Centre for women and the Centre for Economics and Social Sciences in Hyderabad.

Varghese at the Kerala State Archives, Trivandrum and another Varghese at the Kerala Regional Archives for being ever so

helpful.

Reshmi, Binita, Manju, Deepa and Arvinder for mediating Trivandrum as also for the involved discussions. Katheeja and Sumangala for support at crucial times. Nitya for walking into the bylanes of my research with such enthusiasm.

For fellowship in research, Uma, Vijay, Prasad, Narendra, Ramanamurthy, Aruna, Raju, and Sumana. Vijay also for reading and reacting to some of my chapters.

For a caring neighbourhood, here in Hyderabad, Sowjanya, Anu, Indira, Archana, Chitra, Padmavathi, Vani, Aruna, Sindhu and Sandhya. For all the love, Patros, Maitreyi, Nagalakshmi, Reena and Sarah.

For reacting to parts of my work, raising and quelling my fears, and above all for the affection thank you Angel, Uma, Sharmila, Jayashree, Bindu, Indrani and Radhika.

My beloved friends Rekha, Anita, Srilu, and Chalasani for our shared obsessions and for weaving a very special Hyderabad.

Indu and Bagchi for being so special. Anil for being a good friend.

For homes in different places, I must thank Sheeba and Rekha in Delhi, Sachu and Anoop in Kannur, Elayachen in Madras, Kamalavalliamma and Aniatten in Ernakulam, Chandrachi and Narayanatten in Kozhikode, and Vimalachi in Kanhangad.

My very large family for being so supportive over the years. Particularly, Premiachi and Madhuatten for research material and for every other kind of sustenance, Jayatten for doing a fair imitation of the late-nineteenth century karanavan, now and then, Anu, Ammayi, and Sriellamma for the concern, Nana and Dugul for all the fun and Laxmi, Ambu, Vinay, Appu and Ummini for being such bundles of joy.

PREFACE

> In the case of Malabar it must be remarked that the isolated nature of the country, and the uncommunicative and reserved disposition of its inhabitants, added to its peculiar laws of inheritance and of property in land, have given birth to numerous wild and ridiculous stories about the country and its people. A [fellow] graduate of the Madras University hailing from [outside Malabar] once consulted me, in all earnestness as to the best mode of reclaiming a relative of his who had left Madras on a visit to Malabar, and who was therefore given up by his friends and relations as lost. He was under the impression that a portion of Malabar covering about half its entire extent, was peopled solely by the fair sex and that strangers of the opposite sex, who visited the country, were enthralled there for life by female witchcraft (emphasis ours).
>
> P. Govinda Menon[1]

This telling, if bizarre, instance of the high 'visibility' of women in the narratives of Malabar under colonial rule, was by no means an isolated account. Drawing upon the perception of 'unrestrained' sexuality of women, linked to the matrilineal organization of family and property among certain castes in Malabar, it had important implications for the shaping of ***marumakkatayam*** (matriliny) law under colonial rule. It also provided a considerable impetus for projects of reform of ***marumakkatayam*** and ***janmi-kudiyan sampradayam*** (land relations) initiated in the closing decades of the nineteenth century. These projects of reform, though separately conceived and shaped, were intertwined in the way they drew upon a common set of social practices, as the rationale for reform and in their interlocking implications, particularly for women. ***Sambandham*** (the customary hypergamous marriage practice) among the ***Nairs***, the best known of the matrilineal castes, was a case in point.

It is not without import that William Logan, appointed Special Commissioner to inquire into the question of land tenures in Malabar in 1881, signalled the need for changes, simultaneously, on two sites, tenancy structure and the family -- and both in the interests of efficiency and 'progress'. Apart from recommending

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[1]RMMC (Report of the Malabar Marriage Commission) II, (1891).

greater rights for the cultivating tenant, he felt compelled to go beyond the scope of the inquiry to suggest far reaching changes in the system of family and inheritance.

> A Nayar has at present hardly any motive to exert himself, because the fruits of his labours, unless he chooses to strip himself thereof during his own life-time, pass to persons with whom he has but little sympathy. He is in a thoroughly false position, for, if he obeys his natural instincts and gives away his property during his life-time to his wife and children, he becomes a beggar, and is taken to task by his legal heirs. Whereas, if he fails to strip himself of his goods for the benefit of his children, he incurs the displeasure of his own household. This false position is fatal to individual industry and thrift, and if the law is not soon changed, the consequences to the ruling caste will be disastrous.

Logan could not have stated better the case of a section of the emerging ***Nair*** 'middle class'. His recommendations, controversial as they were, provided the impetus for the organization of efforts to reform tenancy relations and matrilineal practice.

Three sites contributed generously to the production of the picture of unrestrained sexuality of women in the discourse on Malabar--travel writing, the colonial discourse on matriliny[2] and ethno-historical writing.[3] A recurrent theme in travel writing was the kinship and marriage system of the matrilineal castes. C. J. Fuller points out that virtually every visitor to Kerala remarked upon the "sexual freedom permitted not only to men but to women as well".[4] Significantly, however, he goes on to comment that,

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[2]In our use of the term colonial discourse we have drawn upon Lata Mani (1989: 90). Mani uses colonial discourse to refer to a mode of understanding Indian society that emerged alongside colonial rule and over time was shared to a greater or lesser extent by officials, missionaries and the indigenous elite. Elite here refers to well-to-do urban, mercantile or landed persons whose course of business or social service brought them into association or conflict with the colonial government.

[3]C. J. Fuller (1976: 152), points out that by the close of the nineteenth century the era of the traveller had come to an end. The utility of travel accounts had been cut into by a new genre of writing that charted 'modern' ethnography and history, good instances being the early census reports, districts manuals and gazetteers.

[4]Fuller (1976: 4).

as statements of objective fact, not many of the remarks have much value, but they do supply a quaint footnote to the history of European attitudes, if little else. Next to nothing emerges from any account of the character of Nayar women - in some ways rather surprising given their position in society - and we have little about them apart from Sir Richard Burton's comments on their beauty".[5]

This corpus of writing was not without influence on the colonial legal discourse, particularly in relation to the understanding of ***sambandham***,[6] as a form of polyandry and not conforming to 'marriage' in its legal sense. ***Sambandham*** was held to establish a relationship of concubinage rather than marriage.

Both the colonial legal discourse and ethno-historical writing relied upon a conception of custom, developed through the former in the process of interpreting and determining customs, to reconcile a more 'conformative' extant marriage practice with the social code or custom that permitted freedom in sexual matters. Witness for instance that long-time administrator and astute observer of Malabar, William Logan,

> This part of Malabar law has, in the hands of unenquiring commentators, brought much undeserved obloquy on the morality of the people. The fact at any rate of recent years is that, although ***the theory of the law sanctions freedom in these relations***, conjugal fidelity is very general. No where is the marriage tie -- ***albeit informal***, more jealously guarded or tis neglect more savagely avenged."[7]

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[5](Ibid: 15).

[6]While ***sambandham*** was a term that was used to refer to the marriage among the ***Nairs***, particularly in south Malabar, for the sake of convenience we use it to refer to marriage among the matrilineal castes. The term denoting marriage differed along the lines of caste and region. For instance, the more common usage in north Malabar was ***podamuri***. The Tiyas in north Malabar used the term ***mangalam***. See O. Chandu Menon, Minute of dissent, RMMC I, (1891). The different usages are also highlighted in the volume of evidence collected by the commission.

[7]Logan (1989, reprint). One early anthropologist and admirer of putative matrilineal sexual codes, rues the departure from custom.

> It is truly sad to read of the celebration of a sambandham [customary marriage] ceremony at Calicut whereat there was cake and wine for the guests, and (shades of all the departed!) a ring for the bride. The departure from national and therefore rational custom, for adoption of that which is neither custom nor ceremonial when copied meaninglessly, is surely food for painful reflection". Fawcett (1900)

Adding that such doings held little interest for the

Such accounts were influenced by the legal condition as representing custom, reinforcing a particular reading of practices.

We are not concerned, however, with the production of a picture of sexual 'permissiveness'. On the other hand, what is of interest to us are issues emerging from and influenced by this picture--importantly that of property relations. More specifically, we shall be concerned with how the property rights of women were trapped within a particular construction of ***marumakkatayam*** in the colonial legal discourse, driven by the 'difficulties' and the non-conformity in sexual matters that the system was seen to represent. Significantly, reform too was, to a greater or lesser degree, restrained within and dictated by this construction.

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anthropologist, he goes on to describe "the genuine ceremony as done in the orthodox fashion".

CHAPTER 1

INTRODUCTION

> I come to economics with a different set of questions than you do, and a different set of observations, perhaps because I come from a different place in the economy.
>
> Nancy Folbre[1]

1.1 Women and Development: Paradigm and Constraint

Critical academic and activist attention, in recent years, to the issue of women's property rights marks a widening of the focus of interventions for women's empowerment from a preoccupation, earlier, with employment as its crucial enabling component. The concern with income-generating work, reflected also in government policy, drew upon the perception that women's empowerment tied to economic independance could be achieved through increased participation in 'outside' work.[2] Until the sixth and seventh five year plans of the Government of India, wherein women found special mention, women's issues were addressed as social welfare problems. It is not without import that the sixth plan was preceded by the Report of the Committee on the Status of Women in India, ***Towards Equality,*** which revealed a very grim picture of women's lives and work in India.[3] Women's greater absorption in the work force, without concomitant changes in a gender ideology,

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[1]Nancy Folbre-authored (1994: 15) feminist economist in conversation with a set of political economists of the neo-classical and Marxist traditions.

[2]More than one third of research on women between 1975-80 was on the economic role of women. Krishnaraj, (1982: 277). The emphasis on outside work, grew alongside extensive discussion of the nature of women's work, invisibility in perceived forms of economic activity and the need to make data systems sensitive to women's work, in the light of increasing awareness of their astonishingly large share of the burden of work. Beneria (1982)., Mukhopadhayaya (1982), Batliwala (1985), Jain and Banerjee (1985)., G. Sen and C. Sen (1985) and Agarwal (1985).

[3]Government of India (1974). While the report did not mention women's land rights, in the Sixth Plan it received a mention. The Eighth five year plan, on the other hand, subsumes women's issues under welfare concerns and leaves much of the responsibility for gender-related concerns on the National Commission for Women and on women's groups. Agarwal (1994: 6, 7).

which imposes upon them a greater share of domestic work, has raised important issues such as their double burden of work.[4]

In the 1970s, when growing concern for women's issues was reflected in research, demands made were for women's access to a rightful share in the benefits of development. These interventions have been categorised into the 'women and development' approach, where women were seen as having been marginalised in the process of development, something that could be corrected by measures that would 'incorporate' them. Esther Boserup's book, ***Women's Role in Economic Development***, published in 1970, was seminal in this sense, endorsing as implicitly beneficial a process of modernization seen as coterminus with development.[5] Nancy Folbre argues that the 'gender and development' approach that followed was not so optimistic, revealing as it did the structural character of inequality between men and women.[6] However, the 'gender and development' approach is now widely used to string together, even if uneasily, a gender and class-based critique of 'development',[7] with analysis which use the catergory of 'gender' rather than 'women', signalling an emphasis on analysing men's roles as well as women's. Much of this analysis shares, uncritically, the neo-classical foundations of the 'women and development' approach -- particularly its

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[4]Singh and Kelles-Vittanen (1990). Bardhan (1985). See also footnote 2.

For instance, Maria Mies points out that the definition of men as 'breadwinners' and women as 'dependent housewives', not only means that women's work at home and outside is made invisible, but also that men claim control over bulk of the money earned by women's work, *i.e.*, while men do not earn a family wage, women's income is depressed by their definition as marginal workers. Mies (1986).

[5]Boserup's was a revealing account of important aspects of women's subordination including the sexual division of labour, their central role in agriculture in particular economies, the negative impact of colonialism and capitalist intervention and the tendency to underreport women's work. For a consolidation of Boserup's argument see Rogers (1980).

[6]Folbre (1995: 128).

[7]Sen and Beneria (1986)., Sen and Grown (1987)., More recently, Kabeer (1995: 27-39) provides a comprehensive critique of successive formulations of women in the development discourse.

central concern with 'efficiency.[8]

Naila Kabeer makes a useful distinction between the women in development (WID) literature, comprising the 'women and development' and much of the 'gender and development' literature, and a fundamental critique of its (WID) theoretical underpinnings, using class and gender.[9] She indicates that the shift in policy discourse effected by WID advocates beginning with Boserup from ***welfare*** (women as receipents of welfare) to ***efficiency*** (women as agents of development) continues in the strategy documents of major development agencies.[10] Witness a World Bank country study on India published in 1991 which cites the need to make accessible to women key inputs, making a distinction between

> ***welfare inputs***, which provide for basic survival and maintenance of the status quo, and development or productive inputs, which provide for growth and change. But whether the goal is stimulating growth within the Indian economy as a whole or helping the poorest households emerge from poverty, whether it is reducing population growth or encouraging gender equality ***increasing women's economic productivity is a necessity.***[11] (emphasis ours)

However, the focus upon women as efficient economic actors who are able to make scarce resources stretch further than men, may serve to increase women's burdens and responsibilities, while ignoring the debilitaing situation of poor men marked as relatively

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[8]Folbre (1995: 127) cites within 'gender and development' approach the publications of multilateral institutions including the World Bank which endorse uncritically parameters of efficiency, competition and growth rather than equality / welfare as determinants of resource allocation.

[9]Kabeer (1995: 26). WID emerged in the 1970s, the second development decade, as a response to the preceding 'welfare' approach to womens issues, which marked them as dependent. Very soon it was institutionalised in numerous multi-lateral development and funding institutions and NGOs. For a review of WID "advocates, practitioners and scholars" see Tinker (1990).

[10]An interesting inversion of Boserup's argument that women needed development by Barbara Rogers who emphasized the adverse effects of women's exclusion on development, served directly into the concern of development agencies with the efficient allocation of resources, and provided the efficiency approach its current prominence in WID policy at national and international levels. Kabeer (1995: 25).

[11]World Bank (1991: 4).

inefficient, irresponsible and non-dependable.[12] Further, behind the programmes of liberalization (in the context of large-scale decline in the world economy) that have accompanied this shift to seeing women as independent and potentially efficient economic actors, was a neo-liberal ideology which maintained that the dismantling of bureaucratic controls and greater reliance on free market forces to allocate national resources were the most efficient route to economic recovery.[13] It is in this context then that greater access to productive resources such as land has been posed within WID policy initiatives. The World Bank once again:

> Women also have little access to ownership of land or other productive assets because of the traditional patrilineal transmission of property without title to land as collateral, women have also been largely excluded from institutional credit and are thus unable to secure tools and capital for self employment except through the more costly informal credit system.[14]

The juxtaposition of the neo-liberal agenda of market-led efficiency with the WID emphasis on women as economic agents has served to underscore the 'gender trap' for women within the market solution.[15] Critiques of WID, as Kabeer points out, question its theoretical ability and political willingness to address the systemic nature of gender inequality and its connection with other forms of inequality.[16] As one early critique pointed out, giving women access to productive resources within existing structures was like "treating cancer with bandaid".[17]

In the following sections of this chapter, we will i) examine the liberal economic basis of separate or individual rights to property, ii) examine the conceptualization of women's rights to

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[12]John with Lalita (1995: 3).

[13]Kabeer (1995: 8).

[14]World Bank (1991: 3).

[15]Kabeer, (1995: 26).

[16]Ibid (38). Jaquette (1990: 56) points out that WID relies on the conception of material justice, at the cost of procedural justice (whether an allocative decision was arrived at by a process that is just), which would focus on value-allocating institutions (the market, bureaucracy or kinship) that directly affect the form and quality of justice.

[17]Sen and Beneria (1981: 148)

property, iii) explore certain ideas towards a framework for understanding the role of intersecting identities and interests in determining the scope and direction of collective action, which influence the shape property relations take, iv) review legal and empirical aspects of women's property rights, v) define our problem vi) objectives, vii) present an outline of our chapters.

1.2 Self Interest, the Masculine Individual and Gender Equality

Recent critical scrutiny of the concepts of self-interest and rational choice have revealed their gendered quality. The liberal political notion that individuals could be entirely self-interested was based on the implicit picture of adult males interacting in an impersonal environment rather than a mother caring for children.[18] Coming in the way of a universal impersonation of the 'individual' is the need of women's domestic labour, which relieves men of certain tasks and permits them to behave 'as if' they were the disembodied, implicitly male, rational agents of liberal theory, a fiction that can be sustained, as Judith Butler points out, only when women are identified almost entirely with the bodily sphere.[19]

The liberal feminist contention that women, like men, were rational beings but were constrained by socialization from exercising their full rationality, was used by WID advocates to stake their claim for equal opportunity. Boserup, WID's most influential advocate perhaps, argues on the basis of her evidence of women's dominant role in specific agricultural systems that in the historical past women were not only equal but equally productive, speaking directly to the market conception of a merit (efficiency) claim for women.[20] Differential access to technology

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[18]Folbre (1994: 26).

[19]Judith Butler (1987) cited in Kabeer (1995: 29).

[20]Jaquette (1990: 61)., Boserup (1970) makes a distinction between female farming systems, characterised by the use of the hoe as in much of Africa, and male farming systems, where as in south Asia plough agriculture was practiced, according to whose labour (women's or men's) was dominant.

was held responsible for depriving women of their productivity.[21] Jaquette points out that growing literature on the negative effects on development projects arising from the exclusion of women has increased the effectiveness of the claim that women are productive. Pointing out that Boserup's work ignored important factors of male domination that could not be explained by levels of agricultural technology, Huntington agrued that the equality argument should not be abandoned because the efficiency argument was easier to make.[22] This is important for as Jaquette warns a criterion of merit based on women's equal productivity by the standard measures could easily be turned around and used against women. The failure to base women's claims on a firm foundation could backfire; equality should be argued on its own merit, not by creating a history of women's equality that is vulnerable to historical refutation.[23]

The construction of women as rational and whose decisions reflected economic rather than emotional considerations, emphasized women's similarities (mental \ rational),[24] with men, ignoring as Allison Jagger puts it, the implications of biology for individual agency, choice and rationality.[25] Kabeer suggests that varying degrees of physical dependency--related to say infancy, infirmity, pregnancy--constrain individual choices differently, such that by ignoring the social significance of these biologically-derived activities, the liberal stance devalues the labour, time and energy of those who carry them out.[26] She points out that this has powerful gender implications for: i) the recognition of women's mothering and caring activities in policy and ii) how women and men perceive their needs and interests as

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[21]Boserup (1970).

[22]Jaquette (1990: 64, 65). Equating individual merit with productivity also suggested that productivity was perhaps the most important social goal throwing equality and efficiency into conflict. (60).

[23]Ibid (65).

[24]Kabeer (1995: 27).

[25]Alison Jagger (1983) in Ibid (28).

[26]Kabeer (1995: 28).

well as their capacity to act as rational economic agents maximising self-interested goals.[27] If the quest for formal equality with men was based on a false identity of interest between men and women, redefining women as agents of development, drew upon a very truncated understanding of women's lives.[28] Investigation of the ways in which the organization of child bearing, the process of socialization and the cultural construction of gender roles affect the ways in which women conceptualize themselves and their interests demonstrate the limits to the masculine rational actor model.[29]

Knocking against us then are the issues of sameness, difference and equality. Collapsing equality with sameness would be to resolve inequality in the figure of the masculine individual, constructed by men as a gender, and theoretically incapable of sustaining equality. This is not to suggest, on the flip side, the possibility of a homogeneous conception of women. On the contrary, it would only lead us to the recognition of a host of other problems regarding the inconclusiveness of the category of 'woman', the importance of their other identities as caste, class or religion. Even as we need to engender analysis and disciplines there is an equally critical need for awareness of class, or caste intersections in a gender analysis.

1.3 Conceptualising Women's Property Rights

As has been argued most comprehensively in recent times by Bina Agarwal the need to widen the basis of women's material resources to include access to and control over property, particularly land is an imperative one.[30] The emphasis on land assumes greater significance in the context of women's

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[27]Ibid (29).

[28]Ibid (30).

[29]Folbre (1994: 27).

[30]Agarwal (1994)., Bardhan (1985: 2208), Sharma (1980: 54-57)., Important here was the debate on the need to rethink 'dowry boycott', in the context of the denial of inheritance rights to women and the need to focus on the latter, as the central issue. **Kishwar (1988a, 1989a, 1989b)**, Lakshmi (1989), Palriwala (1989).

particularly disadvantaged position in relation to it. Women's disadvantage has grown out of lesser legal rights to property, particularly agricultural land, in many contemporary Indian states. Women also face immense difficulties in assuming control over and self managing land. That women's property rights have not long been the focus of research agenda and have been almost absent in government policy is not to suggest an absence of discussion on women and property. Discussion of women's property relations, mostly within the discipline of anthropology saw a gradual shift from description of practices, which necessarily involved women, to opening up crucial questions such as i) how access to, control over and transmission of property, structures relations between men and women and ii) how women are conceived of as property.[31]

Interrogation of the relationship between women's subjection and property has grown out of a considerable and continuing engagement with Friedrich Engels' thesis in, ***The Origin of Family, Private Property and the State.*** Engels argued that the monogamous family was based not on natural but on economic conditions, specifically the need to ensure patrilineal descent of private property. He argued that i) monogamy in its historical sense involved fidelity for the woman only ii) the position of the man as the breadwinner of the family, at least in propertied families, gave him a dominating position that required no special legal privileges and; iii) it would require full legal equality to make explicit the exact character of the subjection of women. Full legal equality he went on to state would make it evident that the emancipation of women was premised upon the re-introduction of the entire female sex into public industry, requiring the abolition of the propertied character of the individual family.[32] The persistence of the working-class family even under political conditions of socialism, however, has been used to criticise Engels' formulation, particularly his neglect of the patriarchal

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[31]Hirschon (1984: 1). See Henrietta Moore (1988), and Dube et. al. (1986), for discussion of approaches to women in anthropology.

[32]Engels (1951: 66-74).

basis of gender oppression.[33] However Engels' description of the emergence of the monogamous individual family, wherein the administration of the household loses its public character and becomes a private service and the wife is pushed out of social production is still useful. Leacock writes that the monogamous family, at the heart of class (or caste) society is still basic to the subjection of women. She argues that the struggle of working-class women for social responsibility for their families (by social she refers to community) represents a basic challenge against the "degrading structures of the entire welfare system", which represent the interests of the capitalist class.[34]

In suggesting that independent property rights for women, qualified by 'effective control', could be crucial in their quest for equality in gender relations, Agarwal seeks to depart from the conventional Marxist position elaborated by Engels that intra-family gender relations are structured primarily by two overlapping economic factors: property status of households to which women belong and women's participation in wage labour.[35] She contends that Engels by-passes the issue of women's property rights altogether, leaving open the question of what would be the impact on gender relations in propertied households if the women too were propertied as individuals?[36] Or of how independent rights to property for women would influence family control over them.

Agarwal argues that existing emphasis on cultural or ideological factors have underplayed the material basis of women's subordination, particularly their rights to property, requiring the recognition of the dialectical relationship between gender ideology and its material basis. However in seeking to break this circuit of subjection, she emphasizes the role that outside work

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[33]R. Delmar (1976: 283) concludes that none of the characteristics that Engels gives the proletarian family in capitalist conditions were empirically descernible., Humphries (1977: 241) argues that the resilience of the family derives in part from workers' defence of an institution which affects their standard of living, class cohesion and ability to wage the class struggle.

[34]Leacock (1881: 308).

[35]Agarwal (1994: 12).

[36]Ibid (13).

could play in empowering women.[37] If as Agarwal has noted, the benefits of legal changes ushering in individual rights to land for women in post-independence India have been diminished by the use or abuse of testamentary power, by pressure brought on women to write away their share of land to their brothers in the interests of good relations and women's circumstantial inability to control and cultivate land, then we need also to be sensitive to the conditions under which individual rights to land are being posited. Alarmingly patriarchal conditions of family and property particularly among sections of people in the north and north west of India would make it difficult for women to claim individual rights to property despite being legally entitled to do so. This would require us to consider a) the specific condition of the family and of property in different parts of the country and b) alternative modes of assertion of rights.

Agarwal's intervention partakes of the theoretical basis of neo-classical economic theory in linking 'property control' to women as self-interested individuals, a precondition to 'disembodied efficiency', and in this sense could fall within the WID corpus.[38] In recent revisions of neo-classical economic theory, the perfectly self-interested individual of the market has come under scrutiny with cultural norms seen as reinforcing group solidarity with crucial implications for social institutions. That is if discrimination is an expression of collective interest, it is seen as shaping social institutions like the family and the firm which influence the moulding of preferences.[39] In recent

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[37]Ibid (437).

[38]Agarwal's emphasis on women as potentially-efficient producers, without critical engagement with the pitfalls of the approach, is marked in a recent paper, (1998) where she explores alternative institutional modes (as against the presumption in favour of the family) of control and management of land by groups of women. A crucial intervention, it is, however, constrained by the inability to deal intersecting social categories.

[39]Folbre (1994: 22)., Folbre (1994) provides a comprehensive review of neo-classical and Marxian approaches of political economy to gender, especially the recent developments within both paradigms, which reflect the greater complexity of social institutions, structure and individual agency.

years the traditional neo-classical models of joint utility and perfect altruism in the family have been supplanted, virtually, by a new generation of bargaining models.[40]

This marked a move away from conventional neo-classical assumptions,[41] by which differently defined political and property rights of women from that of men were seen as characteristic of "backward, non-market societies" that were likely to disappear with modernization.[42] Amartya Sen posits 'cooperative conflict' as the central issue within the household, viewing allocations as a bargaining problem.[43] The relative bargaining power of family members, viewed in terms of their fall back position at break point (point at which they have to quit), perceived interests and perceived contributions affect allocations of income, goods and work within the household. Sen, however, cites the tendency among many women in India to view self interest in terms of their family, pointing to the need to expand the informational base of the bargaining problem from exclusive focus on individual interests, which assume clear perception of these interests.[44]

Agarwal takes issue with Sen contending that women perceive their interests only too clearly, but are prevented from actualising them under existing social conditions.[45] However, both

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[40]A. Sen (1983, 1987), Janet Siez (1991), Folbre (1986).

[41]Becker assumes that the family (and there was only one kind of family), in stark contrast to the 'outside' (where competitive conditions prevailed), was characterised by altruism and voluntary contributions and could be represented by a joint utility function, identical to that of the altruistic head. Becker (1981). Outside the family, in the work place for instance where the individual was characterised by relentless pursuit of self-interest, discrimination turns into a cost that would be eliminated in the quest for efficiency. Ibid (1976).

[42]Folbre (1994: 20).

[43]A. Sen (1987: 13).

[44]Instead, Sen (Ibid) suggests the use of the concepts 'functioning', 'capabilities', 'well being' and 'agency', to negotiate perceptions ***i.e.,*** perceived self interest, perceived well being and perceived contributions. While well being may be seen in terms of a person's capabilities and functioning, agency and well being are distinct as the former may be influenced by perceived interests.

[45](1994: 57-58, 422-438). Rather than seeking a conception of

Sen and Agarwal share a conception of self interest, that encompasses women and ignores what Kabeer terms their greater embeddedness in familial and domestic responsibilities, the implications of gender division of labour on the lives of women and men and the different needs, priorities and possibilities that it gives rise to.[46] Folbre suggests a possible other direction of inquiry positing the notion of 'purposeful choice' (as against rational choice, premised upon self interest) which is informed by the interaction between self interest and group interest.

We seek to question the often unexamined and monopolizing claims being made on behalf of a system of 'individual' rights to property when historical and empirical record suggests that such a system of rights has facilitated systematic denial to some and is weighted heavily in favour of other classes, castes, and gender. While none of these factors are reasons for the denial of equitable property rights to women, they do indicate the need to re-engage with the conceptualization of property rights itself. This need is only strengthened by the fact that the question of rights to property for women in post-independence India has been raised, apart from in legal and academic discourse, mostly in a broader context of caste \ community struggle, the best instance being the Bodhgaya land struggle.[47]

In a sense ours is a journey in the reverse. *We seek to understand the reconstitution of gender and property relations in the context of the transformation of matrilineal society in late colonial Malabar, which could then inform conceptualization of women's claims to property in the contemporary context.* Processes of reform of matrilineal family and property relations along increasingly patrilineal lines, that had grown out of the interface between colonialism and an English-educated middle

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interest wider than self interest, Agarwal forced to wrestle with contending voices of altruism and self interest, sees the former as a form of the latter and discounts the possibility that interests are not always spurred by economic concerns.

[46](1995: 86).

[47]For analytical accounts of the Bodhgaya struggle see Kelkar and Gala (1990), Manimala (1984), Agarwal (1994).

class, anticipate the modern individual, framed against the nuclear family.[48] Crucially, the modern individual of the reform process was a masculine entity, for the emergence of whom matrilineal women, particularly their sexuality and related to it their relations to property, had to be recast. The reconstitution of property structures (matrilineal family/landlord-tenant relations) were premised upon the reconstitution of culture and ideology, crucially, in and through the figure of the woman. For instance the first attempt to reform matrilineal laws in Malabar tied changes in property to changes in the marriage practice, foregrounding the 'problem' sexuality of matrilineal women. The reconstitution of gender was mediated by processes of reform based on caste, class and religion. Different intersections of these factors in specific regions of Malabar were reflected in varying configurations of struggle and demands of reform groups in each region. In this context identities, both of men and of women, comprised specific intersections of gender, caste, class and religion.

The influence of a conception of individual rights in consolidating male control over property is demonstrated also in the reform of patrilineal Hindu law. Most prominently, the Hindu Succession Act, 1956, despite initial proposals to the contrary, introduced two telling innovations in this direction: a) it retained existing exclusively male coparcenary rights to ancestral property removing, however, existing restrictions on members against alienating their shares, b) it allowed testamentary power over ancestral property. These provisions introduced the possibility of dispossession of women, effectively depriving women of their earlier limited rights to ancestral property of their husband or father.

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[48]We take seriously criticism of older anthropological theories that linked family and kin organization to social structure, particularly in the light of evidence that non-nuclear families and traditional kinship systems do not die in the face of economic development. Fuller (1976: 144). What was important however was that reformers espoused the superior suitability of the nuclear family in the context of economic development and the decadence of the joint family that was "apt in a different socio-economic order".

An overarching concern in processes of reform, along caste, class and religious lines, was the enabling of separate rights not constrained by communitarian claims, seen as imperative in the context of modernisation. In this context a structure of property that supported separately and unequally conceived gender relations, framed by the nuclear family, reveals the acute complicity of individual rights in facilitating male legal control over property and over women's sexuality.

1.4 Choice, Structures and Identity: Towards a Framework

Folbre writes that resolving the problems of production and social reproduction entirely in the realm of choice and cooperation in neo-classical economics and entirely in the realm of conflict and coercion in Marxist economics leaves both incomplete rather than incorrect. Importantly, it detracts from the simultaneity of interaction between agency and structure in determining outcomes.[49] Collective identity, often reinforced by common norms and preferences, helps explain why collective action cannot always be explained in instrumental terms.[50] For instance in the context of determining choices the distinction between self-interest and group interest is not always so clear as people often care for and identify with each other.

> Rather than consciously choosing to join a group, they simply learn that they are members of a certain gender, or race or class. They also belong to many groups at once, often with conflicting interests. Their failure to act collectively may have less to do with false consciousness than an awareness that actions which advance the interests of their gender may harm others of their race or class, or vice versa.[51]

On the other hand, consider the possibility of choices being affected by the possibility of economic gains. But choices as Folbre points out are also influenced by the social construction of individual preferences and cultural norms.

> Choice takes place within certain social structures, themselves the outcome of previous choices and structures. The ownership of the means of production, or, more broadly,

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[49]Ibid (5)

[50]Ibid

[51]Ibid.

> the distribution of initial assets, is an important dimension of social structures. But political, cultural and psychological factors also define the groups to which individuals belong, and locate their position within them.[52]

People may choose, individually or in concert with others, to modify conditions they find themselves in. Folbre uses the term 'purposeful choice' in place of rational choice informed by self interest to describe choices that are determined by existing constraints and intersecting group interests.

She then combines an appeal to take gender more seriously, precisely in its interactions with other social categories such as class in determining outcomes, with the contention that "the family cannot be conceptually segregated from 'the economy' -- it is one of the many sites where individuals pursue their diverse and sometimes contradictory interests".[53] A critical analysis of demands to alter the relations between men, women and children in a family in particular ways could reveal the logic of a set of gendered identities and interests that has both shaped and been shaped by economic and social processes.

Our task is to understand the implications and resonances of mobilization around specific dimensions of 'identity' such as caste, class, religion or gender on each other and the implications of multiple identities on people's choices or understanding of group interest and collective identity. The simultaneity of multiple identities, could engender conflict but also the strategic or structured subordination of certain dimensions of identity in the quest for the consolidation of others. Also one dimension of identity that is dominant in shaping group interest may mediate the shaping of interests along other dimensions. For instance a dominant caste identity may mediate the shaping of gender roles and interests within different castes. Or underlining and organization along caste identities may influence the response of respective castes to a national identity. Keeping this in mind, we seek to understand how people

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[52]Ibid (39).

[53]Ibid

drew upon and mobilized around caste, religion, nation, class or gender interests and identities to shape or reform the organization of production and social reproduction through collective action.

1.4.1 Structures of Constraint and Collective Identity

Folbre maintains that collective identities and the social categories upon which they are based are shaped by 'structures of constraint'. Four sets of factors, asset distribution (of various forms of assets like financial assets such as money or biological assets such as reproductive assets, or skill), political rules (legal parameters), cultural norms (such as female seclusion) and individual preferences are identified as comprising 'constraints' *i.e.*, taken together and in mutual association, they determine 'boundaries of choice' for groups based on class, gender, race, nation or age among many possible others. Assets, rules, norms and preferences shape collective identities and interests precisely because they are constraints that place people in similar circumstances and create similar boundaries of choice.

The coexistance of constraints make each category-based activity not the only form of collective activity men and women engage in. Indicating as this does the simultaneity of multiple identities, it is important to note the interactive nature of different dimensions of identity in shaping the choices that people make. For instance a dalit woman may experience class and gender differently from an upper caste woman and choose to rally around caste or class rather than gender. More importantly for us mobilization around caste for reform may entail an agenda for gender, that could constitute the defining aspects of a new caste identity, aspects of or all of which women may resent.

Precisely because of multiple identities, people often occupy contradictory positions making possible through the dynamics of collective identities and action, the collective exercise of

power.[54] Structures of constraint based on membership in a group are also structures of power as constraints limit some individuals' and some groups' choices more than others. Greater power would mean greater ability to impose one's choices on others --individuals and groups. Emphasizing the significance of important parallels and intersections among different kinds of group identity and interests, Folbre suggests that structures of constraint may be the joint outcome of efforts to solve problems of coordination and the power of distinct social groups to force others to pay a disproportionate share of the constraints.

1.5 Colonialism, Personal Law and Women's Property Rights

Research focused on sub-Saharan Africa, south Asia and Latin America suggest that colonial policies and privatization that came in their wake, have influenced the dispossession of women's conventional rights to property, without investing them with comparable rights within a new framework.[55] In tribal societies in sub-Saharan Africa, access to land was based on kinship and women's usufruct was protected by custom. The provision of land titles almost always to male heads of household did violence to the tremendous diversity of extant practices among the numerous tribes, introducing a gender-differentiated homogenity.[56] In most of these countries women formed the bulk of agricultural labour, a pattern that was accentuated by male out migration. Safilios-Rothschild observes that this did not lead to agriculture being redefined as an equally female and male domain.[57]

Post-independance legislations built upon this colonial

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[54]Ibid (49)

[55] Folbre (1995) gives a brief review of evidence.

[56]Ibid, p 132. Okeyo (1980 shows that among the Luo community in west Kenya, British colonization first reduced corporate land holding by creating reserves for the African population. The institution of land tenure reform in the 1970s turned corporate allocative rights into alienable individual rights almost entirely for men. Women who have only daughters or are widowed are among the most affected as they are described by land-adjudication officers as those who do not need much land. Okeyo (1980).

[57]Safilios-Rothschild (1985).

legacy with development interventions failing to tackle mechanisms that rendered women invisible.[58] In Lesotho, for instance, where male out migration is high agricultural training is imparted mostly to men.[59] In west Africa, where women traditionally had greater financial autonomy owing either to matriliny or women's informal organizations, a rigid sex stratification system is setting in with the failure to develop modern structures and conditions that would protect their interests.[60]

In agrarian reform processes of all Latin American countries barring Cuba, the overwhelming majority of beneficaries have been men.[61] Legal, structural and ideological mechanisms have served to exclude women, by designating beneficiaries as male.[62] In all except Cuba and Nicaragua only one member of the household--the head (culturally defined as male) was designated as beneficiary. While Mexico, Bolivia and Honduras had provisions that included female heads as beneficiaries, they were considerably attenuated by qualifications. For instance the 1971 Mexican agrarian reform attempt to cover women were weakened by article 200 requiring beneficiaries to be agriculturists and women it was implied in the law were not.[63]

In south Asia as in Africa colonialism and national policies introduced uniformity in inheritance, and individual tenure and ownership rights which considerably reduced women's access to land.[64] In the following section we will deal in greater detail

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[58]Okeyo, (1980: 203)., and Safilios-Rothschild (1985). Notably the Zimbabwean constitution of 1980 did not grant women legal guarantees of joint ownership or inheritance from husbands. Cheater (1981) cited in Folbre (1995: 132).,

[59]Safilios-Rothschild (1985: 301).

[60]Ibid (303).

[61]Deere (1985).

[62]Costa Rican and Venezuelan agrarian reform programmes indicate implicitly that the beneficiary was male. Article 83 of the Venezuelan agrarian reforms states that in the case of death or abandonment by the beneficiary the Insititute will adjudicate the parcel to his wife or concubine or in the third place to the son. Ibid (1042).

[63]Ibid (1043).

[64]Agarwal's (1994) canvas is south Asia, where she gives special

with women's property rights in different parts of India.

1.5.1 The Indian Context: Legal and Empirical Issues

An important, even crucial aspect, of women's property rights in colonial India was the legal form they took through interpretations by colonial jurists and judges, in consultation with select Indian authorities. This was true of both Hindu and Muslim law in the understanding of which the British relied entirely on certain texts.[65] In certain regions and among specific social groups law was deemed to draw from custom and here the British sought to interpret custom, an exercise that shared a remarkable similarity with textual interpretation. Once an interpretation was applied in arbitration, it assumed the force of precedent, which was deemed to constitute law.

1.5.2 Hindu Law and Practice

In their search for an authentic code of Hindu law, the British confronted variant interpretations of the smritis, an ancient collection of precepts, which held sway in different regions. Importantly there were the dayabhaga, followed in Bengal and Assam and four versions or sub schools of the mitakshara, prevalent over a large part of the rest of the country. In certain regions like the Punjab and among specific social groups, customary practice was recognized as the basis of law and in some parts of the south and north east India, matrilineal practice was recognized as the source of family law.

Recent research on women's property rights affirm that the shastras, comprising the smritis and commentaries upon them, were not entirely didactic and in fact reveal points of difference between important jurists as well as awareness of the important

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attention to the decline of rights among conventionally matrilineal communities in parts of India and Sri Lanka.

[65]Derrett (1968), Kozlowski (1989), Kishwar (1994), Agarwal (1994). While the mitakshara derived from a commentary by Vignaneshvara on the Yajnavalkya smriti, the dayabhaga was based on a digest composed by Jimutavahana.

place of custom.[66] While even the Manusmriti, the most conservative of the texts, recognized women's property or stridhan and the right of unmarried daughters to a share of the father's property, there were differences among the important jurists who helped to develop and define further women's property rights.[67] The mitakshara and dayabhaga, commentaries on the smritis which became the basis of Hindu law under the British, emerged in the early 12th century. The mitakshara and dayabhaga formed the basis of British interpretation of Hindu law and women's property rights were seen as emerging from two sources a) stridhan and b) the widow's limited estate in her husband's property.[68]

Differences between the two systems of relevance to us related to a) the joint family property and b) women's special property. Under the mitakshara there were effectively two kinds of property the joint family property and self acquired or separate property. Joint family property was held by a coparcenary comprising four generations of male members who became members at birth. Devolution was by survivorship and individual shares and each members share decreazed when a coparcener was born and increased when a member died. Their shares could be determined only on partition which was possible though alienation was severly restricted. A man had absolute rights over his self acquired property.

Women could not be coparceners in the joint family property and had only a right to maintenance as wives, widows or unmarried daughters. Daughters also had a right to marriage expenses and to gifts at marriage. In the absence of sons agnatic (in the male line) grandsons and agnatic great grandsons, a widow inherited a limited right in her husband's self acquired property. A limited interest meant that it was not alienable except under certain conditions including on account of 'legal necessity' and for religious purposes. In the absence of male heirs and widow, a

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[66]Derrett (1968, 1978), Kishwar (1994: 2147-2148)., Mukund, (1992: WS 2-3)., Agarwal, (1994: 84).

[67]Mukund: (1992: WS 2), Altekar (1991).

[68]In the following account of different systems of law we have drawn mostly upon Agarwal (1994) and Kishwar (1990, 1994).

daughter could inherit.

The mitakshara contained a liberal definition of stridhan including all property acquired by inheritance or partition. There seems to have been no consensus on her powers of disposal. In 1912 the Privy Council ruled that inherited property did not form a part of stridhan and on a woman's death it was to revert to the heirs of persons she had received it from. Significant here is the interpretation of ***stridhan*** (women's wealth) by the privy council in 1912 to exclude all inherited property, whether from men or women and their decision that therefore it would pass on not to a woman's heirs but to the person from whom she received it. Far from its early interpretation in the mitakshara as comprising property of women obtained through inheritance and partition, this definition reduced it a lesser form of property.[69]

Under the Dayabhaga, there were no survivorship rights or rights by birth but only rights by succession to joint family property. Further a male had absolute rights over ancestral as well as self-acquired property. Division occurred on the death of a man and his widow inherited a limited interest, with rights to manage though not to alienate property, in the absence of male agnatic heirs. The important difference was that widows shared in the entire property of the husband. Stridhan property under dayabhaga was restricted effectively to movables but women had absolute rights to it.

In the Punjab where custom was recognized as the basis of law, custom was interpreted in a particular systemic form, whereby practices were seen as having grown out of immemorial principles to which they were then expected to conform.[70] Court decisions

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[69]Mukund (1992: WS 2) concurs that there was a much broader interpretation of ***stridhan*** available in the ***smritis*** themselves. She suggests that ***stridhan*** derived initially from ***kanyasulka*** or brideprice and the ready acceptance of the former as the property of women derived from the general disfavour in which ***kanyasulka*** came to be held. Gifts received at marriage and after 'through affection' were also included in ***stridhan***, which constituted the absolute property of the women and husbands were forbidden from using it unless in dire need.

[70]Bhattacharya (1996) examines the conception of custom that underpinned the interpretation of practice.

were underpinned by two concerns: a) a theory enunciated by a colonial official, that the stability of 'tribal' Punjabi kinship depended on the protection of male agnatic devolution of the father's landed property and b) the maintenance of Punjabi kinship structure was intergral to British interests in the region.[71] Property rights for women as daughters and widows were seen as a destabilising factor and sought to be suppressed.[72]

It is now acknowledged that the establishment of the British Courts, underpinned by a specific or peculiar understanding of systems of law and legal procedures, constituted virtually an alteration of the law itself.[73] As in the case of the Privy Council judgement on stridhan noted above, women's rights were easy prey to the vagaries of judicial interpretation, which extended to certain texts being preferred over others. For instance it has been noted that the ***Balbambhatti***, written by Lakshmidevi, of the Maharashtra school of mitakshara which had a liberal interpretation of women's rights, which had been used earlier was rejected by the Bombay High Court in 1908.[74]

Shastric influence which was strongest among the upper castes and in the northern and eastern parts of the country was bolstered by colonial intervention.[75] Women's rights to property registered negative influence at two levels, a) regionally, notably in the south and west where custom favoured women in several respects, b) within some communities particularly the lower castes and the tribes.[76] A case in point was the prevalence of widow remarriage among lower castes and tribes. The Hindu Widows Remarriage Act, 1856 by taking the upper caste Hindu widow as the norm impinged upon the rights of lower caste widows. Under the Act, upon remarriage all widows had to relinquish rights to property of

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[71]Gilmartin, (1981), cited in Agarwal (1994: 228).

[72]Chowdhry (1989).

[73]Derrett (1968), Kishwar (1994: 2149), Galanter (1989). Cohn (1990) posits that the process of collecting and juridically interpreting custom changed it, fixing what had been flexible.

[74]Kishwar (1994: 2149).

[75]Agarwal (1994: 199), Derrett, (1968), Carroll, (1989).

[76]Agarwal (1994: 201).

their deceased husband, rights that lower caste widows had hitherto enjoyed.[77] The remarriage Act had different implications among castes that practiced levirate marriages or ***karewa***, (remarriage of a widow usually to the deceased husband's younger brother though in instances to a male relative). Among the Jats in the Punjab, it has been noted that *K*arewa was a mode of retaining land in which a widow had a limited interest under kin control. A limited right in property allowed the right to alienate it for 'legal necessity' which included proving that income from the estate was inadequate for her maintenance or for a daughters marriage, paying land revenue to the state or to repay a just debt.[78] Against a number of appeals by widows to use this provision in the early twentieth century, it was noted that to contain growing appeals, it was necessary to ensure "a firm anchoring of the widow in remarriage".[79]

Significantly, patrilineal organization of marriage and the prohibition of divorce and remarriage, played an important role in effecting sexual control over women and property.[80] Typically, these were features of the upper castes and were considerably relaxed among lower castes and tribes. Thus attempts to work towards gender-egalitarian laws were seen as attempts to break the family. In another context, that of the matrilineal castes of Malabar and South Kanara, to achieve greater property rights for individual men, the conventional marriage was sought to be replaced by the 'modern contractual' version.

The Hindu Women's Right to Property Act, 1937 gave Hindu widows a right to intestate succession to the separate property of the deceased husband equal to the sons share under mitakshara and in all property under dayabhaga as well as the same right as her deceased husband in the undivided mitakshara coparcenary. But the widow was to hold only a limited interest by which on her death

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[77]Carroll (1989).

[78]Agarwal (1994: 203).

[79]Chowdhry (1989: 316).

[80]Our discussion in Chapter III focusses on this aspect of property relations.

the property would revert to her deceased husbands heirs, it was subject to forfeiture on remarriage and it explicitly excluded agricultural land, which according to the Government of India Act, 1935 came under the jurisdiction of the provincial legislature. The Act did not include daughters.[81] Restraining the Hindu widow's right to a limited interest had significant negative implications for groups like Jain widows who under customary law had enjoyed absolute rights in property inherited from their husbands.[82]

It has been noted that legal precepts were not uniformly observed, in certain regions and among certain social groups they were overidden by custom.[83] Regionally, tensions between shastras and local custom were greatest in the south and west though differences were tolerated in the north and east as well.[84] Inscriptional evidence from the south bears out that women had been alienating land to temples though it was not always clear under what conditions these gifts were made.[85] Though Agarwal warns, correctly, against reading too much into this, they do indicate that a proportion of women did possess land. Mukund finds that women mentioned in inscriptions as donors of land fell into three categories, i) royalty, ii) devadiyargal or temple dancers and iii) employed women, broad basing the group of women who owned and alienated land. Atchi Reddy shows from a collection of written lease documents from 15 selected villages of Nellore district in Andhra Pradesh between 1869 and 1989 that there was a declining trend of women lessors. Significantly, he related the exceptionally high figure of 57.1 % female lessors between 1870 - '79 to the Madras famine when women were unable to reclaim their lands from tenants, who were mostly relatives.[86]

In the Punjab where custom had the force of law, the

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[81]Agarwal (1994: 206).

[82]Kishwar (1994: 2151).

[83]Carroll (1989).

[84]Derrett cited in Agarwal (1994: 93).

[85]Mukund (1992).

[86]Atchi Reddy (1995: 6). Significantly, for selected years between 1851 and 1982, women lessors in Kondayapalem, near Nellore, consistently received lower rents than their male counterparts.

flexibility of custom could have spelt greater contextual variation and greater or lesser rights for women depending upon their specific situation. Customs recorded in the second half of the nineteenth century in the Punjab indicate the right of Hindu widows to seek partition of and alienate property under certain conditions (noted earlier). It must also be mentioned that among lower castes and among tribes there were important differences. Remarriage of widows was permitted and did not lead to forteiture of property inherited from a deceased husband. Among patrilineal tribes women enjoyed a fairly secure usufruct in land owned by the tribe, which however were increasingly impinged upon with the vesting of titles to land in men during British rule, a practice that has continued in post-independence development policy.[87]

1.5.3 Muslim Law and Practice

The shariat gave women considerably greater inheritance rights than did the textual Hindu law. There are two schools of Islamic law, the Hanafi school of Sunni law and the Ithna Ashari school of Shia law. Under both Muslim women had inheritance rights to immovable property though not in equal measure with men. Under the Hanafi school, while daughters and widows could inherit in the presence of sons and were vested with absolute rights, the daughter's share was half that of a son's and a widow received one fourth of her husband's estate if childless and one eighth in the presence of agnatic male descendents. A widower's share in his deceased wife's property was considerably more at half if childless and one fourth in the presence of male agnatic descendents. The mother and father get a share of one sixth. These rights were also secured partly against testation. Sunnis could not will an estate to an heir without the consent of all the other heirs and in the case of a stranger a maximum of one third of the estate could be willed without the consent of the heirs. Under Shia law up to one third of the estate could be made over by will to a stranger or heir without the consent of all the heirs.[88]

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[87]Kishwar (1987), Agarwal (1994: 97).

[88]Agarwal (1994: 98-99, 233-237).

There was also a woman's right to mehr, some amount of wealth promised by the bridegroom to the bride as part of the marriage contract. Mehr was treated by custom as symbolic of the status of the family and hence it was not unusual especially among wealthy families to pledge large sums of money, though they were not expected to pay the full amount. The interpretation of mehr by the British courts, however, made it a pledge that the widow could claim in full. The courts even gave widows suing for mehr, control over the husband's property until mehr was paid.[89]

Despite textual law, however, inheritance practices among Muslim communities in different parts of the country tended to conform to local custom. This meant that apart from the few areas in the south west where matrilineal inheritance was the norm, many Muslim communities in the rest of the country tended to conform to the customary patrilineal norms that largely disinherited women. This was particularly evident for the Punjab, where the British recognized custom as law and went on to collect, codify and juridically interpret custom. Muslims in the Punjab were seen as bound in the first instance by customary law, which was seen as held together by the 'agnatic' theory propounded by a colonial offical, by which daughters were excluded from inheritance of land.[90] However, as Kozlowski points out there were instances of wealthy Muslims endowing their daughters with property under the provisions of the shariat or through a waqf (endowment). The other prominent instances were of courtesans, dancing girls and singers receiving substantial gifts of immovable property from patrons which were inherited in the female line.[91]

The legal interpretation of Islamic law based on custom came under reform scrutiny in the 1920s and 1930s, with efforts by Muslim reformers to establish the shariat as the basis of Muslim personal law. Under the Muslim Personal Law (Shariat) Application Act, 1937, the result of such efforts, the shariat superseded customary practices. The Act, was not valid for Jammu and Kashmir

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[89]Kozlowski (1989).

[90]Agarwal (1994: 228).

[91]Kozlowski (1989), Agarwal (1994).

and agricultural land was excluded from its purview and left to devolve according to custom.[92] Not surprisingly amendments of the Act by several states in post-independent India to include agricultural land did not include the crucial states in the north-west, where custom favours male lineal descendents in the male line for inheritance of agricultural land.[93]

1.5.4 Matrilineal Practice

Matrilineal groups in the south west and north east of India were governed by their customary practices. There were siginificant differences between matrilineal groups even within each of these regions emerging importantly from the organization of production. Unlike in the north east, in Malabar and South Canara districts of the erstwhile Madras Presidency, matrilineal groups were part of larger caste and agrarian hierarchy, which seemed to have had an influence upon the shaping of matrilineal practices. This is borne out by variations in caste and agrarian practices in different regions of Malabar corresponding to differences in matrilineal practices. However, all these groups were set apart from patrilineal 'Hindu' groups featured earlier by matrilineal descent and devolution of property, which made for striking differences in women's rights to property.[94]

North East: Among the Garos, and Kasis matrilineal tribes in the north east, the property rights of men tended to be derivative, emerging from their relationship with certain women (as the brother or husband of certain women).[95] The Garos seem to have

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[92]Ibid (230).

[93]Ibid (233).

[94]In the following chapters we shall indicate where possible the emergence of a 'Hindu' identity among some of these castes. It has been argued that the 'Hindu' identity of different castes was constructed on several sites of discourse during the colonial period. Muraleedharan (1996). For the more complex nature of social and religious identity in the pre-colonial Travancore see Susan Bayly (1984).

[95]On these three tribes, we have drawn upon Agarwal's account of their customs and changes during the colonial period. Agarwal, (1994: 101-109, 154-168).

subsisted on shifting cultivation or *jhum*, which relied primarily on women's labour, supplemented by forest produce. Their settlements were controlled communally by one dominant clan (usually the oldest founding clan of the settlement) with all members having usufructory rights. Custodial right to communal land was vested in the husband of the heiress, a woman from the dominant clan (usually the youngest daughter of the former heiress), but decisions regarding land required the consent of the heiress and her clan and was usually taken by a council of elder men of the clan.

Among the Khasis, who traditionally practiced both settled and shifting cultivation, there were two kinds of land, communally held and privately held. *Jhum* cultivation seems to have been mostly on the latter kind. Also unlike the Garos, a clan was dispersed over many settlements. The smallest unit of the clan was the *iing*, the core of which comprised two persons, the mother, in whom was vested the ancestral property, and her brother who managed the property and represented *iing* authority. A husband did not belong to his wife's *iing* but was part of the household. An heiress daughter was part of her mother's *iing*; other daughters branching off to start their own *iings*. In such contexts women would have enjoyed a relatively strong bargaining position as inheritors of property with uncontestable usufurctory rights to land, some role in decision making and a primary role in agricultural production, and the security of matrilocal residence.

A number of factors, importantly government policies, have led to the undermining of matrilineal inheritance and matrilocal post-marital residence. There has been considerable erosion of the communal basis of land holding. Private control over land has been facilitated and encouraged through government policy, beginning with the British, which has served to restrict area available for *jhum* by creating reserve and state forests of parts of tribal land and distributing the latter to select beneficiaries. There has been a major shift away for *jhum* to wet paddy and more recently to garden cultivation giving rise to a paucity of land for *jhum*. This tendency encouraged by the government has undermined the importance of women's labour as both technology and title to land have been given mostly to men.

However, there is significant inter-village variation. This has led to women turning into helpers of men in paddy cultivation when under ***jhum***, men were seen to assist women. It has also led to greater male control over cash and crop, there being a growing tendency for parents to pass land to sons and towards the adoption of virilocal post-marital residence.

Malabar: In this section, we will develop brief outline of matriliny and agrarian relations in Malabar with attention to regional and to caste-based variations.[96] Malabar district of the erstwhile Madras Presidency comprised eight plain taluks, the hilly, forested inland taluk of Wynad and British Cochin. In terms of matriliny and agrarian relations, Malabar could be divided into north Malabar comprising Chirakkal, Kottayam and the northern parts of Kurumbranad taluks and south Malabar comprising southern Kurumbranad, Calicut, Ernad, Walluvanad, and Ponnani. The southern parts of Kasargod taluk of South Canara district with a predominantly Malayalam-speaking population, shared the agrarian and matrilineal features of north Malabar.

The best known of the social groups that practiced ***marumakkatayam*** (matriliny) were the ***Nairs***, who were mostly ***kanakkar*** (intermediate or cultivating tenant) in south Malabar and ***janmis*** (landlord) in the north. The ***Nairs*** came below the ***Nambudiris*** (Malayalee Brahmins) in the caste hierarchy, but shared with them close social and economic ties.[97] Unlike the ***Nairs*** who were matrilineal throughout present-day Kerala, the ***Tiyas***, a lower caste who were mostly agricultural labourers or small tenants, and

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[96]References will be spelt out in detailed inquiry in to these issues in later chapters.

[97]***Ambalavasis,*** (temple servants) an aggregation of different occupational groups all related to temple service, claimed rank between the ***Nambudiris*** and the ***Nairs***, a claim that was disputed by the ***Nairs*** but more or less widely acknowledged.

One group of ***Nambudiris*** belonging to the Payannur ***gramam*** (settlement) in the northern frontier of British Malabar followed ***marumakkatayam***. Apart from their ritual role as trustees and priests in temples, they were wealthy ***janmis*** with landed property extending into Kasargod taluk in South Canara district. Logan (1951), Innes (1921).

the ***Mappillas***, a Sunni Muslim group of mixed Arab and local descent, followed ***marumakkatayam*** only in north Malabar. The ***Mappillas***, as we shall elaborate in chapter IV, were knit into the local ritual economy of caste and seemed to have been ranked alongside the ***Nairs***. Differentiation among social groups was achieved through what seemed like hair-splitting restrictions, ranging from strictures against touch, interdining and even sight to prohibitions against marriage.

A ***taravad*** (matrilineal joint family)[98] comprised all members of a kin group tracing descent from a common ancestress and who shared ***mudal sambandham*** (community of property). There existed also a larger kin group, which had at some point split or moved away to form different ***taravads***, but which was still held together by ***pula sambandham*** (community of pollution), a reference to a continuing ritual relationship, emphasized by clan exogamy (marriage outside the clan). ***Taravads*** could comprise a number of ***tavazhis*** or branches, who were descendants of more recent ancestresses. It had been possible, until the shaping of British-inspired ***marumakkkatayam*** law, for instance, for a woman to move out of the ***taravad*** with a brother or husband and found a new ***tavazhi*** which eventually grew into a ***taravad*** or even to found a ***taravad.***[99]

All property was vested in the ***taravad*** and devolved matrilineally. Children born to women of the ***taravad*** were members or 'coparceners', so to speak, while the children of male members belonged to their wives' ***taravads***. By the turn of the century, possibly under the influence of the colonial interpretation of ***marumakkatayam***, the ***karanavan*** defined as the oldest male member of the ***taravad*** was its manager and representative in all contractual matters. The senior woman was consulted on important issues like decisions on marriages and was entrusted with domestic management. Marriages were usually arranged by the ***taravad*** and even when it was not, had to conform to rigid caste codes of hypergamy

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[98]It is also used to refer to the larger kin group, to the estate or to the residence.

[99]Melinda Moore (1983: 121) finds many ***taravad*** histories recount women who moved away with brothers or husbands to form ***taravads***.

(marriage of women with men of higher or equal caste status). While sexual transgressions that did not flout these codes seem to have been tolerated, those that did were penalised by excommunication. There were no restrictions upon remarriage of widows and women like men could terminate a marriage but this usually called for the consent of the ***taravad***, as pressure could be brought to bear upon men and women to continue a relationship that was beneficial to the ***taravad.*** Important differences among the ***Nairs*** in the north and south could be seen in association with differences in post-marital residence, virilocal in the south and uxorilocal in the north.

In south Malabar the ***Nairs*** as intermediary ***kanakkar*** were part of a network of hierarchial land or agrarian relations. They had a customarily recognized interest in land for which they were paid a rent, comprising a portion of the total rent paid by the cultivating tenant. The ***kanakkar,*** usually a ***Nair,*** took land on ***kanam*** (tenancy interpreted by the British as mortgage) from the ***janmi*** (a superior interest holder in land interpreted by the British as owner), who was usually a ***Nambudiri*** (Malayalee Brahmin), a ruling family, a temple or sometimes a ***Nair***. Such land was let out either entirely or partially to ***verumpattamkar,*** who in turn could further let out or cultivate the land. These comprised mutually non-exclusive hereditary interests in land which were virtually permanent arising from their renewable character. They were subject to customary restrictions such as payment of rent. Further, while ***janmis*** could have at least some land on ***kanam,*** many ***kanakkar*** had ***janmam*** rights over some portion of their landholding, indicating that a single ***taravad*** (which under British law became, incresingly, a single person) could combine a variety of interests in land. However, they were associated with predominantly either ***janmi*** or ***kanakkar taravads.***

Taravads (residences) were built on ***kanam*** or ***janmam*** land and in the former case there was little fear of eviction. Further, where women were concerned, uxorilocal post-marital residence (residence in the woman's matrilineal home) meant that except for short periods when they visited their husband's ***taravad***, women were not separated from their matrikin making for the development of strong ties among women. Apart from the security of the

permanence of natal kinship, they could not be excluded from maintenance in the family home and at least in certain ***taravads*** had considerable rights over certain categories of property which fell under particular ***stanums*** (entailed rights of specific property) or were referred to as ***stree swothu.*** A crucial indicator of the responsibility of the husband/father lay in his obligation to pay the expenses of child birth. The only restriction against husband's endowing their wives with property was that it should not be at the expense of his ***taravad.***

In north Malabar, most ***Nairs*** were ***janmis***, a few of them large land-owning ***taravads*** and most of them small ***janmis*** who combined owner cultivation with tenancy. ***Kanam*** here was closer to a real mortgage than to a permanant tenure or an interest in land and most land on ***kanam*** was held by the big ***janmis.*** Unlike in the south, most ***Nairs*** were involved if not in cultivation itself, in the organization of cultivation. Among large ***taravads***, some portion of land was let out on ***kuzhikanam*** (an improvement tenure on land which has first to be made suitable for cultivation, it was the major form of long-term tenure in the north) and some kept for direct cultivation. A great portion of forest land was left uncultivated and surveyed as unoccupied dry. Direct cultivation drew upon attached, hired and/or family labour. Women played an important role in cultivation and in the processing of crops particularly paddy. This was more pronounced among the small ***janmi*** families where their labour was crucial.[100] This involvement came under the critical scrutiny of ***Nair*** reformers in the early twentieth century leading to their gradual withdrawal, in the interests of a caste identity built upon the sobriety and seclusion of women.[101]

Virilocal post-marital residence (in the matrilineal home of the husband) made it possible that matrikin could be scattered over a wide area. The difference from the south Malabar pattern has been seen in association with differences in the nature of commitment to the militia (the ***Nairs*** in the north did not comprise

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[100]RMMC, Evidences.

[101]Sankaran (1968).

a standing army), their more permanent presence at their ***taravads*** and greater involvement with agriculture, and the difficult terrain combined with the vast distances between ***taravads*** making a visiting relationship as in the south difficult.[102] Under the circumstances wives and children of male members were entitled to maintenance from the latter's ***taravad*** and also to certain customary obligations in the event of his death. Though a woman usually returned to her ***taravad*** for child birth, her husband was expected to pay the expenses of confinement and supply her with food and other articles for her maintenance during this period. On the other hand when a woman resided in her marital ***taravad***, she was entitled to a share of the crop from her ***taravad*** at regular intervals and on the death of her husband or on termination of the marriage a woman was expected to return to her ***taravad***, without fear or favour.

Differences in custom among the ***Tiyas*** of north Malabar may be seen in association with their position as small tenants and agricultural labourers. ***Taravads*** tended to be fractured and lacking in depth and permanence owing to the increasing tendency during the colonial period towards foreclosure of tenancies and eviction. Small tenants in search of land could find their kin group scattered over wide areas. It was into these smaller groups subsisting on short-term tenancies that women often married. However, the value of women's labour was recognized by the payment of a bride price to the bride's ***karanavan*** or father during the marriage. While post-marital residence was virilocal women were expected to return to their natal ***taravads*** upon the death of their husband or upon termination of marriage. Remarriage was common enough. During a marriage women could visit their ***taravads*** and were entitled to take a share of the harvest to their ***taravads***.

The ***Mappillas***, in contrast, practiced the most complete form of

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[102]It must of course be noted that the need for an explanation of differences with the south arises from the assumed normativity of the latter. Hence the features of matriliny in the north have been seen variously as a greater move towards the patrilineal family, or as emerging from agrarian or ecological compulsions rather than as a form of matriliny in consonance with its ecological and political conditions. See RMMC, Vol I., Gough.

matrilocal post-marital residence in Malabar, wherein husbands took up residence in their wives' ***taravads***. Unlike the picture of impoverished peasantry presented by the ***Mappillas*** of south Malabar in the north they were relatively affluent, though there was wide disparity within the community itself. Many Mappilla families had successfully invested surplus from trade in land which was given to tenants and rarely cultivated.

South Canara: ***Aliyasantana*** is a term in Kannada for the matrilineal system practiced by the Tulu-speaking ***Bants*** and ***Billawars*** of South Canara district. There was a remarkable closeness between the matrilineal customs in north Malabar and South Canara. The ***Bants*** were a land-owning castes like the ***Nairs*** in north Malabar even as the ***Billawars*** have been compared with the ***Tiyas***. Importantly for us little difference was made in the interpretation of ***aliyasantana*** and ***marumakkatayam*** in the British Courts and they were seen as deriving form common principles.

A series of legislations, backed by demands for reform from caste and tenancy groups, colonial and post-independence made way for private ownership of land and for the patrilineal nuclear household as the unit of property. Significantly, while among conventionally patrilineal communities colonial interpretation of law or practice contributed to the strengthening of patrilineal modes of transfer of property at the cost of women's rights, among the matrilineal communities changes during the colonial period were in the direction of fracturing the conventional rights that women enjoyed under a communitarian system, even as interpreted by the British (which we will argue in Chapter II was an innovation).

1.6 The Problem

This study seeks to examine the proposition that there was a decline in women's rights to property, particularly land, in colonial Malabar, in the context of a transformation from a matrilineal to an increasingly patrilineal form of family, defined by a notion of conjugality, that placed women in a dependent relationship to men. Our task is considerably complicated by the lack of comprehensive information about the nature of rights and in relation to it of the nature of relations of men and women to

each other and to property in the ***taravad*** or matrilineal joint family of the immediate pre-colonial period. In this absence we have sought to read against the grain colonial accounts, particularly the legal discourse, on the ***taravad*** and place in relation and contrast to it reform discourses that emerge from among a section of the english educated, indigenous-middle classes in the last decades of the nineteenth century. We will be concerned primarily with the prominent matrilineal groups, the ***Nairs***, the ***Tiyas*** in north Malabar and the ***Mappillas*** also in north Malabar. In addition to these social groups we will deal with reform efforts among the patrilineal ***Nambudiris*** particularly in the relation and contrast they provide to the ***Nairs***.

Land tenure structure and matrilineal practice formally comprised two distinct and separate sites of law and processes of reform. We attempt to locate the transformation of women's rights to property in Malabar in the interlocking changes in land and family customs. Important here were two sets of processes which implicated women in different ways:

a) colonial interpretation of land and matrilineal customs;

b) diverse and intersecting forms of collective action which seek to transform land and matrilineal customs in the context of conditions created by colonial rule.

However, changes in property relations were a part of comprehensive changes in the organization of economy and society that were in part wrested from (as in the case of changes in tenancy laws) and partly facilitated and influenced by the colonial government (through the establishment and intervention of political, judicial, educational and other institutions which represented realms of power). The conditions facilitated by the British brought to the fore the contradictions in their policies emanating from their political interests (for instance their support to a non-productive rentier class of landlords as against their efforts to maximise revenue from land). Among the different social groups in Malabar changes were wrestled out, that is debated, contested and selectively endorsed, and acted upon by interest groups formed on the basis of class (tenancy), caste and religion, and nation. Important here was the simultaneity of multiple identities and the regional specificity of practices,

interests and identities. Hence while it is important to note the intersections and differences between interests and identities based on caste and tenancy or tenancy and nation or caste and nation, it is equally significant to note the ***different intersections*** of these interests and identities in different regions that is north and south Malabar. These differences are important for us precisely because of the way gender relations are engaged with by reformers. During intersecting processes of reform of caste practices and tenancy in north and south Malabar, gender relations were sought to be reconstituted in important ways but the agenda for gender was mediated by that of class, caste, religion and nation. It was only among the ***Nambudiris*** that women's organizations were formed to negotiate changes in their status. Nevertheless, women's position particularly in relation to marriage, inheritance and within the emerging conjugal family was to form a defining aspect of the caste identity among the ***Nairs***, ***Tiyas***, and ***Mappillas***.

1.7 Objectives

1. To examine the proposition that there has been a decline in women's rights to property in the context of a transformation from a matrilineal form of family and descent of property to an increasingly patrilineal form of family through

   a) colonial interpretation of family and land customs that facilitated male control over property and persons in the matrilineal family;

   b) successive processes of reform that seek to alter radically the matrilineal family by centering conjugality and placing women in a dependant relationship with men.

2. To examine the implications for women of the colonial interpretation of matrilineal practices

3. To examine how successive reform efforts engaged with the questions of women sexuality and property, which mediate and influence the reconstitution of gender relations.

4. To examine the centrality of the redefinition of gender relations in shaping new self-identities among different caste and religious groups -- ***Nairs***, ***Nambudiris***, ***Tiyas*** and ***Mappillas***.

1.8 Methodology and Sources of Data

We have relied upon mostly historical sources relating to two successive periods that comprise our study,

a) the late nineteenth century (1880-1900) when efforts at reform of both land and matriliny relied on lobbying for government intervention;

b) the twentieth century (1900-1940) when there were growing attempts to mobilise on the lines of group interest and identities and bring pressure upon the government to enact reforms.

The material we have drawn upon may be categorized as follows:

i) Official Sources: Documents relating to proceedings and correspondence of the Madras government particularly departments of Law, Judicial, Public, and Revenue;

Publications of the Madras government including administrative writing, statistical compilations, early census reports, Madras Native Newspaper Reports; Inquiry commission reports and evidences particularly on the subjects of land relations, agrarian conflict and matriliny; Survey and Settlement Reports and Settlement Registers; Proceedings of the Madras Legislative Assembly;

ii) Legal Sources: Law journals and compilation of Malabar and Hindu law;

iii) Interviews conducted in 'Malabar' with people directly or indirectly involved in or informed about the agrarian, caste, and nationalist struggles; informed about the disintegration of the *taravad;*

iv) Press and Literary Sources: Back volumes of newspapers and periodicals; autobiographies, biographies, fiction and compilations of 'oral' literatures including ballads and folksongs;

v) Research: We will draw upon research on a) matriliny, which though it has emerged mostly out of anthropology, was undertaken at different periods of time and reflect distinct preoccupations; b) Agrarian conflict and land reforms; c) Social reform, nationalism, gender and caste.

1.9 Chapter Outline

Our study is organized into seven chapters. The following is

an outline of each chapter.

In chapter two, we interrogate, using the category of gender, the interpretation of customary practice and the development of a 'system' of ***marumakkatayam*** law by the civil courts. A specifically colonial understanding of the notion of custom, as deriving from the timeless and immutable principles of a system of law, together with patrilineally-informed understanding of matrilineal customs, we go on to argue had deleterious implications for women's rights to property among the matrilineal castes.

Chapter three deals with the debate around the need for a marriage law for the matrilineal castes of Malabar in the last decade of the nineteenth century. We review the material generated in the process that led to the marriage law in an attempt to understand the different positions that emerge on the question of ***sambandham*** (matrilineal marriage which was not given legal sanction by the colonial government until 1933) in the light of the colonial understanding of 'marriage as contract'. We argue that legal status or the lack of it of ***sambandham*** hinged upon the colonial interpretation of the 'rights' of women emerging from ***sambandham***. The efforts to reform matriliny during this period attempted to restrict the customary rights of women in a ***sambandham*** and to property, importantly by linking property rights ***primarily*** to marriage.

Chapter four reviews colonial land policy in Malabar. We seek to understand how north-south differences in tenancies, matrilineal customs and caste configurations influenced the development of different reform alignments and agendas in the respective regions in the late nineteenth and early decades of the twentieth and late nineteenth centuries. Also, we will examine the role of the tenancy struggle in influencing the agenda of reform of ***marumakkatayam*** and the coincidence of the two on issues like hypergamy (***sambandham*** between ***Nambudiri*** men and ***Nair*** women), which was seen as representing the exploitative edge of hierarchical land relations.

Chapter five interrogates the process of reform of ***marumakkatayam*** among the ***Nairs*** in the first three decades of the twentieth century. Using the instance of the North Malabar Nair

Samajam, the largest caste association among the ***Nairs*** in Malabar we attempt to deal with certain questions: How did they resolve the questions concerning women and property raised during the debate on a marriage law? What were the implications for women of their comprehensive agenda of reform of caste practices? How did they conceive of women's roles in the emerging society and economy? Importantly we also look at the interface between the ***Nair*** and ***Nambudiri*** reform movements and the interlocking of their separate attempts, specially where it concerned practices related to women.

In chapter six we attempt to engender the process of reform of caste and religion among the ***Tiyas*** and ***Mappillas*** of north Malabar. In the ***Tiya*** reform project, ***marumakkatayam*** was seen as suspect for keeping the caste in 'bondage' and alternative frameworks, importantly that of the 'Hindu', were explored. The growing reference to notions of 'Hindu' and 'Muslim' in the press and in government documents, in the first decades of the twentieth century, in the context of conflict around religious processions were important markers of change. Alongside this, a section of the ***Mappillas*** voice demands for change in ***marumakkatayam*** and the desire for a more 'Muslim' identity. We will examine the mediation of gender relations by caste and religion to understand the implications it had for the redefinition of women's rights to property among matrilineal social groups.

In the concluding chapter, apart from bringing together the discussions in the preceding chapters, we review some of the legislative measures in post-independant India that have had to do with the definition of women's rights to property. Here we pay special attention to the continued erosion of ***marumakkatayam*** as a legal practice through legislations by the Government of Kerala and by the Central Government. We also review some empirical work on contemporary practices related to family and property among the matrilineal social groups. More importantly, we attempt to link this discussion to the question of the conceptualization of women's claims to property and the need to be wary of basing women's claims upon stereotypes of as women as 'chaste', 'conformative', 'naturally domestic' or at the other extreme as 'efficient' producers in modern capitalist economies.

Chapter 2

MATRILINY, WOMEN AND 'CUSTOM' IN COLONIAL MALABAR

> Although the British claimed that they only interpreted Hindu (or Muslim) law and did not interfere with it, in fact by the very process of setting up their law courts for judicial interpretation (which acquired the force of law through the notion of binding precedent) the British altered the law -- in some ways beyond recognition and irretrievably.
>
> Madhu Kishwar[1]

2.1 Colonial Interpretation of Custom: Introduction

The administration of 'personal law' in colonial Malabar, was held to derive from customary practice and it was left to the civil courts to interpret, define and administer customs as and when the occasion, in the form of disputes, arose. The first inquiry into customary practice in Malabar, aside of the labours of the civil courts, was undertaken by the Malabar Marriage Commission set up in 1891, a full century after the establishment of colonial rule in 1792. For the purposes of the commission, customs had already been mapped out and its labours were more in the direction of whether change was desired. A corpus of Malabar law was built up entirely on the basis of precedents established by the courts.

In the legal domain of the colonial government, a distinction was made whereby, "British and Anglo-Indian law has 'territorial' scope and ruled over the 'public' world of land relations, criminal laws and laws of contract and of evidence".[2] Reflecting the division in English law, topics concerning the 'private', regarding family, marriage, and inheritance, were to be governed by 'personal' laws, seen as deriving sanction from religion and hence inviolable.[3] In the conception and framing of personal

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[1] (1994: 2149).

[2] Sarkar (1993: 1871).

[3] Ibid., Non interference in religious matters, professed by the East India Company was reiterated in Queen Victoria's proclamation of 1 November, 1858. See Cohn (1987: 216).

laws, this intention was thwarted, judicial presumption being in favour of textual Hindu law leading to conflict and erosion gradually of customary practices.[4] This was so even among social groups and in areas where 'custom', not based on literary traditions, was recognized as the basis of law.

The project of interpretation of customs and codification constituted a terrain upon which an important break with pre-colonial society was attempted.[5] It was necessitated by the colonial ambition of bringing under judicial supervision aspects of social and political life that had hitherto been under the jurisdiction of community, importantly caste-based institutions.[6] For instance, among the ***Tiyas*** of Chirakkal taluk in north Malabar, a ***Tiya stani*** (dignity or title) family, Muthedath Aramanakkal Mannanar, was an authority to decide caste disputes.[7] His jurisdiction could be invoked on appeal. In adjoining Kottayam taluk, however, juridical authority was vested in the ***nattu***

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[4]Carroll (1989: 2).

[5]Cohn's (1987: 567-575) points out that the British ignored extant adjudication procedures and modelled the process of adjudication in the courts on that of British law courts of the period. Central to it was the necessity of a decision in a case, unlike adjudication procedures in different Indian institutions where compromise was looked for. It had implications for the nature of cases, disputes which had continuity and complex contexts were reduced to the specificity of a 'case'. Arguing on similar lines, Galanter (1994: 17) adds that in undertaking to administer the law in government courts rather than merely supervising the administration of law, the British initiated a process of 'expropriation' of law. It gave the government the power to "find, declare and apply" the law.

[6]Kishwar (1994: 2145). Pre-colonial Malabar was considerably fragmented, politically, before Hyder Ali sought to contain the local rulers. Family and caste disputes were usually brought before caste councils and depending upon the nature of disputes before the village headman (or chieftain) indicating a very considerable local autonomy. Miller (1954: 46), Logan (1989: 132).

[7]Deposition by Muthedath Aramanakkal Kunyi Kelappan Mannanar, K. Krishnan Vazhunavar; Appendix IV, RMMC II, (1891)., Logan (1989: 155), Thurston (1907: 43). The family also provided a refuge for ***Nambudiri*** women who had been excommunicated for adultery in the customary ***smarthavicharam*** (trial for adultery by a ***smarta*** -- Tamil Brahmin).

karanavanmar (caste elders), a right possessed by specific *taravads*.[8]

Colonial officials in seeking to develop a 'definitive' code of Hindu law, comprising the "best shastric law that could be discovered",[9] did considerable violence to the diversity of existing rules used to negotiate disputes depending upon caste and region.[10] Though they were seen as deriving from different sources, there was a remarkable similarity in the mode of determination of customs from textual Hindu law and from customary practice not based on any written code. The assumption that underlay interpretation, that practice grew out of a uniform set of tenets and could be reduced to them, gave shape to a conception of custom that was specifically colonial. While it provided a filter for all extant practices in the process of definition of customs, during the debate on the need for a marriage law later in the nineteenth century, it formed the basis of contentions both in defence of and against matrilineal customs.

We will contend that the colonial legal discourse on *marumakkatayam,* despite or precisely because of the overt connexion between women and matriliny, was not so much about matriliny or women but about what comprised authentic custom.[11] In the interpretation of customs there was no engagement with *marumakkatayam* or with the position of women under *marumakkatayam*. On the other hand, *marumakkatayam* was understood within the framework of a universal theory of the evolution of the family and a framework of Hindu law, both of which provided patrilineal, patriarchal analogies for understanding matrilineal customs.

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[8]Deposition by Panangadan Raman, Vakil, Appendix IV RMMC II, (1891).

[9]William Jones cited in Kishwar (1994: 2145).

[10]Derrett in ibid.

[11]Mani (1989) has argued that the debate on *sati* in the early nineteenth century reconstituted tradition, such that all parties to the debate invoked the 'authenticity' of a particular corpus of texts -- the *shastras*. The debate was not about *sati* as about what constituted authentic tradition. The conception of tradition that emerges in the debare was specifically colonial.

Among the matrilineal castes of Malabar and South Canara where unwritten custom was deemed to form the basis of personal law, the determination of customs was influenced nevertheless by texts that were later impugned by the same courts.[12]

A reinvented conception of custom created new possibilities for certain sections of matrilineal society and lent pace and direction to the reshaping of customs. We seek to show that the understanding of ***marumakkatayam*** and ***aliyasantana*** practice using a patrilineally-informed conception of custom had important implications for the women (or perhaps we should contend ***against*** women). Add to this the fact that at a time when the importance of control over property and other resources in the family was becoming increasingly clear, information regarding matrilineal customs was accessed invariably from men, it is not unlikely that information regarding custom would have been in the interests of the informants.[13] A third factor that prejudiced the position of women was the deployment of a particular notion of 'rights' in understanding and administering the ***marumakkatayam*** and ***aliyasantana.*** The notion of collective rights which was said to regulate relations under ***marumakkatayam***, we will argue, was caught in a polarization of rights between individual and collective, understood in relation to each other. This excluded the possibility of an entirely different conception of 'rights'.[14]

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[12]The influence of texts is not to be underestimated. For even after the ***Aliyasantana Kattu Kattle,*** which for a time was perceived by colonial judges as an authoritative account of ***aliyasantana*** custom, had been denounced by the courts as a recent forgery, judgments based on it continued to constitute precedents. Moore (1905: 82).

[13]Even in the late nineteenth century, during the inquiry into matrilineal customs in Malabar, women were conspicuous by their absence. In Travancore, a similar commission in the early twentieth century noted that it was impossible to interview even the few women who agreed to be interviewed as they insisted that it be done in their homes. Saradamoni (1996: 145).

[14]It is instructive that, V.K. Chinnamalu amma, a contributor to ***Mahila***, a women's journal, in 1927 should have posed the Hindu concept of ***dharma*** (morality or ethics) against the western idea of rights, arguing that the notion of rights could have detrimental effects. Velayudhan (1994: 73).

While our focus will be on Malabar, it would be useful to draw upon the treatment of ***aliyasantana***, for it was perceived as founded upon the same principles and hence partaking of the same customs. Virtually, the only difference in interpretation lay in the recognition of female management under ***aliyasantana*** law. Uniformity in forms of matriliny was imputed through the decisions of the civil courts despite claims to the contrary particularly from persons governed by ***aliyasantana*** law.

As our approach seems, easily, to invoke a comparison with the ***marumakkatayam*** in the pre-colonial period, we must add a note on method. Our engagement with customary practices is, unless otherwise mentioned, with their interpretation during the colonial period through the efforts of the colonial civil courts.[15] For instance, in referring to the rights of women, we allude not to their position under ***marumakkatayam*** and ***aliyasantana*** law in the immediate pre-colonial period, but to the rights and position that were attributed to them through a colonial understanding of those systems. In doing so, we seek to avoid making a comparative statement using the language of rights, for there are indications that any claims, or interests that members of the ***taravads*** had were ***mediated*** by the ***taravad***. While this is not to suggest that individual or separate rights per se were incompatible with ***marumakkatayam***, it is one way of not ruling out, in the face of inadequate information, that they were diffuse and could be distorted easily when read through the prism of individual rights.

This chapter is in five sections. In section two, we will outline the notion of 'custom' that underpinned the colonial project of interpretation of customary practices in Malabar. It

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[15]We would argue along with Kala (1982) and Arunima (1996) that matrilineal customs (pre-modern kinship) were flexible and in a process negotiation. For indications of changes in *sambandham* and other social practices in the medieval period alongside changes in political and cultural dominance of certain castes see, Narayanan and Veluthat (1984). In a striking parallel, Ganesh (1991) deals with the wrestling between different interest groups in land, importantly the *janmi* (landlord) and the *kanakkaran* (tenant) for greater control, in the late medieval period. This could not have left untouched social practices such as *sambandham* that were part of the network of relations between *janmi* and *kanamdar taravads*.

will be followed in section three by a more detailed look at the interpretations of important customs by the 'civil courts in an attempt to understand the possibilities they engendered and the particular implications they had for women. In section four we will examine interpretations by the courts specifically dealing with women's rights to property and the concluding section will discuss the implications for women of the colonial interpretation of customs.

2.2 Custom and a 'System' of Matrilineal Law

> I adhere most strongly to the opinion that where a rule of law indisputably exists it is the duty of the judges not to fritter it away on the specious pretense of bringing rules of law into harmony with what they may consider the requirements of society. If they are wrong in their view of such requirements... the evil is unmixed, if right, the mischief still predominates over the good because it prevents that systemic reform from which alone good can result. Such systemic reform is for the legislature.
>
> Justice Holloway[16]

Bhattacharya, in a study of the codification of practices in Punjab, exposes the assumption inherent in the colonial project of codification that the underlying principles of practices could be grasped through modern theories.[17]

> Observed facts made sense only within such a framework of explanation...[O]nce the essential principles were understood, ambiguities and confusions could be ironed out and the real practices systematized into codified rules.[18]

This reinvented the notion of custom such that customs had to be proved, they had to be general, consistent and arising from the principles of a system of law.[19] Practices then were restrained

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[16]Munda Chetti *v* Timmaju Hensu, S.A. no. 83 of 1862, I MHCR, 1862-63: 383.

[17](1996: 37, 38).

[18]Ibid.

[19]Bhattacharya (22) points out that this understanding of practice was influenced by the Orientalist project of searching for an unadulterated past embodied in the 'Hindu' scriptures. Serving as the impetus for the immense colonial project of identifying, interpreting and translating 'original authoritative texts which were to form the basis of colonial codes, it in privileging

within the grid of a set of putative organizing principles.

Evidence that did not conform to the theory were explained using such distinctions as between the 'norm' and the 'exception', between the general and the particular and between customs that were 'authentic' i.e., had the authority of 'antiquity' and later 'innovations'.[20] Implicit in the colonial project of mapping out a system of law, based upon customary practice but only upon such customs as conformed to a set of principles, is the assumption that the system in the terms that it was defined in the civil courts was timeless and immutable for any change was seen as potentially destructive of it. A particular construction of the ***marumakkatayam*** then preceded every engagement of the courts with customary practice. "The perceived coherence of customary law was pre-given".[21]

It is instructive, in this regard, that much of the direction and inflexibility regarding rules of matrilineal law emanated from the higher courts, particularly the High Court. Cases brought to court seeking partition of ***taravads***

> were constantly successful in the Provincial Courts, but were invariably foiled on appeal to the Sudder Court at Madras, the objection being frequently taken for the first time by an English Barrister. It so happened that...the Sudder Court possessed one more more Judges, who were thoroughly acquainted with Malabar custom, and by whom cases from the district were invariably heard.[22]

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textual law also effectively effaced any real distinction between custom and textual law where, textual law was recognized. A process that was centered in Bengal and around the Bengal tradition, it has important implications for the rest of the British territory.

[20](Ibid: 38, 39).

[21]Ibid.

[22]Mayne (293) cited in Moore (1905: 16).

This was also true among others of the customary powers of the ***karanavan.*** In Lakshmi ***v*** Krishna Panikkar, the Munsifs decision in favour of female right to management was overturned on appeal by Herbert Wigram in South Malabar A.S. 434 of 1878, Ibid, p 121. The High Court confirmed the decree of the appeal court S.A. 634 of 1878, Ibid, p 122. Similar judgments were handed down in A.S. 299 of 1855 (Calicut) and A.S. 194 of 1862 (Tellicherry) by Justice Holloway. Ibid (120).

But what was the basis of their thorough acquaintance with Malabar custom? Sundara Aiyar, a High Court Judge is instructive in noting that while the law of property among the ***marumakkatayis*** was based entirely on usages, British exponents of the law allowed little weight to the views of the people and were guided by "their own notions of a perfect system of Marumakkatayam law".[23]

2.2.1 Separate Rights or the Subversion of Difference?

It was maintained in the civil courts that separate rights did not exist in the Malabar ***taravad***, which was in keeping with the interpretation of the ***taravad*** as the "antique Patriarchal form" of the Hindu family.[24] However, the affirmation of separate rights comes to the fore in at least two ways.

i) The colonial interpretation of important customs, particularly the denial of the right to partition, except by common consent, was based upon an expression of individual right in every member's right of dissent. "No one member, nor even all but one can enforce a division upon any who object."[25] Collective rights then and "holding property in the collective capacity" were both founded in the official legal discourse on a ***form of individual right***.

ii) Understanding the ***taravad*** in analogy with the 'Patriarchal' family, in the official legal discourse the ***karanavan*** (oldest male member of the ***taravad*** defined as 'head of household') was vested with the sum total of individual right. However, his absolute right emerging from this theory was considerably toned down

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[23](1922: 13).

[24]Mayne's ***Hindu Law*** cited in Moore (1905: 17). Mayne locates the ***taravad*** at a particular stage in the evolution of the modern Hindu family, corresponding to its "antique Patriarchal form" whereby ,

> the doctrine that property was by birth--in the sense that each son was the equal of his father--had then no existence validated impartibility and the unimpeachability of the 'Patriarch'. The son was a mere appendage to his father, and had no rights to property as opposed to him.

[25]Ibid. Sundara Aiyar (1922: 13) points out that the nature of the rule was due to the British courts for it was extremely unlikely that a single member should have been given the right against the will of the majority in the ***taravad*** to resist a partition.

through clauses restricting his power to alienate ***taravad*** property and the chiseling down over a period of rules such as the absence of separate maintenance.

A crucial intervention by the civil courts lay in generalizing the power and property relations inherent in a form of patrilineal family. This was achieved by collapsing the terms ***karanavan*** and head of household, when the latter was informed by the position of the father or the 'patriarch'. That the ***karanavan*** was defined as male, needless to say prejudiced the position of women, but the critical difference lay in the moulding of his status as head of household, central to which was a form of individual right, against, ironically, the explicit denial of individual rights in the colonial discourse on the ***taravad.*** Reproduced in the reconstitution of the ***karanavan*** were the autocratic possibilities inherent in the notion of 'head of household'.[26]

It has been argued that identifiers of matrilineal kinship in colonial law such as co-residence, impartibility and the inalienability of property were not an essential part of customary practice in pre-colonial Malabar.[27] While there is evidence of sale and purchase of land and other 'property', there is little

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[26]Arunima's (1996: 292) contention, based on Buchanan's travelogue, that in early colonial north Malabar women had rights to management of the ***taravad*** is misleading. For Buchanan's account of ***Nair*** practice in north Malabar if anything suggests the prevalence of a notion of gender difference that was prejudicial to women. He wrote that ***taravad*** women managed domestic affairs when they returned from their marital homes. But that women in north Malabar could return to take up permanent residence in their natal ***taravads,*** only on the death of their husband or on his having turned them out. On the other hand, a woman could not divorce her husband. It is significant that Buchanan's information about ***Nair*** practices in north Malabar was gleaned exclusively from some eminent men of the area. This is not to suggest that ***marumakkatayam*** had no favourable implications for women. On the other hand, for such implications it would be self-defeating to look among separate rights for we would remain within the authoritarian possibilities that such rights enabled particularly in the context of communitarian institutions like the ***taravad.***

[27]Ibid.

indication of how such decisions were made for ***taravads*** or who had the authority to make them, except in the definition of the powers of the ***karanavan*** in the colonial civil courts. Hence, we are left guessing about the ***basis*** of alienability, which is important in understanding the dynamics of power in a ***taravad.*** Similarly, while women like men in certain wealthy ***taravads*** had rights to revenue from entailed property such as ***stanum*** (a special status), and certain ***cherikallus*** (land under ***taravad's*** direct cultivation), there is nothing to suggest that they could alienate such property, which would be implicit in a sharply defined separate right. Such reasoning has the perhaps unwarranted consequence of projecting backwards into the pre-colonial period a notion of rights that formed the basis of the colonial interpretation of *marumakkatayam.* It is also caught within the polarization of rights between individual and collective in the colonial legal discourse, which served to rule out an altogether different conception of claims and obligations.

2.3 Engendering Transformation

In this section we will examine the colonial interpretation of some important customs in an attempt to unveil the influences that went into their understanding of *marumakkatayam* system and practice. We will show that the theories that informed interpretation of custom drew upon patriarchal and patrilineal circumstances and lent these influences to the understanding of *marumakkatayam.*

2.3.1 The 'Right' against Partition

It was in the second half of the nineteenth century that ***marumakkatayam*** began to take on sharp legal contours. The same period also marked the increasing contest over legal interpretations, using spaces within these interpretations. This was necessitated by the structure of the law itself for plaints based outside these interpretations such as seeking the right to partition on the basis of ***tavazhis*** (branches), or any basis other than common consent, could not be maintained. Though a decision

against partition had been confirmed as early as in 1814, provincial courts had continued to sanction partition.[28] From the 1860s, however, the rule under the focus from the possibility of 'misuse', was fleshed out using markers such as co-residence.

We confront two seemingly divergent explanations for the right against partition in the official legal discourse. If the understanding of the ***taravad*** in analogy with the impartible "archaic Hindu family" avoided any reference to matriliny, Justice Holloway, who played an important role in strengthening the contours of the ***taravad*** on the west coast, invoked matrilineal practice as the determining factor of the rule of impartibility. In a case that was to form an important precedent for establishing impartibility as custom, the judges disallowed a plea for division under ***aliyasantana*** law which came up before the High Court in the 1862. The plaintiff, a woman had sought partition and the case had been decided in her favour in the original suit and on appeal. In a special appeal to the High Court, the appellants contended that division could not be legally enforced. Holloway held that:

> The divisibility of family property in Canara is one of those propositions which fall within the category of law taken for granted, and is found when examined to have no ***solid foundation***...[I]t has not been disputed, as indeed it could not be, that the compulsory division of the family property is wholly opposed to the authorities upon which the Aliya Santana system of inheritance rests. ***It is equally opposed to the principles of that system which vests the property in the females of the family...***Decisions dividing the family property have also been passed in Malabar and it is one of the claims of our late colleague Mr Justice Strange...that he successfully resisted the attempts of lower courts...to introduce foreign admixtures into a law of which whatever may be thought of the policy none can deny the consistency of the theory upon which it is based.[29]

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[28]I Sudder Decisions, 118 in Moore (1905: 13). Witness Justice Holloway: "If this indisputable rule had been abrogated by decisions of the highest courts of appeal...how much so ever I should have lamented that Judges had overstepped their proper duty of declaring law, I should...have followed such decisions. Here, however, the only decisions produced are those of inferior Courts, evidently influenced by their view of expediency in the particular case before them. 1 MHCR., 380 in Ibid (15).

[29]Munda Chetti v Timmaju Hensu, S.A. no. 83 of 1862 in 1 MHCR, 1862-63: 380-382. The treatise in circulation, the ***Aliyasantana***

If partition was held to be "at direct variance with the ancient law on the subject",[30] it was nevertheless seen as deriving from matriliny. That is, matriliny constituted the ground for the rearticulation of custom. As Sundara Aiyar asks in response to Holloway, how could it be said that non division followed logically from succession through females? "And even if it did the question is not logical plausibility or perfection but what were the usages among the communities who are governed by it?"[31] The rule of impartibility, assumed the stature of authenticity, against which the sanction of partition by the lower courts were based, as Holloway characterized it, on "foreign admixtures".

Interestingly, both explanations served to interpret and 'contain' the deviance or non-conformity of ***marumakkatayam*** using familiar concepts. In denying compulsory partition, both maintained that division could occur only by common consent. That is as Aiyar points out the courts established that while no member of a ***taravad*** could claim division as a matter of right, ***every member could resist*** partition.[32] As we have pointed out this amounted to reinvesting every member with an individual right ***against*** the collective.

Up to 1860 division was a part of ***marumakkatayam.***[33] Division of ***taravad*** property represented the settlement of disputes, stretching sometimes over a few years. The ***Kannoth taravad*** in Kottayam taluk of north Malabar separated from ***Koodali*** in 1856.

Kattu Kattle, which it was claimed was the work of Bhutalapandiya, considered the ancient law giver, asserted that if a disagreement took place between the sisters the eldest sister is to provide the younger sister with a separate house and its necessary apparatus, retaining the general managership and the performance of ceremonies. Holloway interpreted this as far from being a claim for compulsory division, constituting a "positive authority against it".

[30]Frere ruling against partition in Ibid.

[31]Sundara Aiyar (1922: 13).

[32]Ibid (11, 12).

[33]Proceedings, Madras Legislative Council (PMLC) vol. 59. U.C.S. Bhatt argued that it had been routine until the High Court put a stop to it in the mid-nineteenth century.

The disputes between ***Koodali*** and ***Kanhirote Kunnath*** over ***taravad*** property that led to this division started in 1852.[34] Through analysis of a number of ***taravad*** histories, Melinda Moore shows that there was no one manner in which ***taravads*** were founded, that branches may split off for different reasons including fall from caste, quarrels or the desire of a husband to endow his wife and children.[35] There could be a gradual breaking off of ties by dropping one connection after another without any defined point of partition.[36] Hence, when ***taravads*** assumed large sizes, they did so for reasons other than inertia or legal impartibility ***i.e.,*** for reasons of 'worth'. It was the dominant, landed ***taravads*** that usually did so.[37]

2.3.2 A History of Partition?

Targeting precisely the right against partition, the plaintiffs in a case in 1870 attempted to stake their claim to the property of another ***taravad*** with whom they shared descent. The defendants maintained that while they descended from a "common stock", their ***taravad*** and the plaintiff's were distinct. Given

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[34]Gopindranath (1996: 85) and Kurup (1995). ***Kannoth*** was allotted land growing 13000 seers of paddy and 88 ***parambas*** in 1856. In a more telling instance, A.K. Anandan Nambiar records that his ***taravad*** divided into three ***tavazhis*** in 1860, suggesting a different basis of partition. Appendix IV, RMMC II (1891).

[35](1983: 145). In a related point, Moore points out the futility of searching for ***taravad*** genealogies for it was not so much a string of ancestors who were remembered as turning points or important events in the history of the ***taravad***.

[36]Ibid (183)., Kunhappa, (1981: 5) illustrates the gradual severing of ties of pollution among the divisions that traced lineal ties to the Ayilliath ***taravad*** in Chirakkal taluk. Mavilayi ***amsam*** was at one time under the authority of the Ayilliath ***taravad***. At the time that the British were establishing their factory and base in Tellicherry, the territory of Randuthara too was purview to the authority of four ***taravads*** claiming common descent to ***Ayilliath,*** referred to by Logan (1989: 376) as the Randuthara ***Achanmar*** (elders) Being a large and widespread ***taravad,*** death and birth pollution spelt a great inconvenience. While pollution ties were terminated, Kunhappa mentions that they continued to use the same cremation ground.

[37]Ibid (185).

the way matrilineal law was developed with the emphasis on denying partition, a decision against the plaintiff could have meant affirming partition. In denying the contention of the plaintiff, holding it to be a case where one of several branches had become better off and another, "by virtue of ambiguity of a word" had sought to reap the benefits, Holloway adopts a position along the theory of the evolution of the family.

> "As in all Hindu law so in the archaic form of it which exists in Malabar, the first conception of the family is of an indissoluble unit, a mere aggregate with no separate rights... In Malabar as elsewhere, the inconvenience of this state of things has made itself felt and families... have split into into various branches".[38]

Holloway also calls to his aid the indigenous concepts of ***mudal sambandham*** (community of property) and ***pula sambandham*** (community of pollution) to argue, ironically, that the ***taravad*** was not lacking in a history of partition! The movement from ***mudal sambandham*** which referred to the property-owning group and "the only sense with which the courts were concerned" to ***pula sambandham*** which referred to a larger group that shared ritual pollution but where "separation has taken place" was one of divisions.[39] However, acknowledging that partition along branches had occurred did not lead to a search for a different basis, itself, for partition.[40] On the contrary stipulations were set to identify formerly partitioned ***taravads***.[41] However, in the early

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[38]Regular Appeal no. 120 of 1870, VI MHCR, 1871, 411.

[39]Ibid.

[40]It is perhaps significant that when partition was sought in the early decades of the twentieth century, it was along the lines of ***tavazhis*** (branches) and it was seen as the only acceptable basis even into the Act of 1933. Making out a case for ***tavazhi*** (branch) partition, T. Vasudeva Raja writes "...Malabar is merely suffering from arrested growth, and (that) the administration of law by the courts constituted by the British government on principles recognized in English jurisprudence is, in no small degree, responsible for this stunting process". Home judicial Dept, no.60-62, 1912, NAI.

[41]In an Appeal Suit 78 of 1878, (North Malabar), it was held that 40 years separation was sufficient to prove that effective partition. The decree was upheld by the High Court. The onus was on those not residing in the ***taravad*** to prove that they were

twentieth century it was held that in a proper case, in the interests of family peace and order a partition may be supported as a family arrangement.[42] Further, "separate residence, separate assessment and separate management are the common indicators of partition".[43]

2.3.3 Co-residence v Separate Maintenance

On the other hand, the adjudication of disputes on practices like co-residence and the powers of the ***karanavan*** yielded greater space for widening and gradually changing the earlier interpretations as also for the evolution of new practices. Focus on co-residence also meant refuting categorically pleas for separate maintenance from the income of the ***taravad***.[44] However by the 1880s suits for maintenance were increasingly successful indicating not so much a change in the clause of the law itself as the widening of the scope of disputes, the adjudication of which pushed at the boundaries of interpretations.[45] In the early

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descendants of mother, grandmother or great grandmother of some of the existing members. A.S. 135 of 1885, ILR., XXIV, Madras, 275.

[42]Parakkateri ***v*** Koran, 1912, in Sundara Aiyar (1922: 15).

[43]Sulaiman ***v*** Biyathumma, 32 MLJ, 1916, in Ibid (17).

[44]Holloway in dismissing a suit for separate maintenance in the District Court in Tellicherry observed:

> The junior members of the family are not entitled to be supported out of the family house from the family property... To give them a cause of action, they must have alleged, and to succeed, they must have proved, that ***by the acts of their karanavan*** they were deprived of subsistence in their own family house. (emphasis ours).

A.S. 275 of 1858, Moore (1905: 124).

[45]In Peru Nayar v Ayappan Nayar a plea for separate maintenance was successful as a "rare exception[s]... ***as the Karanavan has been the cause of quarrels*** that necessitate the plaintiff leaving the family house. The maintenance granted, ***viz.,*** two rupees *per mensem* is intended to discourage such applications. 2 ILR., 1880, 282 in Moore (1905: 128). (emphasis ours).

A judgment in 1882 opened up considerably the space for claiming maintenance. It was held that members were entitled to maintenance when there was no room for them in the ***taravad*** house. Further if the ***karanavan*** made insufficient allowance they could apply to the court to determine what was sufficient in the context of family circumstances and to a raise in allowance when the

decades of the twentieth century maintenance disputes were to form the single largest source of litigation against the ***karanavan*** from within the ***taravad.***

2.3.4 Maintenance for Wife and Children: Anomaly or Rule?

It is instructive that the right to maintenance of the wife and children of male members of a ***taravad*** in north Malabar had not been raised directly, it seems to have been taken for granted. A Case brought in 1878 by a woman and her son claiming maintenance from their ***karanavan,*** included the claims of the wife and children. In a sense this was not at issue and on interrogation at a later stage even the first defendant admitted to it as custom. However, while the Subordinate Judge had not objected to it, on appeal the District Judge pointed out that maintenance of wife and children of male members of ***taravads*** was not in keeping with ***marumakkatayam*** law.[46] On appeal it was held that

> "***Although it would seem inconsistent with the principles of the Marumakkatayam law*** that the taravad should contribute to the maintenance of the ladies with whom the male members cohabit and of the issue of such cohabitation,...it is urged in this Court that it is the practice of the country in North Malabar for females to reside during the whole year in the taravad of the male with whom they cohabit,...We shall therefore remit for trial the issue..."[47] (emphasis ours).

The High Court accepted the finding of the District Judge that the claim was a proper one, as evidence to this effect was not

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family wealth increased. S.A. of 1882, 5 ILR., Moore (1905: 132).

[46]Varikara Vadake Vittil Valiya Parvati v Varikara Vadake Vittil Kamaran Nayar, (Turner, C.J. and Kindersley, J), 6 ILR, 1883, 341. Against the claims of the plaintiffs, a female member of a north Malabar ***taravad*** and her son to maintenance, the defendant, the ***karanavan,*** had pleaded that the former were not entitled to maintenance as they had declined to live in the house that he had allotted to them. The subordinate judge had ruled in favour of the plaintiffs citing that the house in question was already occupied by 11 members and had no spare accommodation. Upon appeal the District Judge had modified the decision. He disallowed maintenance to the wife and children of the second plaintiff citing against it ***Marumakkatayam*** law itself. The plaintiffs had appealed to the High Court against this decision.

[47]Ibid

objected to by the first defendant either.[48] In the official discourse, however, the custom constituted an exception.

2.3.5 The 'Rule' of the Karanavan

Like the right against partition, the powers of the ***karanavan*** too were more clearly spelt out in the latter half of the nineteenth century. It was in this period that there were efforts increasingly to challenge his rights ***vis-a-vis*** the ***taravad i.e.,*** under what circumstances and to what extent he could represent the ***taravad*** such that his actions and decisions obtained against them would be binding on all members of the ***taravad.*** Significantly, the powers of the ***karanavan*** applied to a wide range of subjects, as agent of the ***taravad*** in its relation to people outside the ***taravad*** importantly tenants or possible buyers of property as well as material and ritual powers \ responsibilities within the ***taravad.***

In delineating the powers of the ***karanavan,*** the judges drew upon ***their understanding*** of his position as ***head of family,*** derived variously from Roman law and Hindu law.

> [B]y the principles of the laws of Malabar, the mother herself, while alive, and her children too, were under the guardianship of the head of the family, the Karanavan. Their position was ***precisely analogous*** to that of the members of a Roman family under the ***patria potestas.*** The Karanavan is as much the guardian and representative, for all purposes of property, of every members within the taravad as the Roman father or grandfather.[49]

This laid the field for understanding the positions of the ***karanavan*** and all other members of the ***taravad,*** in relation to one

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[48]When women occasionally visited their ***sambandhakaran*** such that it did not amount to living away from their ***taravads***, it did not disentitle her from maintenance from her natal ***taravad***. S.A. 1194 of 1898, Moore (1905: 130).

[49]Thathu Baputty v Chayakath Chathu, Civil Miscellaneous Regular Appeal no. 406 of 1872, 7 MHCR., 1871-74, 179. The Civil Judge had drawn upon criminal law, which requires the father of a child unable to maintain itself to maintain it, and "the natural equity found in positive law" to entitle the father to guardianship of his children. The High Court reversed the order on the grounds that it was "wholly opposed to the very principles upon which Marumakkatayam depends".

another and in their respective relations to the ***taravad***. The ***karanavan's*** condition as 'head of household' was described as being natural, that is not arising from trust or contract. It is instructive, however, that the authority of the ***karanavan*** was not posed as natural within a distinct logic of matriliny, rather it was derived from his resemblance to the Roman father or grandfather or closer home "the father of the Hindu family" like whom the situation as head of family came to him by birth.[50] Posing the authority of the ***karanavan*** as natural was then a way of 'naturalizing the ***taravad***; 'containing' it by investing it with familiar concepts. This also achieved a truncated ***karanavan*** for if his economic-managerial role was bolstered, his ritual was neatly separated and crucially failed to inform the total conception of the ***karanavan***.[51]

The anxiety of British judges emerging from their lack of familiarity with the matrilineal family came to the fore while adjudicating on a demand brought in 1876 for the removal of the ***karanavan***. The acting District Judge choosing to appoint a Receiver rather than rule in favour of the plaintiff's claim to the position of ***karanavan*** observed that in another suit pending in the sub court, the female members of the family sought to depose the defendant and place the property under their control. While he maintained that it was not in the interest of the ***taravad*** to allow young married females to manage the property, in its judgment on appeal, the High Court came down strongly on "the mischievous extension of the doctrine as to the removal of karanavans".[52]

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[50]1 ILR., 158, Moore (1905: 142).

[51]The contradictions cited in the position of the ***karanavan*** in the nineteenth and twentieth centuries, emerging from his 'false position' have been linked to the failure to appreciate his critical ritual role. Moore (1983: 195).

In organic relation to this the ***karanavan's*** eminence and local standing as Kala (1983: 118) points out depended upon his exertions on behalf of the ***taravad***.

[52]Eravanni Revivarman v Ittapu Revivarman, 1 ILR., 1876-78, 153. The Judge of the High Court argued that the "plaintiff in the regular suit was really the Brahmin paramour of one of the women

> The state of families and property in Malabar will always create difficulties. Their solution will not be assisted by bringing in the anarchy and insecurity which will always follow upon any attempt to weaken the ***natural*** authority of the Karanavan.[53] (emphasis ours).

Admittedly then the system in Malabar was 'difficult'; and the condition of property was peculiar. The construction of ***marumakkatayam*** and ***aliyasantana*** law in a familiar mode whereby if the rules of the system were different, as in the case of matrilineal succession, the mode of operation of these rules could still be defined on familiar lines, sought to reduce the difference to a technical one. The interpretation of concepts of the matrilineal family rigidly in terms of concepts of the patrilineal family, achieved in the official discourse the conflation of power and property relations within two kinds of families. A particular conception of hierarchy and power relations were then seen as natural to the matrilineal system. While this redefined power and property relations within the ***taravad*** in its legal form, in practice it opened up different and unequal possibilities along patriarchal lines including proximity of members to the ***karanavan***.

2.4 Women and Rights to Property

Management and control of property was vested in the senior male of the ***taravad*** as the 'general' rule in Malabar against which

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and a by no means desirable manager for a Malabar family". In turn he held that the question was not whether a man was unworthy of his position as ***karanavan*** but whether the removal would benefit the family. Almost a decade later, the South Canara District Judge had ruled in favour of a woman who on the grounds that the senior woman was ***yejamanan*** ***(karanavan)*** under ***aliyasantana*** law, claimed the right to countermand a ***karar*** (contract) and regain property belonging to the family from the senior male, his wife and children. Quite in contrast to the Malabar case, the High Court on appeal, referring to the observation of the District Judge that management by males was detrimental to the interests of the family and that their natural instincts were in conflict with the duty which they owe to the family, held that "the question was not merely one of expediency" and that in neighbouring Malabar the general rule is in favour of management by males. Devu v Deyi, 8 ILR, 1885, 358-661.

[53]Ibid.

female management as a ***practice*** was framed as an 'exception'. Except in the case of the ***kovilagams*** (royal families), female management was held to be "opposed to the present usage of every other Nayar family in Malabar".[54]

Coming up against the inevitable connexion between women and matriliny it was clarified in the High Court that under Malabar law in the ***karanavan,*** the eldest male of the tarawad, was "vested actually (though in theory in the females), all the property movable and immovable belonging to the tarawad."[55] Positing property in the females of the family only "in theory", served to contain the difficulties that it was feared would emerge from an unfamiliar system of property.

> [W]ith so peculiar a condition of property as that of Malabar, it is most essential for the avoiding of complete anarchy and consequent ruin to maintain the distinct rule as to the Karanavan's powers.[56]

It must be noted that land was the most important form of property among the matrilineal social groups in Malabar. Control over land also meant a degree of control over certain classes of people, tenants and labourers, even service (artisan) castes. Possession, control and management of land referred to the roles of land owners or tenants as ***janmis, kanakkar*** or ***verumpattamkkar*** and

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[54]Moore (1905: 121). The right of the senior woman to management was recognized in the Calicut and Walluvanad ***kovilagams.*** In Calicut there were three ***kovilagams*** (residences), each of which had separate estates attached to it. The senior woman of the family (of the three ***kovilagams***) was entitled to a ***stanam*** (separate estate) called the ***Ambadi Kovilagam.*** The senior women of each of the three ***kovilagams*** was entitled to its management. Ibid (343 - 345).

[55]Varankot Narayanan Nambudiri v Varankot Narayanan Nambudiri, 2 ILR, 1878-81, 328. Wide ranging powers outlined by the judge, including the right of sue alone on behalf or the ***taravad*** and to be impleaded alone as representing the ***taravad,*** were chiseled down in later judgments.

[56]Velia Kaimal v Velluthedatha Shamu, 6 MHCR, 1870-71, 401. The case concerned the right of a branch ***karanavan*** to sue for recovery of property where the ***de jure karanavan*** had renounced his rights and the ***taravad*** in two branches had been managed by branch ***karanavans*** for seventy eight years. The High Court held that no delegation was irrevocable even by the delegator and still less by his successors.

facilitated, inevitably though not necessarily, their coming together with the ***karanavan*** of ***taravads***, all male.

The practice of setting aside property for the maintenance of women in ***Nair taravads***, to which they were entitled to management, was disallowed by the High Court in the middle of the nineteenth century.[57] Among the bigger ***taravads s***eparate ***cherikallus*** were set aside specifically for the maintenance of women and children though the arrangements probably differed from one family to another.[58] The notion of ***striswothu*** (women's property) came up in arbitration and was recognized, though only on the basis of written evidence, "as known to ***marumakkatayam*** and not invalid".[59]

In a suit brought against the Kavalapara Valia Nair by his sister the Valia Kava Nethiar, in the 1850s, even the defendant and his witnesses were on record saying that it was the practice to set aside properties separately for the maintenance of the women, which was under the control of the senior woman.[60] If the senior woman found this inadequate and informed him the Moopil (elder) Nair, usually paid the deficient amount.[61] The senior woman also received 1000 fanams from the 16000 fanams received as ***malikhana*** by the Moopil Nair.[62]

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[57]Moore (1905: 347). Moore points out that the practice was adopted by certain ***Nair*** families of distinction until disallowed by the High Court in Kondi Menon v Vadakentil Kunni Venna where a distinction was claimed between property set apart for women and the common ***taravad*** property.

[58]"Stanaswatha", ***Janmi, edavam***, 1908. The author mentions that a considerable portion of ***janmam*** property was set aside for women and children and women had access to management of this property.

[59]Bivi Umah v Keloth Chiriyath Kutti, S.A. no. 932 of 1894, MWN 1919, 693-694., Puthelath Chatti Soopi v C.V. Kannan Nair, MWN, 1929, 873-877. See also Mayne (1986: 1118).

[60]Kurup (1984: 20 - 24). The Moopil Nair opposed his sister's claim to maintenance while she resided separately ***i.e.***, at a family residence but away from the usual residence of the women. Contrary to the later stance against separate maintenance the court held that the Valia Kava Nethiar was entitled to the maintenance claimed by her.

[61]Thichadi Narayanan Nambiar, witness of defendant in Ibid.

[62]Ibid. Chittazhiyath Narayanan Nambudiri, a witness of the defendant.

Claims of female management, successful at the Munsifs courts, were struck down, successively, at the District Courts.[63] To establish a custom of female management against the general custom the 'evidence' had to conform to certain requirements. For instance it was not enough to argue that, "the woman has always been the manager. To establish a custom contrary to the ***general customs*** of the country, the ***clearest evidence*** is required".[64] (emphasis ours) This implied that a defence of practice ***as practice*** could be dismissed as constituting "vague statements" rather than "proof".[65] On the other hand it was particularly difficult to supply 'sufficient' proof, for

> The management of a female, like the management of an Anandravan must, in my opinion, ***always be presumed*** to be with the consent of those on whom the law confers the right of management ***i.e.,*** the senior male, and may at any time be resumed.[66] (emphasis ours)

Refuting the claim of a woman to management of properties and headship of the family, it was held in the District Court that the evidence proffered was inadequate to prove a "family custom",

> I do not deny that in some tarawads females are entrusted with the management with the consent of the males, but I never yet heard of a case where the headship was claimed as a right by a female, except in the case of the Kovilagams [royal houses]. In the present case it appears to me that all that the third defendant's evidence amounts to is that her mother managed tarawad affairs during her life-time, and so much the plaintiff admits. But is not the whole evidence perfectly consistent with her having assumed the management because there was no males of age in the tarawad? So far as can be seen, she managed excellently for thirty five years, and it may well be that the male members as they grew up should wish to leave the management in their hands.[67]

This put an end to any fluidity regarding family management and the possibility of diverse arrangements within a single family.

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[63]In A.S. 299 of 1855 (Calicut), A.S. 194 of 1862 (Tellicherry), Justice Holloway struck down the decisions. In A.S. 434 of 1878 (South Malabar) the Munsifs' decisions were overturned in the District Courts. Moore, (1905: 121-124).

[64]A.S. 194 of 1862, (Ibid: 121).

[65]Zillah Decisions, March 1857, p 32 in (Ibid: 121).

[66]S.A.434 of 1878, Ibid, p 122.

[67]Lakshmi v Krishna Panikar, A.S. 434 of 1878, Ibid (121).

In another instance, refuting the contention of a Munsif that the authority over a ***paramba*** (garden) resided in the female and not in the male members, the District Judge had ruled that the evidence was insufficient to raise the inference.

> The documents, from the obliteration of the names, do not in fact show that Ittiyachi demised the paramba to the present tenant... The document is dated 1822-23 and it may well be that from the incapacity of males from tender age the woman was karanavatti in her life-time, but the weight of the evidence clearly shows that the grantor of the Janmam, Rama Panikar, succeeded her. This is clear from the payment of revenue by him, which would ***carefully have been avoided*** if the truth were that in this family females had the management of some portions of the property and males of others. ***The separation in all acts of ownership would have been most carefully enforced.***[68] (emphasis ours)

Here payment of revenue is assumed to be a determinate marker of control.[69] It eliminated the possibility that families may have diverse arrangements regarding revenue payments, sharing of income, or management and control of property itself. In matters such as sales of ***taravad*** property, where there was an adult ***anandiravan*** his consent was required even when the sale was assented to by a female member and was clearly for ***taravad*** necessity.[70] Further, the heightened powers of the male head of household could affect the nitty gritty of the everyday life of women, undermining their position within the household.[71]

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[68]A.S. 299 of 1855, Ibid (121).

[69]Many ***janmis*** pointed out, as was well known, that a good proportion of revenue on land owned by them was paid by their tenants. Malapurath Para Nambi said while his ***taravad*** paid Rs 500, his tenants paid Rs 10,000. Appendix IV, RMMC II (1891).

S.A. 216 of 1927 involved a ***karar*** made in 1876 by which ***taravad*** property was described as ***striswothu*** and it was agreed that government assessment and renewal demises would be in the name of the senior woman and that the senior male member would collect rents. MWN, 1929, 874-877.

[70]Sundara Aiyar (1922: 63).

[71]For instance when a senior lady disputed the right of the ***karanavan*** to redistribute the rooms in the ***taravad*** house by refusing to give up the key to one room, it was held that the powers of the ***karanavan*** were absolute and he was entitled to possession of the room. A.S., 208 and 253 of 1881, Moore (1905: 121).

Over a period of time there were changes and in a case in

2.5 Official Discourse on Marumakkatayam: Women, Property and Matriliny

A specifically colonial conception of custom structured the legal understanding of matriliny in colonial Malabar and reconstituted women's status and position in a matrilineal family and economy. However, the official discourse on matriliny was not so much about matriliny or in relation to it about the inevitable link between women and matriliny but about what constituted custom. That is the "principles of ***marumakkatayam*** law", called upon so often to validate customs did not derive from a serious engagement with matriliny. On the other hand these putative principles were understood in relation or contrast to the regulating principles of patrilineal \ patriarchal concepts of family and property. The official discourse produced a 'system' of matrilineal law based on a theory that was deductive and not informed by observation of practices. In this discourse, matriliny constituted the site upon which custom was remade.

This did not mean that all customs were determined in accordance with theories. For instance the normativity of male headship in Malabar did not accord entirely with their conception of ***marumakkatayam*** law. Here we need contend with the privileging of certain sources of information about custom. In determining male headship it is likely that the civil courts relied entirely upon male, particularly ***Nambudiri*** male informants, and not upon a theory of ***marumakkatayam*** law.[72] However their conception of the ***karanavan*** as 'head of household', was informed by familiar

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1917 a lady living in a separate room in the family house owing to scruples about cooking fish was allowed separate maintenance. "When a state of things has gone on for a number of years without objection, it may be unreasonable on the part of the karanavan to terminate it arbitrarily." Sundara Aiyar, (1922: 139).

[72]The privileging of the ***Nambudiris*** as the source of authentic custom is evident in the observation of the Malabar Marriage Commission that,

> Prior to the advent of the British there were no courts of justice to record case-law and the Nambudiri Brahmins monopolized the study of the shastras and were also the sole repositories of the unwritten custom of the country.

RMMC I (1891: 19).

concepts.

The tensions inherent in the legal interpretation of the matrilineal family in an explicitly patrilineal mode is more clearly captured, however, in the case of ***aliyasantana*** law where female management was recognized by the courts.

> The legal right to the family property is vested in the female members of the family jointly, ***but for little other practical purpose than regulating the course of succession...*** possession and control of the property belongs exclusively to the ejaman, or manager, of the family, who is ordinarily the senior of the female members... (members) individually have no right to anything beyond such support (maintenance).[73]

It is instructive that vesting of managerial powers in women was accomplished within a gendered conception of the 'office' as that of the ***ejaman*** (***yejamanan***) determined in accordance with a patrilineal \ patriarchal conception of 'head of household'.

Involved in the colonial mapping of ***marumakkatayam*** law was a system of property with two aspects of relevance to us: i) property in persons, and ii) external property importantly in land, and in other assets such as houses, control over which by different categories of persons was redetermined. We have seen how the colonial interpretation of matrilineal custom through the patrilineally informed matrilineal custom, facilitated male control over property, particularly land. The definition of the powers of the ***karanavan*** as well as the understanding of the ***taravad*** in the light of the 'Patriarchal family' had significant implications not only as we have shown earlier for women's relation to the property, particularly land, of the ***taravad***, but also over the control over property in their person. For instance the ***karanavan*** was able to determine their position in the ***taravad*** and other important aspects of the lives. Arunima cites two cases where women forfeited their rights to ***taravad*** property, on account of sexual relationships that did not meet the ***karanavan***'s approval.[74] Significant here were attempts by the

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[73]Moore (1905: 124).

[74]In A.S. 675, the ***karanavan's*** charge that a woman of the ***taravad*** was engaged in 'promiscuous intercourse' was accepted by the court. This was surprising since in the colonial interpretation

karanavan,reinforced by the legal definition of his powers, to influence even control the mobility of women and junior members.

As ***sambandham,*** the customary form of marriage, was perceived as flouting normative morality, its legal interpretation took a different turn. Unable to fit ***sambandham*** within the rigid requirements of the generalized 'institution of marriage', without compromising the 'moral' stature of the latter, it was refused legal recognition. In the realm of the 'marital' relationship, women were posited with certain rights, because of which it was argued, the relationship did not correspond to marriage. Precisely because of these rights ***i.e.,*** the right to enter into and terminate a marriage at will, sanctioned by customary law as interpreted by the courts, it was held in the civil courts that legal recognition could not be extended to marriages among the Hindu matrilineal communities.

Recognition of matrilineal succession however meant in the official discourse a simultaneous denial of any form of denial of any form of patrilineal inheritance. The interpretation of matrilineal law by the civil courts strengthened the legal contours of the ***taravad***. But it gave rise to contradictions arising from the legal definition in association with changing socio-economic conditions. The patriarchal construction of the matrilineal joint family in the official discourse placed the ***karanavan*** and other members in a relationship of hostility in terms of their differentially defined access to resources. The principles of ***marumakkatayam*** referred to in the official discourse served to give sharp legal outlines to the ***taravad***, opening up in practice areas of dissent, conflict and litigation that made Malabar the most litigious district in the Madras Presidency and the ***taravad*** quite untenable in its extant legal form.

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of matriliny there was nothing to forbid promiscuous intercourse. In A.S. 59 denial of property rights arose from a woman's relationship with a lower caste man which led to her being thrown out of caste. Arunima (1996: 299).

CHAPTER 3

THE DEBATE ON MARRIAGE AND WOMEN: 1890 -- 1908.

> At an interview which Della Vella [a Portugese traveller] had with the Zamorin, there were present two little princesses of the Royal house aged 12 years each; and of them he says, "they were all naked (as I said above the women generally go) saving that they had a very small blue cloth wrapped about their immodesties. One of them being more forward could not contain, but approaching gently towards me, almost touched the sleeve of my coat with her hand, made a sign of wonder to her sister, how could we go so wrapped up and entangled in clothes...Such is the power of custom that their going naked seemed no more strange to us, than our being clothed appeared extravagant to them."
>
> K. P. Padmanabha Menon[1]

3.1 Introduction

Inscribed into the framework of Victorian morality in the nineteenth century, the exposure of a woman's upper body was marked as shameful and coded sexually in a way it had been innocent of.[2] Similarly inscribed into the moral-legal framework of the colonial state, ***sambandham***, customary marriage among the matrilineal castes of Malabar, took on the shape of concubinage.[3] The Malabar Marriage Act, 1896 (Act IV) was an effort by ***Nair*** reformers to redress this by 'introducing' a form of 'marriage', and civil rights held to arise therein, for the matrilineal

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[1] (1984: 199).

[2] The breast-cloth controversy was a campaign, supported by missionaries, to secure for ***shanar*** (a lower caste) women in Travancore the right to wear the upper garment. As merely an instance of lower caste assertion against feudal privilege it underscores many aspects. Cohn (1997: 143) points out that changes in dress became the tokens of much wider social, economic and political changes. Significant was the functional alliance, pointed out by a missionary, between the economic potential for imperial industry from the demand for cloth and the civilizing mission. See also Robin Jeffery (1994) and K.T. Rammohan (1996).

[3] Drawing upon a common set of political-moral imperatives, if sacrificial infanticide and ***sati*** had been banned earlier as 'murder', then by the late nineteenth century temple dancers were being presented as prostitutes, early marriage for women as 'rape' and 'child molestation'. Srinivasan (1987: 178).

castes. It represented the first serious effort to alter by statute the personal law, as administered in the British-Indian courts, of the Hindu matrilineal castes in Malabar and South Canara.

The government instituted the Malabar Marriage Commission in 1891, at the instance of a section of the ***Nair*** middle class, for whom ***marumakkatayam***, especially, as constructed in the legal discourse had turned into an embarrassment. The Commission was to inquire into matrilineal customs among the 'Hindus' and explore the desirability of introducing changes in marriage, inheritance and family organization through legislation. Act IV of 1896, an outcome of the labours of the Commission, was, however, a tame version of the kind of law suggested by the more radical section of the reformers, its permissive character reflecting the effort to reconcile contrary opinion. Yet, it represented a significant moment in a process of reform that started to take shape in the 1880s. The process leading to the Act assumes importance as it brings together two aspects of the transformation of the ***marumakkatayam***--the interpretation of customary practices by the civil courts, discussed in the preceding chapter and reform efforts by a section of the community.

Importantly for us, the customs that were being addressed by the reformers, were in a recognizable process of change. These customs had crystallized in association with a process of interpretation by the civil courts. During the process of reform, however, they were framed by the colonial government as well as by a section of the ***Nairs*** as 'authentic'. By the closing decades of the nineteenth century, a section of the ***Nairs*** had moved away from the ***taravad*** (matrilineal joint family). Their association with the institutions of the colonial state through education and employment, and the influence of a set of ideas and morality, that were part of the common sense of colonial officials and were seen as 'natural', were instrumental in shaping their particular response to ***marumakkatayam.***[4] Fuller suggests that the crisis of

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[4]Fuller (1976: 130), commenting about a perceived crisis in the

the ***taravad*** in the late nineteenth century was overstated, emerging from the preoccupation of a highly visible but small minority of the English-educated and professionally employed ***Nairs***.[5] Their approach, however, tended to displace the crisis of survival and conflict within ***taravads,*** which rather than being addressed frontally was merely garnered to bolster the reformist agenda for a marriage law.[6]

It must be noted that there was no uniformity of ideas and opinion among the ***Nair*** educated middle class from whom the reform process drew its strength. Of importance to us is a distinction between two kinds of liberal 'progressive' aspirations that are arrayed conflictually during the debate on a marriage law. The first kind of opinion, which we will refer to as 'progressive', was thorough going in its disavowal of ***marumakkatayam***, making little distinction between the ***marumakkatayam*** as a legal construct and as a practice. In contrast, the second set of reform opinion, which we will term 'progressive' dissension, resisted the implications of the marriage bill that ***sambandham*** did not constitute marriage, in an attempt that questioned the centrality of paternity to any form of marriage. More importantly, however, we will illustrate how both positions were premised upon the 'conformative' sexuality of women, which required the alteration / denial respectively of the picture of permissive sexuality of

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taravad in the late nineteenth century, writes that the important point was that ***Nair*** leaders and reformers, though in a small minority, "prone to quote Bentham and Mill, who they thought provided some kind of philosophical backing to their arguments", believed that the ***taravad*** was linked to their economic failure. For Malabar the evidences collected by the Marriage Commission illustrates the prevalence of utilitarian ideas among a small group, who then view the ***taravad*** as an anachronism. Eric Stokes (1959) documents the deployment of western ideas in understanding Indian conditions and the dissemination of these ideas in India.

[5]Fuller (1976: 130)

[6]This crisis of survival is depicted starkly in accounts dealing with the late nineteenth and early twentieth century. See particularly Sankaran (1965), Kunhappa (1981), Kannan Nair (1989), Gopalan (1995).

women so much a part of the colonial discourse on Malabar.

This chapter is in six sections. Section two is a review of scholarship on the transformation of ***marumakkatayam***. In section three we attempt to understand the ideological underpinnings of the colonial discourse on ***sambandham.*** In section four we attempt to read two strands in the debate on reform of ***marumakkatayam*** in the last decade of the nineteenth century to understand the position of women that emerge from them. Section five is an effort to understand women's silence in the context of resistance to the legislation proposal. Section six attempts to grapple with the links between women's sexuality and property rights so acutely apparent in the debate for a marriage law.

3.2 Transformation of Marumakkatayam: A Review

Much of the literature on matrilineal society in Malabar has emerged within the discipline of anthropology with an accent on kinship and family, economic and political factors mostly serving as a useful backdrop.[7] In dealing with the transformation of matrilineal economy and society, K.N. Panikkar, a historian, foregrounds two sets of issues ***i.e.,*** i) socio-economic changes that came with European trade and drew strength from British colonial rule, and ii) the emotive issue of ***sambandham*** of ***Nair*** women with ***Nambudiri*** men.[8] For Panikkar as for Kathleen Gough the emergence of a modern capitalist economy was a crucial factor in the disintegration of the ***taravad.*** However, while Gough situates the 'roots' of disintegration more recently, with the entry of land into the market after establishment of British colonial rule,[9] Panikkar suggests that the fault lines in the ***taravad*** began to appear with the inception of trade with Europe in the sixteenth century. Implicit in Panikkar's argument is the ***essential*** incompatibility of matriliny with a modern capitalist economy, emerging, as a section of ***Nair*** reformers had believed and

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[7]Gough (1952, 1961), Mencher (1965), Fuller (1976), Moore (1983).

[8](1995: 176 - 199).

[9](1961: 640).

propagated, from the inability of ***marumakkatayam***, systemically, to cradle enterprise.[10]

Panikkar argues that ***sambandham*** was welded into a network of exploitative land relations between ***Nambudiris*** as ***janmis*** (landlords) and ***Nairs*** as ***kanakkar*** (tenants), ***sambandham*** denoting hypergamous marriage (both between ***Nair*** women and ***Nambudiri*** men and reciprocally among ***Nairs***). Serving to facilitate sexual access for the ***Nambudiri*** male to ***Nair*** women, it underlined the exploitative edge of hierarchical land relations.[11] In this context, then, the need to reform ***sambandham*** as well as the land relations in which it was embedded, could not have been more emphasized. What is not interrogated, however, is the particular resolution of the question of ***sambandham*** in the realm of the "Paternal family". For as Panikkar himself points out, ***sambandham*** was not confined to alliances with ***Nambudiris.*** Moreover, as we shall discuss in Chapter IV, ***Nambudiri*** influence and the preference for ***sambandham*** with them was not as pervasive throughout Malabar as it was in the southern taluks.[12] To explain the resolution in favour of "the paternal family" then, we have to look elsewhere. It must be pointed out that situating the reforms as Panikkar does serves also to elide over issues concerning women, otherwise than in relation to ***sambandham*** between ***Nair*** women and ***Nambudiri*** men, when the reforms that sought to redefine property spaces and relations had important implications for them.

Fuller, disputes Gough's assertion that economic change, crucially the entry of land into the market, was the 'root cause'

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[10]Panikkar (1995: 198) views matrilineal institutions as mere support structures of a ***Nambudiri***-dominated value system. For him if the rejection of the dominant ideology was made possible by socio-economic changes enabled by the expansion of the money economy and the British policy of creating an English-educated middle class for administrative purposes, the matrilineal system was also eroded by the ascent of 'enterprise'.

[11]Ibid (183).

[12]We have provided a brief description of the regional variation in ***marumakkatayam*** and ***janmi-kudiyan sampradayam*** in the Chapter 1.

of disintegration of the ***taravad***.[13] He asks, pertinently, if the entry of land into the market was determinant, why did ***taravads*** in Malabar persist as joint-property holders for so much longer than those in Travancore, when land entered the market in Malabar seventy years before it did in Travancore?[14] Arguing that economic development was not identical in all regions and that anyway by itself it did not invariably alter family and kinship practices, he dismisses a single determinant theory.[15] However, he cites ideology as one of the principal factors of change, referring to the influence of the relative prosperity of the Syrian Christians in Travancore which was linked by a wide spectrum of opinion particularly ***Nair*** reformers' to the former's patrilineal form of family.[16]

We may, however, contest Fuller's claim, based on the experience with ***marumakkatayam*** in south Malabar and Travancore, that the strength of the ***taravad*** was contingent upon the weakness of ***sambandham*** as a marital tie.[17] This is important because even while he cautions against reading too much into the demobilization of the ***Nair*** militia by the British which left all those ***Nairs*** to return home leading to a strengthening of the ***sambandham*** union, he nonetheless suggests that it was an important initial factor that led to changes in kinship and family. This, however, does little

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[13]Fuller (1976: 145).

[14]The reference here is to the conferment of ownership rights by the British in 1793 to ***janmis*** in Malabar. In Travancore where much of the land was the ***janmam*** property of the state, ownership rights were conferred upon the ***kanakkar*** only in 1865. Ibid (145), Varghese (1970), Raj and Tharakan (1983).

[15]Ibid (147).

[16]Ibid (146). He contends that though the ideology derived from a theory, that both matriliny and joint families were a bar to economic progress, which though invalid, served as self-fulfilling prophecies. Robin Jeffery (1994, reprint) documents the strong influence exerted by patrilineal ideology on ***Nair*** reformers. In a subsequent work, he (1978) hazards, the claim that Marxism filled in the ideological and structural void left by the collapse of matriliny for deracinated ***Nair***.

[17]Fuller (1976: 123).

to account for north Malabar where ***sambandham*** unions were more stringently regulated and strong matrilineal descent groups coexisted with virilocal post-marital residence.[18]

Arunima seeks to show that the colonial interpretation of ***marumakkatayam*** often militated against the rights that were historically available, particularly to women and junior members, within the ***taravad***.[19] She argues that a highly commercialized land market (free purchase and sale) and separate rights to property (individual rights denied in the colonial interpretation of the ***taravad*** as incommensurable with ***marumakkatayam***) already existed in pre-colonial Malabar and hence the colonial interpretation was a redefinition.[20] While there is considerable evidence of sale and purchase of land in the pre-colonial period, the transactions involved wider social relations in which land was inextricably caught up and hence to collapse it with 'a free market in land' in the capitalist sense could be widely off the mark.[21] The crucial point was not whether land was saleable or not but what land represented (social status, caste / feudal privilege) and under what conditions and on what terms it was transacted?[22] In other

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[18]Going by this recurrent maxim in anthropological work on Malabar, it would be anomalous that the ***Nairs*** in north Malabar were matrilineal at all, if we set aside for a moment that they had dominant ***taravads***. And yet they were matrilineal with virilocal post-marital residence for at least 300 years preceding British rule. Menon (1994) citing Miller.

[19]Arunima (1996).

[20]It was maintained in earlier research that land was not freely bought and sold in pre-colonial Malabar and became a commodity with the aid of British land policy. Gough (1952), Mencher (1965), Fuller (1976).

[21]***Attiper*** or sale of ***janmam*** right documents in Logan II, (1989), Kurup, (1995).

[22]Arunima's contention ties up with Dharma Kumar's (1985) position that land was freely alienated much before the colonial period. Significantly, Kozlowski (1989: 116) points out that under the Mughals, not land itself but its produce, which enabled command over surplus, was the measure of wealth. He points out that Dharma Kumar's attempt to refute the contention of Marxist scholars that private property in land did not exist in south Asia, did not in any way demonstrate that persons involved in land

words was land ***freely*** alienable or were sales mediated by the ***taravad*** and other social factors? It has been suggested that the ***janmi*** was not merely a landlord; his / her only privilege was not receiving rent, being involved in a network of interlinked socio-economic, political and cultural transactions.[23] An interest in land involved social even ritual meaning and there is nothing to suggest that land was being transacted as the private property of the ***janmi***.

Also, Arunima's effort to show that a notion of separate rights (as in women's separate rights to property) was not 'lacking' in the ***taravad***, ignores the crucial ways in which the same notion of rights (individual / separate) was indeed affirmed in the colonial conception of the ***taravad***, reducing considerably the complexity of the transformation. Apart from what the dissension against proposed changes implied, the 'requiem' for matriliny, (Madras Marumakkatayam Act, 1933) straddled, simultaneously, i) the dismantling of the ***taravad*** as constructed in the official legal discourse (which could be read as liberating matriliny from the tyrannical hold of ***karanavan*** and court-made custom), and ii) the possibility of the conjugal family.

What was effectively remade and frozen in the colonial discourse on ***marumakkatayam*** was the conception of custom though customs based on this notion were continuously challenged and revised. However, such revisions were marked as ***aberrations*** from the theory upon which the law was based. In studying the transformation it is necessary to note that it was this remade notion of custom that was sought to be replaced by the authority

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transactions were not primarily concerned with the produce rather than land itself. Irfan Habib (1995) shows that land had a more broad-based socio-economic rather than merely an economic 'meaning'. See also the debate on rupture and continuity in the context of colonialism, Irfan Habib (1984).

[23]Namboodiripad (1985: 227), Cohn (1987: 570).
Derrett (1976) makes a useful distinction in conceptualization of property in that in Hindu texts land, houses, jewelry and so on were markers of relationships between people and things whereas in western legal theory, property signified a right over things.

of the law codified in the Act of 1933.

We will argue that the Malabar Marriage Act, 1896 marked a significant moment in the transformation of matrilineal practice in Malabar, comprising a record of dissent that influenced the tone and direction of reform in the twentieth century. Its importance lay as much in the reflection of the influence of colonial categories and the production of imperatives (in this case the production of a new morality), as in the critical role that the resentment and social boycott generated against the Act, played in shaping the formulation of the problem of reform in the early decades of the twentieth century.

3.3 Official Discourse on Sambandham: Ideological Underpinnings

In order to locate the ideological underpinnings of the understanding of *sambandham* in the colonial legal discourse it is necessary to outline the conception of 'marriage as contract'. The influence of the conception is evident in the decisions of the British-Indian Courts on *sambandham* and in the debate on 'marriage' in Malabar during the last decade of the nineteenth century. Significant also was the criticism in nineteenth-century Britain of marriage as a truly contractual relation and the struggle to enact marriage reforms. We will draw upon Carole Pateman's *The Sexual Contract,* to consider two aspects of the debate on marriage in Malabar: i) the nature of the marriage contract which it was argued conformed more to the notion of status rather than contract; and ii) the connexion between patriarchy and contract which Pateman points out has been neglected even by feminists.[24]

Pateman argues that the social contract, elaborated by the contract theorists in seventeenth and eighteenth century Europe, was a socio-sexual pact in the 'telling' of which the sexual contract has been repressed; the social contract is a sexual pact i) in the sense of being patriarchal or establishing men's political right over women and ii) in the sense of establishing

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[24]Carole Pateman (1989).

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orderly access by men to women's bodies. She interrogates interpretations of the "original contract" (the social contract that founded civil society in the conjectural history of civil society and a new form of political right) to show that the collective endorsement of patriarchal right by classical contract theorists has been entirely ignored. Hence when civil freedom is seen as post-patriarchal, established by the overthrow of paternal rule\right (natural subjection to the father) by the sons, civil society is both post-patriarchal and anti-patriarchal and the origins of civil society in sex right or conjugal right is easily veiled.[25] "A man's power as a father comes after he has exercised the patriarchal right of a man (a husband) over a woman (wife)".[26] The contract theorists then merely incorporated conjugal right into their theories, transforming the 'law of male sex right' into its modern contractual form.

Also the social contract is treated as an account of the creation of the public sphere of civil freedom. Pateman draws attention to the opposition between civil society\natural state to emphasize that once civil society has been created it seems to shed one of its parts -- the private. The private sphere and by extension marriage and the marriage contract, are in contrast to the civil\public realm not seen as politically relevant. In the classic texts, according to Pateman, the sexual contract was displaced on to the marriage contract giving the impression that the social and sexual contracts were two separate though related contracts and that the latter concerned only the private sphere.

The standard commentaries on the classic texts do not usually mention that women were excluded from the original pact; they "gloss over the fact that the classic theorists construct a patriarchal account of masculinity and femininity, of what it is to be men and women".[27] However, Pateman points out only masculine beings are endowed with the attributes and capacities necessary to

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[25]Ibid (2).

[26]Ibid (3).

[27]Ibid (6).

enter into contracts, the most important of which is ownership of property in the person; only men, that is to say, are individuals. But if this was so, Pateman asks, then how were beings who lacked the capacities to make contracts nevertheless supposed always to enter into this contract? And why did classic theorists insist that, in civil society, women not only can but must enter into the marriage contract? Women are "incorporated into a sphere that both is and is not in civil society. The private sphere is part of civil society but is separated from the civil sphere..."[28] Hence what it means to be an 'individual', a maker of contracts and civilly free, is revealed by the subjection of women within the private sphere.

But why are women thus incorporated? Pateman argues that the reason why women must enter into the marriage contract is that they must be incorporated into civil society. However following the sexual contract, they are incorporated on a different basis from men, that is not as 'individuals', but as women which according to the original contract means as natural subordinates. The marriage contract simultaneously rejected and presupposed the subjection of wives. Rejected in order to enable women to enter into the contract and presupposed in their natural inability to enter into contracts which was revisited in the construction of the figure of the wife. "The original contract can be upheld and men can receive acknowledgement of their patriarchal right, only if women's subjection is secured in civil society."[29]

Though Pateman's purpose lies precisely in looking at the problems with the idea of contract itself, in that the modern form of patriarchy was embedded in it, and hence marriage as 'real' contract has little appeal for her, it would be useful for our discussion to recount the criticism of the notion of 'marriage as contract', which often posited the idea of 'real' contract as liberating or as the solution of unequal relations. For us it could serve as a useful backdrop to the official legal discourse

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[28]Ibid (11).

[29]Ibid (181).

on ***sambandham*** in Malabar, by throwing light on how the customary relationship had to be coded in order to conform to the notion of marriage.

William Thompson, perhaps the most ruthless critic of the notion of 'marriage as contract', in a work published in 1825 refers to the idea as an "audacious falsehood".

> Can even both the parties, man and woman, by agreement alter the terms, as to ***indissolubility*** and ***inequality,*** of this pretended contract? No. Can any individual man divest himself, were he even so inclined, of his power of despotic control? He cannot. Have women been consulted as to the terms of this pretended contract?[30]

The contractual character of marriage was expressed in that, "[i]t was of contract that the relation should be established, but, being established the power of the parties as to its extent or duration is at an end."[31] A distinction was also made between the behaviour of individual husbands and the structure of the institution of marriage or the power embodied in the structure of the relation between 'husband' and 'wife'.[32]

It could then be argued that marriage was not sufficiently a contract or was at best a limited contract, more a matter of a status. However, this then raised other problems specially when contract as the enemy of status was posited as the solution to the subjection of women. As Pateman points out contemporary criticism of the ascriptive construction of 'wife' and 'husband' based on sexual difference, unlike earlier attacks on the indissoluble marriage and its non negotiable terms, directed at the husband's conjugal right, faces an insuperable problem. For the 'individual' was a unilinear masculine 'individual', a patriarchal category. Contract may be the enemy of status but it is also the mainstay of patriarchy; the consolidation of its modern form.[33]

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[30]W. Thompson, cited in Ibid (157).

[31]A judge in the United States in 1888 cited in Ibid (155).

[32]John Stuart Mill in ***The Subjection of Women*** concurs with Thompson on this point though Mill goes on to push the case for contract as embodying freedom.

[33]Pateman (1989:187). She points out that women's standing in

3.3.1 The Legal Status of Sambandham: De-legitimizing Custom?

That the matrilineal system did not have a form of marriage was decided in the High Court in several cases concerning ***aliyasantana*** law and this was extended to the interpretation of ***marumakkatayam*** law.[34] In this section we will examine some of the decisions of the High Court as well as statements by colonial officials which suggest what was deeply 'wrong' with ***sambandham***.

In the most widely cited judgment of the High Court given in 1869, ***sambandham*** was held to be,

> "in truth not marriage, but a state of concubinage into which a woman enters of her own choice and is at liberty to change when and as often as she pleases. ***From its very nature***, then it might be inferred as probable that the woman remained with her family and was visited by the man of her choice;... Such has undoubtedly been the invariable habit under the Marumakkatayam law, and, although women in Canara under the Aliyasantana system do, it seems in some instances, live with their husbands, still there is no doubt that ***they do so of their free will,*** and that they may at any time rejoin their own families.[35] (emphasis ours).

The judgment brings to the fore the role of the putative 'agency' of women ***vis-a-vis sambandham***, in determining the legal status of

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marriage may reflect much deeper problems about women and contract, and that the structure of the marriage contract may be very similar to other contracts ***i.e.***, by one reading all contracts mirror the original contract in that they create what she calls civil mastery and civil subordination. "[T]he social contract enables individuals voluntarily to subject themselves to the state and civil law; freedom becomes obedience and, in exchange, protection is provided." Critics of contract have tended to subsume the subordination aspect in looking at contract as an instrument of exploitation. Pateman argues that exploitation is possible precisely because contracts about property in person place right of command in the hands of one party to the contract. "Capitalists can exploit workers and husbands can exploit wives because workers and wives are constituted as subordinates through the employment contract and the marriage contract." Ibid (7, 8).

[34]There seems to have been no instance of adjudication in the High Court on the question of marriage under ***marumakkatayam*** law. Moore (1905: 80). "It is as certain as anything can be that any ruling which holds that there is no marriage known to the Aliyasantana law must ***a fortiori*** apply to Marumakkatayam also." RMMC I (1891: 25).

[35]Subba Hegadi ***v*** Tongu, IV MHCR. 1868, 196, (Scotland, C.J., and Ellis, J.), in Moore, (1905: 80).

that relationship. Recognition of virilocal post-marital residence as ***custom*** it was implied would go against the ***nature*** of the law. In the context of the recognition of polygamy as a legal form of marriage under Hindu law as administered by the British-Indian courts, we could suggest that the complications relating to marriage in Malabar arose on account of the lack of the 'usual' restraints upon women.[36] Being questioned in the legal discourse was the absence of enforceable restraint specifically upon women not only from terminating ***at her own will,*** an earlier 'sexual connexion', but her 'right' to form another (which polygamy under Hindu law sanctioned for men).[37]

It is not surprising that freedom of divorce was a matter of considerable controversy. In Britain, it was not until 1969, when irretrievable breakdown of marriage became a ground for divorce, that divorces were obtained with relative ease by both wives and husbands and members of all social classes. To anticipate the termination of the marriage contract in the very act of contracting has become possible only recently.[38] Many nineteenth century feminists who favoured divorce, in particular as the best means for a wife to escape from a brutal husband, steered clear of

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[36]T. Kunhiraman Nair RMMC II (1891: 158), pointed out that Islamic law sanctioned divorce "by the husband at his will and pleasure" and yet no one was "bold enough" to urge on that there was no legal marriage under that system.

Poonacha (1996) illustrates a process by which customary marriage among the Coorgs / Kodava, a patrilineal society in south-west India, was reworked through a colonial discourse that restricted women's options. Marriage was recognized as legal but premised upon the fidelity of women. Curtailing women's rights to divorce, while permitting polygamy, Poonacha argues, was a colonial reinterpretation of customary law.

[37]It was pointed out that ***samabandham*** was regulated by custom, requiring the grant of notice before termination and the consent of ***taravad*** elders. C. Ramunni Menon, RMMC II, (1891: 153), Among the institutions cited was ***Nyayam Kodukuka*** (to do justice) indicating negotiation of termination of marriage among the ***Tiyas.*** E. Krishnan, Ibid (1891: 171)., A.C. Kannan Nambiar, Ibid (1891) refers to another term ***kaiyum, kanakkum nokuka*** (to settle accounts) for divorce among the ***Tiyas.***

[38]Pateman (1989: 183).

the subject for fear of compromising their other goals; other feminists were opposed to divorce fearing that the consequence would be to enable husbands to abandon their wives and children more readily.[39]

Uncannily enough, ***sambandham***, in its colonial interpretation, conformed closely to the idea of a 'real' contract and judicial dismissal of its claim to constitute 'marriage', suggest that what was wrong with ***sambandham*** was precisely its identity with 'real' contract. Significantly this was at a time when efforts in Britian to open up the 'marriage contract' were being resisted. Not without import was a submission to the marriage commission by a lawyer from north Malabar that, "the modern idea of marriage is to make it simply a matter of contract, which is more consistent with Malabar marriages."[40]

Entering into a 'marriage contract', however, involved entering into an already familiar terrain of correlative rights and duties. The right to dissolve a relationship at will would interfere with the structure of marriage and the rights of women in a ***sambandham*** interfered with the "power embodied in the structure of the relations between 'husband' and 'wife'".[41] Under a ***sambandham*** being a wife did not entail observing what Lenore Weitzman terms the 'essentials' of marriage, ***i.e.***, "the husband's duty to protect the wife and the wife's duty to serve her husband.[42] As Weitzman noted about marriage in contemporary western society despite major reforms, a married couple cannot contract to change the 'essentials' of marriage. The specific relationship / exchange of obedience and protection, cemented by property relations, inheritance rights and guardianship clauses

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[39]Ibid.

[40]Kottieth Ramunni, RMMC II (1891: 242). A similar point is made by A.C. Kannan Nambiar, a staunch votary of change to patriliny, who nevertheless objects to the import of the English law of divorce, when the ***marumakkatayam*** Hindus have a law "which it is the tendency of modern civilizations to attain". Ibid (207).

[41]Thompson cited in Ibid (158).

[42]L. Weitzman, ***Marriage Contract*** cited in Ibid (165).

arising from 'marriage', were absent in the colonial reading of ***sambandham*** as indeed they had to be if matriliny was premised upon the weakness of the 'marriage' tie.

It is instructive that the objections to ***sambandham*** in the colonial discourse were linked to the putative principles of ***marumakkatayam*** law enjoined in custom rather than ***practice*** itself.[43] Some colonial administrators maintained that though there was no legal form of marriage, "[i]n spite of this ***custom***, marriage is practically as common and as binding among the ***Nairs*** as in many other races".[44]

J. Sturrock, colonial administrator and author of the South Canara district manual, struck a different note. He contended that vesting landed property in women and the greater equality of the sexes in conjugal relations, a consequence, probably, of the women's propertied status, "has been commonly supposed to be an immoral system".[45] However, unfaithfulness, clandestine or otherwise, while the marriage tie exists, is said to be much less common than among castes whose pretensions to morality are much higher.[46] Citing the prevalence of polygamy among other castes, he argues that the "propriety of the common idea of the comparative

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[43]These "principles of *marumakkatayam* law" though never laid out systematically, were called upon constantly in judicial interpretations to validate certain customs over others.

[44]Sir Fitzjames Stephen speaking in the Viceroy's Legislative Council in 1872, cited in Panikkar (1977: 43). William Logan expressed similar views which we have cited in the preface.

Despite the general practice to the contrary, the marriage commission views polyandry as sanctioned by *marumakkatayam* law, hence constituting custom,

> [I]f by polyandry, we mean a plurality of husbands publicly acknowledged by society... it may be truly said that no such custom is now recognized by the Marumakkatayam castes in Malabar. If... we simply mean a usage which permits a female to cohabit with a plurality of lovers... this usage is distinctly sanctioned by Marumakkatayam and there are localities and classes among whom the license is still in practice. RMMC I (1891: 11).

[45]Sturrock (1894: 141).

[46]Ibid.

immorality of Tulu marriage customs" was linked to the conventional code which "strives to preserve the chastity of one sex by the severest penalties while allowing the other the utmost lattitude in the formation of either legalised or illicit connexions".[47]

A decision by the High Court in 1883 spelt out more clearly the grounds upon which marriage was deemed not to exist. "That the Aliyasantana law did not recognize such cohabitation as marriage appears to be shown by the circumstance that it founds upon it no rights of property or inheritance."[48] The definition of 'marriage as contract' ruled out, the possibility of separation of marriage and property laws.[49]

In the assertion that ***aliyasantana law did not recognize the relationship as marriage***, we have curious situation whereby a custom (***sambandham*** was recognized as custom) was refused legal sanction on the authority of customary law itself. Being asserted again is a specifically colonial reading of ***sambandham***, where in, even as virilocal post-marital residence was seen as anomalous, any form of patrilineal inheritance was seen as incommensurable with matriliny.[50]

However, there are strong indications that in north Malabar, and to a lesser extent in south Malabar, the ***taravad*** of a deceased male member was under a "moral obligation" to provide for his wife and children, the kind of provision depending upon the affluence

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[47]Ibid. Tulu is a language spoken in South Canara, mostly by people of castes that followed the ***aliyasantana*** system.

[48]Koraga ***v*** the Queen, ILR., VI Madras, 1883, 374, in Moore (1905: 82).

[49]The report of the commission, hence, does not even consider this possibility suggested by several observers. Chandu Menon RMMC I (1891), C. Gopalan Nair, RMMC II (1891: 186), Govinda Menon (Ibid: 294), Sturrock (Ibid: 156).

[50]Indicating the contradictions inherent in the colonial interpretation, Kottieth Ramunni, a witness before the marriage commission, points out that in-as-much as property rights emerging from marriage were absent, this was so among the ***marumakkatayam mappillas*** as well, but their marriages were recognised as legal. RMMC II, (1891: 242).

of the ***taravad*** and the material circumstances of the wife and children. There were references to ***kattu stanam*** by some respondent from north Malabar as the wife's 'portion' on the death of her husband, comprising movable and sometimes immovable property such as a ***paramba***.[51] Material obligations towards the wife and children of deceased members of ***taravads*** were generally recognized, but underlined when wife and children were in need.[52]

The Nileswaram and Kadathunad royal houses in north Malabar were formed through gifts by the Kolathiri to his sons.[53] ***Putravakasam*** (literally rights of the children), was a part of this obligation. Its categorization as moral rather than a legal right does not make clear how the former could fail to inform the latter, or whether the distinction drew upon the law as laid down by the civil courts rather than practice.[54] The obligation of the ***anandiravans*** of deceased males to supply the latter's wife and children with clothes and oil was a reference in customary parlance to the obligation to maintain them.[55] Significantly

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[51]T. Kunhambu, RMMC II (1891: 340), K. Rammunni, Ibid (242), E. Ambu Nair, Ibid (275).

[52]Reponses to the marriage commission (RMMC II, 1891) by Kannambra Rammunni Nair, ***janmi*** and District Board member, (121); T.V. Anantan Nair, District Munsif, Shernad (122); T. Kunhiraman Nair, Judge, High Court, Trivandrum (158); A. C. Kannan Nambiar, District Munsif, Badagara (197); E. Ambu Nair, Sub Registrar, Ponnani (275). Othena Menon, Sub Registrar, Payyoli (307).

See also deposition before the commission by Vengayil Kannan Nair, ***Janmi***; A.K. Anandan Nambiar, ***Adhigari*** and ***Janmi***; Kalliat Chathu Nambiar, ***Janmi***; Appendix IV, (Ibid).

[53]Gough (1961b: 392), Sreedhara Menon (1967), C.R. Karunagara Menon, Vakil, Appendix IV, RMMC II, (1891). In south Malabar the Kudiravattath Nair received his estates from his father the Samudiri. Ibid.

[54]K.P. Raman Menon, RMMC (1891: 271) High Court Vakil, points out that the civil courts do not recognise it as a right. Suggestive of the pervasive influence of the conception of custom, Gough (1961b) mentions that gifts of land to wife and children were known long before the British period, "but was against customary law".

[55]Kannambra Ramunni Menon, ***janmi*** and District Board member, points out that a woman was entitled to such maintenance until she married again. RMMC II (1891: 121).

putravakasam was also referred to as a posthumous right and as an older version of the current gift of self-acquired property to children by fathers.[56]

3.4 Social Reform, the Women's Question and Sambandham

It is tempting to place the efforts to reform matrilineal practice through legislative intervention in the context of the nascent nationalism of the closing decades of the nineteenth century. Partha Chatterjee has argued that the disappearance of social reform, within which framework the 'women's question' had been addressed earlier, from the agenda of public debate at the close of the nineteenth century was the expression of the refusal by the nationalist elite to let the colonial state intervene in matters that were crucial to the cultural identity of the nation".

> This did not mean a halt to the project of reform; all it meant was a shift in the agency of reform - from the legal authority of the (colonial) state to the moral authority of the (national) community.[57]

The nationalist elite proceeded to do this by dichotomising the domain of culture into the outer and inner. Even as the outer\material domain represented the subjection of the Indian people, the inner\spiritual domain, which corresponded to the home and family, represented a sphere of autonomy, even sovereignty; an area that was outside the purview of the colonial state.[58]

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[56]A. Chathu Nambiar, District Munsif, Nadapuram, (RMMC II, 1891: 137)., Deposition by John Leonard Rozario, Vakil, (Ibid: Appendix IV)., A.C. Kannan Nambiar, District Munsif, Badagara (Ibid: 201) points out that the custom received its *coup-de-grace* in the last ten years with rising conflict between *karanavan* and *anandiravan*, though "gifts of self-acquired property by father to children are still designated by the old name of *putravakasam*". This is in contrast to responses, mostly terse, that *putravaksam* was only a gift to children by fathers and did not indicate a right.

[57]Chatterjee (1995: 16).

[58]Ibid (1989: 237). Sarkar (1993: 1871)has argued that colonial rule in the second half of the nineteenth century tried to keep its distance "from the more intimate areas of human existence -- family relationships, family property and religious life", adding to the nationalist conviction that this was "an interior space that was as yet inviolate".

However, in Malabar it was precisely at this juncture that the state is called upon to legislate on the question of marriage a project of reform that continues under nationalist guidance into the twentieth century. We will suggest that the imperative for such reforms came from what has been described in the colonial discourse as the "difficult" condition of the family and property in Malabar. Through a marriage law for the Hindu matrilineal castes of Malabar and South Canara, the radical section among the reformers sought to 'introduce' a form of marriage, implicitly denying the legitimacy of ***sambandham***. The marriage law that was suggested, sought to tie marriage to provisions that would facilitate and recognize a new form of family/household centered, importantly, around conjugality. Hence, the inner domain or the family in Malabar had to be radically reconstituted. Women were to form the terrain of this reconstitution, for in order to establish the primacy of conjugality and the new form of patrilineal family, women had to be 'marked' differently or recast--as monogamous, 'chaste' and dependent upon husband and father (both of whom were in the colonial discourse on ***marumakkatayam***, legal non entities). This was linked to the willingness of the colonial government to intervene through legislation in personal law in Malabar, despite their avowed preference for non-interference in matters relating to religion. Tanika Sarkar points out that after decades that had seen profound changes in England in family law as a result of feminist intervention, colonial officials turned with relief to the relative stability and strictness of Hindu rules.[59] In Malabar, however, the 'stability of the family' was yet to be fostered. The extant family, the ***taravad***, was showing the strains of an internal crisis. This then was as a possible juncture to initiate moves in the direction of the 'natural' family.

Restructuring involved importantly positing a new set of 'rights' for women, necessarily editing out those 'rights' that previously had prevented legal recognition of ***sambandham.*** At the

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[59]Ibid.

core of the reforms, as we have pointed out, was the need to reconstitute the family/household, with the 'introduction' of conjugality. There were two important aspects to this, i) the establishment and regulation of access by men to women's bodies within the conjugal family, in itself a property relation and, ii) the facilitating of the conjugal family as a property space, by defining property relations within it.

3.4.1 Reform of Matrilineal Customs: Formulating the Problem

Concern was expressed over the state of families and management of property among people following the ***marumakkatayam*** system upon two not unrelated grounds. i) One reason for concern was, perhaps, best expressed in the crystallization of the notion of self-acquired or separate property and the emergence of the dichotomy between ***taravad*** \ separate property. Separate property was seen as driving a wedge into the ***taravad.***[60]

> [It] causes splits, litigation and quarrels in the tarawad, which is thereby ruined. It is doubtful whether there is a tarawad in Malabar where there is no enmity between karanavans and ananadiravans.[61]

A father making provision for his children was described as merely observing "a dictate of natural law".[62] It was asserted that ***anandiravans*** subject as they are to, "natural sympathies and antipathies... perceive the folly of expecting the karanavan to extinguish their feelings of love for their wife and children..,

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[60]The right of a ***taravad*** member to dispose of separate property was recognised by the High Court in a case in 1863, stipulating, however, that after his death it would pass to his ***taravad.*** Moore (1905: 175).

[61]***Kerala Patrika,*** 20 April 1893 in Panikkar (1977: 42).

[62]A. Govinda Pillai, Dewan Peishcar, Trivandrum, RMMC II (1891: 171). In a written statement to the Commission, the Dewan of Cochin, Tiruvenkatachariar, questioned the use of the term natural to certain arrangements. Against the notion that ***marumakkatayam*** proceeds against nature in compelling "a man to give his property to one for whom he can have little or no natural affection", he argues that 'nature' and 'natural' are relative terms. He asks what was natural and/or just about ***makkatayam*** law when it denied inheritance rights to daughters. RMMC II, (1891: 208).

eagerly awaiting a time when it will be their turn to enrich their wives and children at the expense of the tarawad".[63] Indicating as these do the displacement of the tensions of the ***taravad*** on to the lack of primacy of 'natural' ties or the 'natural' family, the writers, nevertheless, do not adopt the ***language of legitimacy*** in advocating change. Yet, in seeing the tensions as arising from the 'not-natural' condition of the family in Malabar and Canara, it deflected attention from the possibility at all of working through these tensions.

In another kind of response, the ***crisis of legitimacy***, emerging from the lack of legal status of ***sambandham***, constituted the very ground for concern. Adapted to push this point were stories, often exaggerated, which sought to convey the fragility, to the point of being capricious, of ***Nair*** marriages.[64] "Lately there have been many instances of well-to-do men carrying off the wives of poor husbands and consequently a law to give permanence to marriage has become necessary."[65]

Panikkar draws upon a view current among the colonial administrators that ***sambandham*** generally lasted for life and were marked by a great degree of mutual fidelity, to suggest that 'aberrations' were highlighted precisely because they were exceptional.[66] However this begs the question of why then was a legislation, particularly on the lines suggested, at all required? The legislation was targetted not so much at exceptional behaviour

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[63]A.C. Kannan Nambiar, Ibid (207).

[64]While these included on a more serious note, accounts of how ***Nambudiris*** used their position as ***janmis*** to coerce their tenants into arranging ***sambandhams*** between them and women of the tenant ***taravads***, in a different genre were jokes and anecdotes narrated to bring home the point that all ***Nairs*** were illegitimate. For instances of the former see RMMC II (1891: 205, Appendix IV, witness no, 94), MNNR, Mencher and Goldberg (1967: 100)). Panikkar (1977: 43) provide***s*** instances of the latter.

[65]K.R. Krishna Menon RMMC II, (1891: 214). Added to such tendencies was the belief of a ***Nambudiri*** that, "he has a right to have sexual intercourse with a Nair lady, ***what ever might be the position of her husband."*** emphasis ours. Ibid.

[66](1977: 44)

as at social mores. It was expected to lead the way in introducing a more 'enlightened' social practice, particularly by provoking opinion in favour of a marriage law.[67]

On the other hand, these writings suggest, acutely, the dilemma of a section of the ***Nairs*** trapped between the legality of custom and a new circumstance, a collective agony that was expressed by Sankaran Nair while introducing the Malabar Marriage Bill in the Madras Legislative Council on 24 March, 1890.

> [O]ur wives are concubines, our children are bastards in a court of law and the necessity therefore for a bill to legalize marriage and provide for the issue of such marriages seems apparent.[68]

While it would be tautological to suggest that the Malabar Marriage Commission and the ensuing debate foregrounded the question of marriage, it is significant that other changes were expected to follow, inevitably, in the wake of a 'form of marriage'.

We have sought to make a distinction between different formulations of concern about the *taravad* on the basis of their use of the language of legitimacy for the question of legitimacy was to have a determining influence on the formulation of the problem of reform in the late nineteenth century. In fact, as the problem was posed in the late nineteenth century, reform hinged upon the issue of marriage and issues such as the powers of the ***karanavan***, and relations of property within the ***taravad*** were not raised independent of marriage reform. It was to continue to exert a determining influence on the formulation and coding of the problem of reform well into the twentieth century, though in a significantly different way -- the anxiety being to avoid posing the problem in terms of the crisis of legitimacy owing to the considerable resentment against the allusion that *sambandham* did not constitute marriage.

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[67]RMMC I (1891: 34).

[68]Panikkar (44).

3.4.2 The Inquiry: Premises and Recommendations

The Commission appointed in May 1891 submitted its report in December that year.[69] Its universe of inquiry was the educated and government and associated employed who comprised the emerging elite, the only exceptions being the landed aristocracy, the customary elite. The report of the Commission was signed by only four of the six members. Two of these four had reservations on certain points and submitted separate memoranda. Two members, the President, Muthuswami Aiyar, and Chandu Menon submitted dissenting notes expressing near total disapproval of the Bill.

From the questionnaire issued by the Commission it is evident that in seeking to ascertain the preferable form of legislation, the options were tied to possible forms of marriage.[70] Questions were organized around five concerns: i) mapping out *sambandham* as a practice[71], ii) whether the rituals that comprised ***tali-kettu kalyanam*** and ***sambandham*** had religious sanction[72], iii) the state of relations between ***karanavan*** and junior members, iv) whether specific civil rights were attendant upon a ***sambandham*** which in turn would determine whether it was established upon a proper

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[69]Dairy of the Commission, RMMC II (1891). In order to collect information the Commission framed and despatched questionnaires to 474 persons described as belonging to "the official and educated classes, from representatives of influential families or tarawads in the interior and from members of the Bar in the district". Of them 322 sent in replies. Local public opinion was sought to be ascertained through a few leading men from each taluka who were invited to appear before the Commission which led to the examination of 121 witnesses. In response to an announcement in the district gazette inviting representations from persons\societies not specially invited, the Commission received 38 petitions and representations from 12 meetings held in various parts of the district. RMMC I (1891: 4).

[70]In the questionnaire itself attention was directed predominantly at the question of marriage seeking to generate information on the rituals connected with ***tali-kettu kalyanam*** and ***sambandham,*** significance of these rituals, and civil and ritual rights arising from these customs. RMMC II (1891).

[71]Questionnaire circulated by the Commission, Questions 1 - 10, Ibid.

[72]Questions 11 - 22, Ibid.

contract[73], e) opinion regarding the proposal to enact a law of marriage.

The Commission's efforts to reopen the question of marriage by examining rituals and civil rights were undermined by the premise that the legal status of ***sambandham*** could be determined in relation to a 'universal' definition of marriage rather than by customary law.[74]

> It [marriage] is certainly not regarded in this country, in all cases, as a contract between the persons married, as it is in Europe, but it certainly is regarded as a contract between some persons, the parents of the parties, or the parents of the girl and the husband...There must be an agreement, there must be a consideration for that agreement, and there must be, as a consequence, a set of correlative rights and duties.[75]

Being held out here was the notion of marriage "not as a contract in the ordinary acceptation of the term; but as a contract ***sui generis,*** if indeed it be a contract at all; as an agreement to enter into a solemn relation which imposes its own terms"[76] ***i.e.,*** the set of correlative rights and duties.

On religious status the Commission set complete faith in the denial by the ***Nambudiris*** as a caste that the formalities constitute marriage and in a revelation of the interlocking interpretation of marriage as contract and sacrament, state that "a marriage can scarcely be religious, when the marriage relation can be at any time arbitrarily repudiated".[77]

Importantly, evidence of strife within the ***taravad*** and strained relations emerging from the polarization of relations of

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[73]Questions 22 - 28.

[74]Imbichunni Nair, First grade pleader, Tellicherry, indicated to the commission that the nature of the questionnaire despatched indicated that legal recogntion of *sambandham* was not possible. Ibid (134).

[75]Speech by Sir Fitzjames Stephen in the Viceroy's Legislative Council in 1872 reported in The ***Gazette of India,*** January 27, 1872 cited in RMMC I, (1891: 13).

[76]J. Shouler, ***A Treatise on the Law of the Domestic Relations,*** 2nd edn (Boston, Little Brown and Company, 1874) cited in Pateman (1989: 155).

[77]RMMC I, (1891: 27).

power and dependence, fed directly into the argument in the report that the matrilineal system was unworkable. Thus the need to curb, through legislation, the absolute powers of the ***karanavan*** reflected in the evidence of mismanagement collected by it does not seem to merit mention. On the other hand, that there were not 50 ***taravads*** in Malabar that were not in debt is cited as indication of its non viability.[78] A witness who is opposed to a marriage law who nevertheless highlighted strife within the ***taravad*** is seen as "unlikely to exaggerate the evils of the existing system"; ironically then, such evidence is perceived as working into the need for a marriage law.[79]

3.4.3 Debating the Marriage Bill

It is important to note that there were a number of positions that emerged in response to the marriage bill.[80] For instance, orthodox defendents of the status quo, particularly the ***Nambudiris*** and members of royal families, maintained that providing a form of marriage for ***marumakkatayam*** society would amount to flouting the tenets of religion.[81] This opinion is treated in the report as possibly the only valid objection to the marriage law, it being on religious grounds, but is seen as undermined by ***Nair*** resentment against it. Further Muthuswami Aiyar, the President of the commission, who submitted a note of dissent against the commission's report, agreed with the colonial interpretation of ***sambandham*** but viewed the changes embodied in the Bill as much too

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[78]V. Chappan Menon, Appendix IV, RMMC II (1891) cited in the report.

[79]RMMC I, (1891: 31).

[80]Panikkar (1977) sees the resentment against the legislation proposal and later the Act as a remnant of feudal values, conflating a number distinct and even opposing positions that were voiced against the proposals.

[81]They held that ***marumakkatayam*** was instituted by the ancient sage Parasuraman so that ***Nambudiri*** men could have unrestrained sexual access to matrilineal women. Thet cited the ***Kerala Mahatmyam***, a text of that was seen by the British as suspect, which deemed that chastity was no virtue for women of the matrilineal castes. RMMC I, (1891: 10).

radical, pointing out that in framing the Bill, the commission had exceeded the brief given by the government.[82] The Bill ignored caste restrictions and the customary rules of consanguinity and affinity and retained stringent provisions as to divorce and the rule of succession to self-acquired and separate property. Instead, Muthuswami aiyar proposed a law with minimal changes such that marriages remained within existing caste rules, provided for divorce without resort to court and recognized matrilineal succession.[83]

In this section we will attempt to read critically two contrasting views on the marriage law that emerged from among the English-educated section of the ***Nairs*** to understand the position of women that is articulated or implied in them.

3.4.4 Legal Marriage, the Paternal Family and Protection of the 'Wife': The 'Progressive' Resolution of the Marriage Question

The changes fostered through the interpretations of *marumakkatayam* law by the civil courts were within the framework of the ***taravad,*** though they threatened, increasingly, that framework. However, during the process of reform envisaged through a marriage law there were attempts to do away, altogether, with ***taravad.*** C. Sankaran Nair, perhaps the strongest voice for thoroughgoing change, maintains that there was no place in the ***marumakkatayam*** system for a marriage law, co-terminus with the official legal discourse on ***sambandham.***[84] Hence providing a form

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[82]***President's Supplementary Memorandum,*** RMMC I (1891: 79, 80). He observed that the revised Bill presented by Sankaran Nair embodied provisions which were at once at variance with extant custom and opposed to the feeling of the majority of *marumakkatayam* society, including the educated classes.
And that,

> I do not think that the Government desire to improve the national morality by aggressive legislation."

[83]Ibid (39).

[84]Witness for instance his objection to the Muthusami Aiyar's proposal of making minimum changes. "We import into the system the notion of marriage which is every bit repugnant to, but ultimately destrustive of, that system. Home Judicial

of marriage meant introducing into the system, simultaneously, other innovations such as patrilineal inheritance and guardianship and maintenance of wife and children by husband and father respectively.

Sankaran Nair's position on a marriage law was linked to his association with the Social Reform Movement in Madras in the latter part of the nineteenth century, particularly their concern with reducing the rigours of the caste system and removing the disparities imposed on women by Hindu law.[85] While his own circumstance as a prominent lawyer attached to the High Court in Madras and living in a nuclear family could well have made adherence to ***marumakkatayam*** law seem anomalous, his marriage Bill was directed also at orthodox opposition to it on the ground that people following the ***marumakkatayam*** law should not be allowed to have a marriage law.[86] In fact, his response is shaped also by the need to disavow orthodox opinion. Significantly, it was the colonial interpretation of ***sambandham*** that had endorsed the orthodox reading. As Chandu Menon points outs even Sankaran Nair does not seem to be quite sure as to the binding character of ***sambandham*** before the High Court ruling in 1869.[87]

Against the suggestion that legislation should be based on existing usage as much as possible, he argues that it was "scarcely sufficient to ignore the principles that underlay that scheme of legislation.[88] By legalising ***sambandham*** by registration "the law makes it a legal marriage while ***custom did not recognize it as such*** [emphasis ours] and ***perpetuates all the restrictions by which such unions are now surrounded***".[89] (emphasis in the

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Proceedings, Nos 162 -- 182, April 1895, NAI.

[85]From the third session of the Indian National Congress at Madras in 1887, he is known to have taken a leading part in the Social Reform Movement of which and went on to become President. K.P.S. Menon (1979).

[86]Home Judicial Proceedings, Nos 162 -- 182, April 1895, NAI.

[87]RMMC I, (1891: 102).

[88]Home Judicial Proceedings, Nos 162 -- 182, April 1895, NAI.

[89]Ibid.

original). He suggests that his Bill could be modified so as to be at once acceptable to the educated Malayali and in harmony with the principles that an English government was bound to uphold.[90] This leads him to advocate a permissive law which would enable "those so inclined to adopt the Paternal family law, ***based on marriage***... and leaves alone those who prefer the Maternal family law".[91]

Among Sankaran Nair's objections to a legislation based on existing usage was the lack of restraint on divorce (an interval of six months) and the non-recognition of the right of wife and children to succeed to the ***entire*** property of the husband, which he argued were basic shortcomings.[92] "I consider that that union can scarcely be considered marriage if it is dissoluble at the will and caprice of either of the parties."[93] The establishment of the 'natural family' (by ensuring stability of marriage through a difficult divorce provision), however, was contingent upon the 'naturalisation' (the generation of natural reluctance to break of the family) of patrilineal kinship, inheritance and post-marital residence.

> I strongly believe that the stability of the marriage union will be best ensured by creating such unity of interest -- by

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[90]RMMC I, (1891: 39).

[91]In a move it would seem to pacify offended ***Nair*** sensibilities, Sankaran Nair adds that,

> "[t]o support such legislation we are not bound to maintain that the absence of a marriage law and the severance of the sexual union at will is a disgrace. We only assume that there is no rule of public policy which prevents those willing to do so from abandoning the Marumakkatayam system".

Home Judicial proceedings, Nos 162 -- 182, April 1895, NAI.

[92]He cites two other points on which the proposal militated against social reform, i)tacit sanction of polygamy and polyandry and ii) recognition of customary caste barriers to marriage by legislation. Ibid.

[93]Ibid. Winterbotham, a member of the Commission: "... a marriage law so framed that a couple might become husband and wife at night and cease to be so next morning, at the whim of either party, is a law which will ***serve to bring the institution of marriage into derision and contempt***, and I should have supposed it futile to ask the secretary of State to consent to legislate at all on the subject of marriage if free divorce is to be a sine qua non."

> declaring that the wife and children will succeed to the property left by the deceased. It will strengthen and where necessary ***create the feeling*** that the home of the father is the home of the wife and children and there will therefore be a ***natural reluctance*** to break up the family circle.[94] (emphasis ours).

In other words the wife had to be brought under the guardianship of the husband, establishing the relationship of protection and obedience, 'essential' to the notion of 'marriage'. He advocates encumbered divorce, i) in the interests of the wife on the plea that it is not the wife who generally abuses the right to divorce; ii) as divorces were rare and socially regulated, "it appears to me that the law ought to declare that except on certain specified grounds, the marriage tie ought not to be dissolved".[95]

Such a provision would not legalise existing social regulation of divorce as constitute a ***presumption*** grounded already in the terrain of the notion of 'marriage as contract'. If the desire for patrilineal succession rested on perfectly 'natural' grounds ***i.e.,*** "[n]atural justice is in favour of the wife and children"; it was also in the interests of public policy which required it "partly to ensure the stability of marriage unions, partly as a stimulus to exertion and generally in the interests of the family home".[96] Hence he emphasizes the need to ***presume*** that a man ***intended*** to leave his property to his children, calling for an inversion of the presumption in favour of the ***taravad*** in the colonial interpretation. Paternity was incommensurable with the matrilineal system and could be achieved only at the cost of the ***taravad,*** with the endorsement of the 'conjugality' as ethic, as the defining moment of marriage and the central relation of the paternal family and kinship. The moral and sexual impeachability of the 'wife' had to be presupposed and could be only within the

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[94]Home Judicial proceedings no. 162-182, 1895, NAI.

[95]Ibid.

[96]Ibid. On the other hand matrilineal succession interfered with human nature. "[T]o say that in Malabar a man does not wish his children to succeed to his property is to say that human nature is different there from what it is elsewhere".

'institution of marriage'; her sexuality had to be defined and restrained.

3.4.5 Sambandham and Women's Sexual Self-Discipline: 'Progressive' Dissension against the Marriage law

Chandu Menon submitted a separate memorandum expressing disagreement with the report of the commission. He attributed the vehement and widespread opposition to the marriage Bill to provisions which interfered with caste rules, introduced registration of marriage, removed customary rules of consangunity and affinity, and enabled descent of self acquired property to the 'natural' family.[97] The joint estate of the *taravad*, he argued, was nothing if not the accumulation of individual acquisitions and sanctioning descent of the latter to the 'natural' family, as the bill provided, would amount to abolishing the *taravad*.[98] Yet, he did not see this as incompatible with testamentary power, a point we will return to.

More important, however, were his objections the commission's endorsement of a marriage law on the basis that *sambandham*, i) was not of a religious character and hence was open to legislative intervention, and ii) did not constitute 'marriage', citing the civil rights that supposedly, did not emerge from it and the lack of restraint upon divorce. Though at one point in his dissenting note, he states that irrespective of whether *sambandham* had religious sanction or not as the people of Malabar were content with the present system, it would be against their sentiments to thrust upon them a law to regulate marriage, he is at pains to show that *sambandham* did partake of a religious character and even indignant that "the bill had leveled down the sacred institution of marriage, to a system of business relation or an ordinary

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[97]RMMC I (1891: 91).

[98]Ibid (95)., C. Karunakara Menon linked *taravad* prosperity with individual acquisitions. Enclosure to Legislative dept, G. O. no. 108, 1911, TNA.

contract enforceable at law".[99]

The law of succession, he argued, derived from religious usage and as the government "would not interfere with our religious law, so they could not, according to their policy, interfere with our civil rights based upon such law".[100] On the question of succession and property rights however, he denies the very basis of the definition of 'marriage' contending that,

> "the system of succession to property had nothing to do with the solemnity or the binding character of a marriage... and if it can be shown [as he attempts to show], that we have a perfectly good system of marriage founded upon our social and religious custom, why should not that system be recognised by our courts?"[101]

His defence of ***sambandham*** occupies precisely that normative terrain, used in the legal discourse to deny legal sanction to it. For instance, he contends that the principal features ***sambandham*** were in the main the same throughout the territory. "I would further say that they ought to be gone through at every sambandham if the parties wish to marry *according to the customs of the*

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[99]RMMC I, (1891: 97).

[100]Ibid (96). That customary common sense linked ***marumakkatayam*** with religion is evident in the reference by 'liberal' and orthodox respondents to the commission, to Queen Victoria's Proclamation of 1858 promising non-interference with religious observances. Manjeri Karanamulpad, ***janmi***; Karamvelli Kunhunni Kurup, ***janmi***, Kottieth Ramunni, first-grade pleader, Tellicherry, RMMC II (1891: 130, 142, 242).

[101]RMMC (1891: 103). There were lengthy attempts by respondents to show the ***marumakkatayam*** partook no less of the sacred aspects of a 'Hindu' system. For instance, Karunakara Menon, sub-editor of the Hindu, wrote that the marriage ceremony among "all higher caste Hindus" was divided into two parts: "(1) that in which the religious ceremonials form the chief feature and which is known as betrothal and, (2) that which is popularly known as consummation." The first part, titled among the ***Nairs*** as the ***tali kettu kalyanam***, according to the commission had been described variously as a religious marriage or a marriage sacrament to a sham marriage, an empty form and a waste of money. He argues that the ***tali kettu kalyanam*** was imbued with religious significance, as "in other Hindu customs (also) it will be found that while the letter of the law is strictly adhered to, the spirit is sometimes lost sight of." RMMC II (1891: 292).

country."[102] (emphasis ours)

Chandu Menon charged travel writing about Malabar by foreigners and the colonial interpretation of ***sambandham*** as concubinage with excessive reliance on the ***Nambudiris*** who, "from interested motives have always wished to make out that our women do not and need not practise chastity".[103] Confronted with the construction in the colonial discourse of the ***Nair*** woman as sexually permissive and the ***Nambudiri*** version that they were created for gratification of the sexual desires of the ***Nambudiri*** male, Chandu Menon premises his argument that ***sambandham*** constituted marriage on the the sexually conformative, chaste ***Nair*** woman-wife.

The tenor of his argument is distinctly moral. For instance he contends that the denial of legal status to ***sambandham,*** "because some Nambudiri landlords successfully use their influence their wealth and position in Malabar give them to seduce Nayar women", because there were professional prostitutes among Nayar women who did not regard the significance of the marriage tie and because of matrilineal inheritance, was a denial of justice to the ***Nairs***.[104] The tendancy to define the moral woman ***vis-a-vis*** the prostitute is instructive of his effort to assert the sexual conformity as is his warning against the interpretation of ***tali-kettu kalyanam*** (pre-puberty ritual that was interpreted in certain quarters as akin to the initiation right of the ***devadasi***) as granting ritual sanction of prostitution, "where facts clearly disprove prostitution and immoral life in Nayar women".[105]

While Chandu Menon's asserts the 'normed' chastity of ***Nair*** women in his challenge to the Courts to discern polyandry as a ***caste institution***, in his novel, ***Indulekha***, he addresses

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[102]RMMC I, (99).

[103]Ibid (101).

[104]Ibid (103).

[105]Ibid (101). Unni (1950: 125-126, cited in Mencher, 1965: 174) makes the distinction between ***sambandham*** and concubinage, the latter being a secret relationship, not socially recognized.

differently, atleast one aspect of sexual 'permissiveness' -- free divorce.[106] When Madhavan, Indulekha's suitor, taunts her that in Malabar women were proud and overbearing and did not practice the virtue of fidelity as did women of other countries, being free to cast off a husband if she so pleased, Indulekha retorts,

> ...[y]ou probably meant to inveigh against the ordinance of our race by which it is lawful for a woman to put away one husband and take another according to her own will and pleasure. There are some disreputable women who avail themselves incontinently of their prerogative, ***but the prerogative in itself is one of our most valuable institutions***... The maintenance of their liberty in this respect is beneficial...[107]

In doing so, however, she seems to suggest moral adherence as a form of 'self discipline'.

> ...to say that a woman makes light of the marriage tie, is tantamount to saying that she is immoral... If you intended to signify that we ***Nairs*** encourage immorality, because, unlike the Brahmins, we do not force our womenkind to live lives worthy only of the brute creation by prohibiting all intercourse with others and by closing against them the gates of knowledge, there never was any opinion so false.[108]

In her defence of the system, Chandu Menon introduces a twist for Indulekha's assertion that the general observance of fidelity in Malabar was not despite but precisely because of the ***marumakkatayam*** system.[109] Chandu Menon's point of departure lies in

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[106]Chandu Menon (1965).

[107]Ibid (42).

[108]Ibid.

[109]Chandu Menon anicipates criticism that it was not possible to find a woman like Indulekha and stakes that the only quality that "hundreds of Nair ladies in respectable taravads" lacked ***vis-a-vis*** Indulekha was knowledge of English, which he sees as a cultural attainment. Noting the speculation that Indulekha was modelled on a highly westernized ***Tiya*** woman in Tellicherry of Chandu Menon's acquaintance, T.K. Ramachandran (1994: 122), warns against reading 'Indulekha' as an archetype of matrilineal society. Far from representing 'feminine' spaces, he contends that matriliny in a feudal society was highly patriarchal. However to dismiss matriliny as not having any beneficial influence for women as Ramachandran does is much too hasty. More importantly it could serve to underscore the patrilineal / patriarchal influences that dominated reform thought in the late nineteenth and early

his suggestion that conjugality was normal in ***marumakkatayam*** families. This is significant in so far as it disturbs the construction of 'husband' and 'wife' within 'marriage'. What is also interesting here is that the conjugal unit is not produced as the ***necessary*** basis of family.

3.5 Silence of Women: Consent or Strategic Erasure?

The commission speaks of its inability to garner the opinion of women on the desirability of reform. The absence of women's views as also their agency in the process of reform in the late nineteenth century was perhaps underlined by four petitions from women received by the commission shortly before it was to wind up. Three of these petitions signed by 245 women in favour of the bill and one signed by 387 women against it, could well have been an indication of awareness of this gap in opinion and a hurried attempt to mobilize women's opinion in favour of and against the Bill.[110]

Even when the center stage of reform had shifted from legislative efforts centered in Madras to mobilization against baneful caste practices at the local level in the early twentieth century, women continued to be invisible in a process of reform that was to affect their lives drastically. This was in contrast to the sense of urgency attached in the ***Nambudiri*** reform movement to efforts to mobilize women, importantly the appeals by male reformers that women must organize themselves if the reforms were to be effective. The sense of urgency attached to women assuming agency for reforms was entirely absent in the efforts among the ***Nairs*** and the ***Tiyas***, the major matrilineal castes in Malabar. We

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twentieth centuries.

[110]Panikkar (1995: 138) contends that Indulekha's defence of ***marumakkatayam*** in ***Indulekha*** echoed the gender equality that ***Nair*** women had enjoyed for centuries. While here he elides over the feudal and possibly patriarchal context of ***marumakkatayam***, his sympathy with the resentment of a new generation of ***Nair*** men against the "iniquity of the Nair-Nambudiri alliance", underscores the efforts by ***Nair*** reformers to gain access to 'their' women in ways that they did not have earlier.

will anticipate here our argument in Chapter V by suggesting that their silence in the process of reform suited well the agenda of reform, in that the reforms were aimed at 'normalization' of marriage and family, which pre-supposed the erasure of the high 'visibility' of women in current perceptions of matrilineal practice, particularly the non-conformative sexual practice. We refer here to the picture of permissive sexuality of women, their putative agency in relation to their sexual practice, which the reformers sought to replace with a more conformative code.

It has been pointed out in recent scholarship that women were clearly marginalized in the processes of law that formed a part of the process of reform.[111] It is true that the Malabar Marriage commission had only male members and all the people interrogated through questionnaires and interviews too were male. Yet, it is obvious even to the commission that its efforts held limited validity. The President of the commission notes in his remarks about how the commission went about its work:

> A majority of the representative men in the district have not come forward to lay their views before us in spite of every effort to direct their attention to the object of our inquiry... I cannot attribute this to mere indifference, for the widest publicity was given to the nature of our inquiry, and there were traces of an impression on the public mind that the proposed legislation would break up the Marumakkatayam tarawads... The general reluctance to come forward to give evidence appears to me to be a silent protest against any change of the Marumakkatayam usage.[112]

The inference made from the invisibility of women in the processes of the state, could only proceed from assuming for those processes a legitimacy that the state indeed seeks for itself. While this cannot serve to tide over such questions, we need to engage simultaneously with the nature of the emergent public domain, influenced by the processes of the state and with a domain that remained outside the legal-political process of the state. Here we draw upon a distinction made by Chatterjee, who argues that the penetration of a newly established state authority into the social

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[111]Nair (1995: 155).

[112]RMMC I, (1891: 3).

formation and the transformation of power relations into legal-political forms of state power is itself a historical process.[113] Pointing out the need to think of state formation (codification being a part of the process) in terms of the inter-penetration of the two domains he maintains that,

> the point is not only to study how the 'other' domain resists such incorporation, but also how, in the process of domination and resistance it affects the course of evolution of politics (and society) in the first domain and is transformed by it.[114]

Hence while codification and statutory reform could be both markers as well as forces of change what is less recognized is that they carry imprints of the resistance to and the struggle against the kind of interventions attempted. For instance in providing that the Act IV of 1896 was a permissive Act, its proponents were at pains to avoid the 'embarrassment' of legalizing ***sambandham***.[115] The Act, nevertheless, legalized the custom of free divorce. The Madras Marumakkatayam Act of 1933 legalized ***sambandham,*** which in terms of the ideas of radical reform professed by a section of the community was a move in the wrong direction.

The objection to the provision relating to succession to self-acquired property reflected in the evidence collected was a puzzle to the commission.

> To be consistent, the objectors should oppose the grant of testamentary power, whereas they all (with hardly an exception) urge that the power to devise by will is one of their most crying wants.[116]

This pattern continued to elude the understanding of the

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[113](1984: pxxxviii).

[114]Ibid (xlvii).

[115]Winterbotham had urged the government against legislation 'unworthy' of it.

> Hitherto the English Government has not brought on to the statute book any law sanctioning the divorce of a wife except for adultery, and unless this high standard can be maintained (as I think it can) it is, in my opinion, far better that there should be no attempt at legislation.

Home Judicial Proceedings, no. 162 - 182, April 1895, NAI.

[116]RMMC I (1891).

indigenous proponents of the bill as well as colonial officials.[117]

In recognition of the opinion in favour of testamentary right, the government decided to bring forward a bill defining the testamentary right of persons who follow the ***marumakkatayam*** and ***aliyasantana*** laws.[118] The Malabar Wills Act came into force on 2 September 1898 and never looked back. It was reported that the number of wills executed on the West Coast increased steadily every year. While the number of wills executed by persons other than those governed by the ***marumakkatayam*** and ***aliyasantana*** laws increased from 121 in 1898-99 to 196 in 1909, the number of wills executed by persons who are governed by these laws increased from 83 in 1898-99 to 519 in 1909 or more than six fold.[119] The West Coast far outstripped the other districts of the Presidency in terms of rate of increase of wills executed.[120]

While the will was considered to be a mode of channeling self-acquired property to the 'natural' family, and while an

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[117]P.Govinda Menon, a respondent to the commission, too argued in favour of testamentary power.

> It may be said that the grant of testamentary power to Hindus under the Marumakkatayam Law is a death-blow to the Tarawad...If there be such a strong current of feeling against the Marumakkatayam Law that the people will not hesitate to avail themselves of any loophole that they may find... any legislation that would safely bring about the wishes of the people will do nothing but good to the country. But it seems to me that such a feeling does not exist, and that the fears of those who may augur the immediate dissolution of the existing Tarawads are groundless... Such being the case...there is no reason to suppose that in a custom-ridden country like Malabar, the testamentary power will be used by the generality of the people prejudicially to the interests of those who, by the custom of the country, are considered to have a moral claim to a share in the property of the testator.

RMMC II, (220).

[118]Home Judicial proceedings, no.162-182, April 1895, NAI.

[119]Home Judicial Proceedings, no. 60-62, 1912, NAI.

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	1896-97	1909	Per cent increase
West Coast districts	169	715	423
All other districts of the Presidency	2714	5573	205

Source: ibid: 23.

greater proportion of wills were in favour of the 'natural' family, it is significant that wills were also used to transmit property to particular branches of the ***taravad***. During the fourteen years ending 1909, of the total number of wills enacted in south Malabar 67.96% were in favour of the 'natural' family against 30% in favour of ***anandiravans***. In north Malabar the figures were closer at 39% was in favour of mothers, brothers and sisters and 59% in favour of wife and children.

Quite in contrast to the considerable success of the Act of 1898, the Malabar Marriage Act, 1896 turned out to be a dead letter, disproving the commission's 'optimism' that "uninstructed majority will rapidly follow the lead of the enlightened classes, and there need be no apprehension that if the law be framed it will remain a dead letter".[121] And despite efforts to tone down provisions seen as offensive to custom. The Act was in keeping with caste restrictions that frame marriage and provided for virtually free divorce.[122]

On inquiry into the working of the Act it was suggested that the main objection to the Act taken even by the small section of the educated elite was based on the principle that an ordinary ***sambandham*** is not a legal marriage and that the children of such a ***sambandham*** are illegitimate. The implication was strenously combatted as a disgrace to ***marumakkatayam*** society and there was a general refusal to countenance it by making use of the Act.[123] Further the educated classes instead of influencing the people in the direction of the bill, were, it was maintained, finding it

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[121]RMMC I (1891: 34). It is prefaced by the observation that as most ***Nairs*** and ***Tiyas*** were tenants of small holdings, "[t]hey are totally uninstructed on the subject of the proposed legislation and can form no opinion as to its desirability". The landlord and agricultural classes were held to have little education in the English sense of the term and harboured a horror of innovation which characterises most orientals.

[122]Home Judicial department, no.162-182, April 1895, NAI.

[123]D. Dis. 1524 dated June 24, 1918, KRA. K. Kannan Nair, (1989: 105) a prominent social reformer and a leading member of the Nair Service Society in Travancore writes of the efforts by his wife's kin to nullify the registration of their marriage.

difficult to go against *local* opinion which was against the Act.[124]

3.5.1 Sexuality of Women and Property Relations

In Malabar where a matrilineal society presented difficulties with notions such as family and marriage, customary law was used not only to house customs but also to delegitimise them. Significantly, it was maintained on the authority of customary law that ***marumakkatayam*** did not have a form of marriage which was then used to deny legal sanction to ***sambandham***, a custom that it sanctioned. Customary law then rather than forming the basis of law, served, effectively, to interpret custom in relation to 'universal' conceptions of marriage, family, natural guardian and head of family.

The high 'visibility' of women of the matrilineal castes did not translate, in the legal realm, into any but "theoretical rights to property" vested in women, "for little other practical purpose than regulating the course of succession". But it did have significant implications in determining the legal status of *sambandham*. *Sambandham* was denied legal sanction on the grounds that it established, "no rights of property or inheritance". Following upon which it was held to "do no more than create a casual relation, which the woman may terminate at her pleasure".[125] *Sambandham* did not establish the 'proper' marriage relation, which involved an exchange of protection and dependence between 'husband' and 'wife', based upon relations of property and inheritance. Further, in creating no more than a casual relation which a woman could terminate at her pleasure, the 'husband' failed to acquire property in the 'wife', or acquire the right to exercise control over her sexuality. Involved in a 'marriage' relation then were two sets of property rights: a) rights to property and inheritance and b) the right of the 'husband' to property in the 'wife'.

If in relation to *sambandham* women were seen as 'individuals'

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[124]D. Dis. 1524 dated June 24, 1918, KRA.

[125]Moore (1905: 82).

as embodied with the right to exercise free will or choice, the ***taravad,*** the matrilineal joint family, was understood in analogy with the 'Patriarchal family', where the father was the sole 'individual'. Here women were defined a dependents of the ***karanavan,*** the oldest male member and head of the ***taravad***. Contained in the above interpretation is a conflicting understanding of women's rights with regard to, on the one hand, transmission of property and kinship structure and, on the other, control over women's sexuality and marriage practice.

In the attempt to provide a form of marriage through legislation for people following the ***aliyasantana*** and ***marumakkatayam*** law, there is considerable pressure against legalising the customary form. Further in engendering contractual relations, patrilineal inheritance and restricted divorce were insisted upon. This particular resolution of the marriage question was a response to the 'agency' attributed to women in the legal discourse, which had to be denied in order to constitute a valid marriage. It was a measure of the resistance to such intervention that free divorce was legalized through the Act of 1896.

Implicit in the colonial discourse is an uneasiness arising from the agency attributed to women in the matrilineal societies in Canara and Malabar. This interpretation of agency grew out of the putative rights of women to enter into and terminate a ***sambandham***. However, this freedom, which destabilized the relation of protection and obedience, was seen as *necessarily* destructive of certain rights that arose, necessarily, from marriage such as the rights of wife and children to the property of husband/father. In validating a form of patrilineal inheritance, the wife and children of men following *marumakkatayam* and ***aliyasantana*** law were entitled to claim a share in his self-acquired property on his death. But as we have noted earlier these new rights also served to define women and children in a dependent relationship within a patrilineal framework.

CHAPTER 4

DISLOCATING WOMEN: LAND REFORMS, 1900 - 1930

4.1 Introduction

Changes on two sites of matrilineal society in late colonial Malabar i) ***marumakkatayam*** law (personal or family law) and ii) ***janmi-kudiyan sampradayam*** (land relations) had important implications for women's rights to property. Reform efforts on these sites were intertwined in the redefinition of property relations, ***i.e.,*** the demands for codification and reform of ***marumakkatayam*** law and efforts to legislate reform of ***janmi-kudiyan sampradayam*** sought to undercut the legal basis of the colonial redefinition of property in the ***taravad***. This is most evident in the case of the ***janmi taravads*** (***janmi*** families) where the interlocking of the ***janmam*** right in colonial land policy with ***karanavans*** powers and impartibility in ***marumakkatayam*** law made possible a concentration of authority in the ***janmi***.

The demands raised by the tenancy association in the decades leading up to the Malabar Tenancy Act, 1930, included crucially security of tenure for the intermediary ***kanakkar***. Security of tenure would have achieved for the intermediary ***kanakkaran*** a degree of independance from the ***janmis*** which was seen as capabale of blunting the exploitative edge of land relations, visible acutely in the ***Nair*** social practice of ***sambandham.*** In important ways ***sambandham*** and an entire discourse that had grown around it was to provide the rationale for the protection of tenant rights and the need to do away with the ***taravad***. It must be kept in mind, however, that these were concerns that grew out of the specific conditions of ***kudiyayma*** (tenancy) and ***marumakkatayam*** in south Malabar.

During the process of reform, the separation of land relations and ***marumakkatayam*** was if anything underlined. This separation drew upon the development over almost a century of separate codes, delineating each of these as distinct sites of laws. Personal law in keeping with the distinctions that already

existed in British laws, concerned the private realm. It is in this realm that questions involving women -- in relation to marriage, inheritance, guardianship, adoption were negotiated. The sphere of land relations, on the other hand, concerned the public *i.e.*, supposedly a gender-neutral space. Here then we are not concerned, apparently, with a gender differentiated set of rights and obligations. It is in interlocking interpretations on the two sites of law that the gendering of rights to land or property becomes explicit. A critical a instance was in the coincidence in one person, usually male, of the ***janmi*** or ***kanakkaran*** (gender-neutral by law) and the ***karanavan*** (defined as male and authorized with absolute control over all the property of the ***taravad***).

In speaking of women's rights to property, which in important ways were linked to their rights emerging from ***sambandhams*** and the perceptions of their sexuality under ***marumakkatayam*** law, we tended to go along with the notion of a unitary ***taravad***, in the construction of which the large wealthy ***taravads*** served as the model. However, most ***taravads***, even of a middle caste like the ***Nairs***, were small peasant households, which more often than not combined a variety of tenures, intermediary and cultivating. It could not be more misleading then to attempt to generalize the property rights of women of specific social groups such as the ***kovilagams*** or ***stani*** families or even the 'aristocratic' ***Nair*** lineages. In order to locate ***taravads*** in the colonial economy of Malabar we will draw upon the larger canvas of land relations, and agrarian struggle.

This chapter is in six sections. In section two we will attempt to capture a process of the consolidation of land ownership in the hands of a few ***taravads***, facilitated by colonial land and revenue policies and the interpretation of tenures by the British-Indian civil courts. Section three deals with the development of distinct tenures and cultivation practices in north and south Malabar. In section four we have mapped out caste, ritual and social relations and their influence on tenurial relations in the northern taluks. Section five and six draw upon

the specificity of tenurial and social relations in the preceding sections to identify the triggers of the different formulations of the questions of agrarian and social reform in north and south Malabar, which gives us the contexts in which ***Nair*** women were implicated in different ways in reform agendas.

4.2 Colonial Land Policy and Interpretation of Tenures

Malabar was wrested from Tipu Sultan by the the East India Company in 1792. In the following year the Company issued a proclamation deeming the ***janmi*** the absolute proprietor of land and the ***kanakkaran*** the holder of a terminable tenure. Colonial land policy in Malabar straddled two somewhat contrary concerns, i) land revenue interests and ii) the interests of a few superior right holders.[1] Thomas Munro, who was instrumental in introducing the ***ryotwari*** system of land settlement in Malabar, admitted that the preservation and independence of a large body of landlords was not necessary for securing revenue. Yet, he recommended it citing as "liberal and judicious" the view of a fellow administrator, that by leaving a share of rent to the landlords,

> a class will then be formed of men whose ideas (will) not be exclusively confined to the tillage of the ground or to servile occupations but possessed of education to qualify them to be intelligent arbitrators in disputes and able revenue and police officers of government. It is by means of such men alone that any general improvement in knowledge, in morals and religion can be brought about.[2]

The scheme of distribution of produce which formed the basis of assessment was evolved in consultation with a group of "chief ***janmis***".[3] While on wet land this involved a distribution of net produce among cultivator, ***janmi*** and government in the ratio of 3.33: 2.66: 4, on garden land produce was to be shared equally by

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[1]Varghese (1970: 22).

[2]Panikkar (1990: 35). See also Varghese (1970: 21).

[3]Proclamation of 1805 issued by Principal Collector, Thomas Warden in Logan II (1989: ***ccl***), Varghese (1970: 25). Panikkar (1989: 6) points out that a meeting of 116 substantial ***janmis*** was held at Calicut in 1803 for the purpose of determining the distribution of produce contained in the influential proclamation of 1805.

the three claimants, allowing nothing for expenses to the cultivator.[4] The ***kanakkar*** (intermediary tenant) did not figure in the above scheme and it was suggested that their absence might have been passed over with the reflection that they were mortgagees ***i.e.,*** investors of money and hence might be left to look after their own interests.[5] Thomas Warden, for instance described the superior tenures of Malabar as follows:

> The jenm right of Malabar vests in the holder an absolute property in the soil. The Kanamkar is a mortgagee or one who has land pledged to him in security for the interest of money advanced to the jenmakar which advance is the ***kanam*** that is 'ever incumbent on the land until it be redeemed.[6]

Further, the scheme of distribution of produce was only a theoretical one and as has been suggested the ***janmis*** had the power to raise rents and the burden of land revenue fell primarily on the tenants and small landowners who cultivated their land.[7]

The Board of Revenue issued instructions on January 5, 1818 for the introduction of the ***ryotwari*** mode of settlement and collection, recognising the ***janmi*** as the 'ryot' in whom "the exclusive right to the hereditary possession and usufruct of the soil was vested."[8] Earlier, the Court of Directors had been careful to warn the government against introducing in Malabar "an intermediate class of persons between the government and the Jelmkaars, or hereditary proprietors of land".[9]

The ***Mappilla*** revolts, a series of uprisings by groups drawn from the ***Mappilla*** tenantry against prominent 'Hindu' ***janmis*** and the State (law enforcing machinery), drew attention to the simmering conflict in agrarian relations. In 1852, T. L. Strange,

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[4]Logan I (1989: 665).

[5]Ibid (614).

[6]Thomas Warden's report of land tenures of Malabar, 1815 cited in Panikkar (1989: 20).

[7]Varghese (1970: 42), Panikkar (1989: 11).

[8]Ibid (1989: 21).

[9]Court of Directors to government on December 16. 1812, in Logan I (1989: 678).

appointed to inquire into the '***Mappilla*** outrages', emphasized the communal angle to the question. In 1855, however, the Board of Revenue admitted that erroneous decisions by the courts had occasioned much suffering in the province and identified the need to define the ancient law of the country in clear and consistent terms.[10] Towards this end a document was prepared by the Sudr Adalat in 1856 giving precise definition to the land tenures of Malabar and the conditions that were to regulate them. Two kinds of tenures were identified, one set comprising such tenures as ***kanam*** and verumpattam and another comprising 'real' mortgages. Even earlier on February 13, 1854, the Sudr Adalat had affirmed that the ***kanam*** tenure was to endure for 12 years subject to certain reservations.

The attempt by the court to streamline tenures did not have the desired effect. Evictions continued to increase through the second half of the nineteenth century.[11] Under tremendous pressure, in not being able to cope effectively with the revolts, the administration appointed William Logan as Special Commissioner in 1880 to inquire into land tenures and suggest measures to deal with the conflict. In a comprehensive report that relied on data both historical and contemporary, Logan argued that the revolts were a manifestation of acute agrarian distress, the making of a century of misdirected colonial land policy.[12] Logan's assessment of the problem and more so his recommendations that the cultivating tenant should be recognized as the ryot and should be granted permanent occupancy rights were opposed stridently by officials and intermediary ***kanakkar***. The latter while receiving no protection against the *janmis* would no longer have been able to evict tenants under them.[13]

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[10]Varghese (1970: 53).

[11]Panikkar, (1989: 40).

[12]Report of the Malabar Special Commission I, henceforth RMSC I, (1881).

[13]Panikkar (1978: 883), Namboodiripad (1985: 177).

4.21 Development of Tenures

It is necessary to recognize that we are dealing with at least three sets of mutually non-exclusive, if hierarchical, interests in land, that were increasingly drawn into mutual conflict in the colonial period. Equal sharing of produce between the ***janmi***, ***kanakkaran*** and ***verumpattamkaran*** was reported to have been the practice when the territory came under Company rule.[14] Panikkar suggests that the principle that informed the customary sharing of produce was the independent rights of these three categories in the produce of the soil.[15] Such rights supported the practice of buying and selling of ***janmam*** or ***kanam*** without disturbing the other.[16]

Historians have linked the development of these tenures to the decline of the politico-economic authority of the later Cera kingdom.[17] Under the numerous chieftainships that grew in the political void, conditions regarding land rights and obligations were localized. Ganesh argues that the socio-economic authority of the land owning class had become customary authority, which represented a social and legal binding force.[18] He locates the growth of the tenures of the immediate pre-colonial period within this framework, spurred on by the demands of growing overseas trade. By the eighteenth century, ***kanam*** for durations from 30 to 48 years were not uncommon and as permanent mortgages were growing. Besides, there was the ***panayam*** transaction, involving a loan with land plegded as security.[19] ***Kuzhikanam***, another

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[14]RMSC I, Appendix I (1881).

[15](1989: 19).

[16]Logan held that in former days the ***kanakkaran*** had been as much a proprietor of land as the ***janmi***; "proprietors held together in interest by the admirable laws of custom". For him ***kanam*** was a permanent tenure which included a custom of periodic renewal of the ***kanam*** deed and revising of advance paid to the ***janmi***. RMSC I (1881), Logan (1989: 680).

[17]Ganesh (1991: 304), Narayanan and Veluthat (1984).

[18](1991: 304).

[19]Ibid (307, 319).

important tenure, involved bringing land under cultivation usually of garden crops and underlined the demand for produce and the need to expand cultivation. While ***kuzhikanam*** acquired greater importance in Travancore, in Malabar it was restricted to the southern region, though even here it was ***kanam*** that took precedence.[20] In contrast, Buchanan noted at the beginning of the nineteenth century that two thirds of the land surface in north Malabar was covered with forests.[21] While ***kuzhikanam*** was to grow into the dominant form of tenure in north Malabar by the closing decades of the nineteenth century, ***kanam*** in the north, as we will suggest in a later section, represented an entirely different transaction.

In south Malabar and Travancore, most of the landholding was was held under the *janmam* right by temples, ***Nambudiris*** (brahmins) and chieftains or rulers. The intermediary non-brahmin class of ***ambalavasis*** (temple-service castes) and ***Nairs*** (militia and accountants) were closely associated with the development of ***kanam*** and related tenures like ***kuzhikanam*** as well as *panayam* (land mortgages).[22] More importantly, these tenures underlined the autonomy of the intermediate class in terms of cultivation and control of land holding, growing out of the long duration or permanent leases and their mediation of the customary rights of the ***janmi***.[23] The intervention of the Mysorean regime and the introduction of revenue assessment made further inroads into the customary authority of the ***janmi***, strengthening in south Malabar the hold of the ***kanam*** and ***kuzhikanam*** tenants.[24]

There are two sets of issues involved here i) the nature of 'rights' involved in the ***janmi-kudiyan sampradayam*** when made to correspond to forms of ownership, mortgage and lease, uniformly

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[20]Ibid (320).

[21]Buchanan (1988: 501-2), Ganesh (1991: 319).

[22]Ganesh (1991: 316).

[23]Ibid

[24]Ibid (321).

across Malabar and ii) the regionally-specific organic development of tenures.[25] Inquiry commission reports and the discourse on tenancy until the enactment of the Malabar Tenancy Act, 1930, reflect acutely the conflict over land between two "rent-receiving groups" *i.e.,* the ***janmis*** and the intermediary ***kanakkar***. Representatives of the ***kanakkar*** did not fail to point out that the early inquirers i) were driven by the need to find the best mode of collecting a land revenue for the company than to ascertain the rights of the people ***inter se***, ii) had approached the subject from a wholly English point of view, and hence were unable to conceive of what was practically a co-proprietorship in land between ***janmi*** and the ***kudiyan*** (tenant).[26] The Board of Revenue had toyed briefly with the view that land was much more the property of the ***kanakkar*** (as cultivator). This was based on the fact that they were unable to find that the proprietor had the power to raise the ***pattam*** (rent), which was seen as constituting a limitation on the ***janmi***'s rent.[27] Tenant representatives pointed out in their favour the belief that limitation of rent generally coexists with co-proprietorship in land and suggested that they had permanent rights. "The courts by declaring the absolute power of a ***janmi*** to turn out a tenant, have set aside this customary rule."[28]

The direction and extent of transformation of tenures during the colonial period were influenced greatly by the possibilities engendered for the ***janmis*** relative to the intermediary tenants and cultivating groups by colonial land policy. The ***janmi's*** powers

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[25]Namboodiripad (1985: 232).

[26]As illustrating the original sense of the term ***janmam***, it was pointed out that, the fees paid to the village barber or astrologer were called their ***janma avakasam*** (***janmam*** right). MLTR (1887 44). ***Kudiyan*** was term for tenant that included both ***kanakkaran*** and ***verumpattakaran*** and seems to have been more commonly used in the north. On the other hand, the ***kudiyan*** addressed his superior, whether ***kanakkaran*** or ***janmi*** as ***janmi tampuran.***

[27]Board of Revenue proceedings, January 16, 1815, MLTR (1887: 38).

[28]Note by C. Sankaran Nair, MLTR (1887: 40).

were restricted only by the greater affluence of a section of the intermediary ***kanakkar***.[29] In only three out of 98 estates examined by Logan in 1881 were the cultivators found to be enjoying the 'customary' share of produce ***i.e.,*** the share determined in 1805; that on all the others the cultivator's share had been greatly encroached upon.[30] Permanent tenancies were fast becoming a thing of the past and even ***kanam*** as a renewable tenure was on the decline, as against which annual leases or leases at will were being adopted. Of 14,034 pieces of land examined by Logan, 10,328 were held by cultivators directly from the ***janmi*** and remaining were held from intermediaries between the ***janmi*** and the cultivator.[31]

4.22 Revenue Policy and Land Consolidation

An important contradiction in the revenue policy of the government came to the fore in a High Court decision in 1888. For, though the ***janmi*** was conceived of as the 'ideal ryot', payment of revenue had been left to the tenant in occupation. The Janmam Registration Act, 1896, was passed so that all ***janmam*** titles could be registered. The adoption of this course involved the replacement of the existing system of land registration, under which occupation was accepted as a basis of registration and ***janmis*** who were not occupants were treated as rent chargers.[32] However, registration of all ***janmi*** titles also established quite indisputably their rights over large areas of waste land "which the government had hitherto treated as its own and had assigned to

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[29]Ganesh (1991) argues that the ***kanakkar*** were in a position of control in the immediate pre-colonial period. Logan I (1989: 614-615) shows that the ***janmis*** were deeply in debt to the ***kanakkar*** in the early nineteenth century and up to 1830-31, when prices of agricultural produce rose dramatically, had not attempted to evict their tenants.

[30](1989: 619).

[31]Ibid (618).

[32]Revenue Dept, G.O. no. 471, 28 May 1902, Kerala Regional Archives (KRA).

ryots for cultivation..."[33] Checking the powers of the *janmi*, ironically, to resent title it was held that, "the law empowers the government to register titles on a prima facie case and to leave it to the *janmi* to prove the inaccuracy of the record".[34]

In 1900 the *janmam* registration establishment was merged with the Settlement department. The first Survey and Settlement of Malabar, conducted between 1900 and 1904, streamlined and transformed revenue assessment in important ways.[35] A fundamental change involved the assessment of occupation rather than cultivation, all except in the case of unoccupied dry lands, a move in recognition of acreage as the basis of measurement.[36] In the case of unoccupied dry lands where intermittant fugitive

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[33]Ibid. Such land was now recorded as the nominal property of *janmis*, who were then saddled with the responsibility for the payment of land revenue hitherto collected directly from the occupants.

[34]Ibid. Against the move, *janmi* representatives argued that even the Rajas had land on both *janmam* and *kanam* tenures and on the latter they too paid a rent. In a memorial to the government land owners and land holders of Calicut taluk maintained that the Settlement was a violation of the Proclamation of 1805, the "unalterable settlement", and was bound to entail grave hardships to landowners and tenants alike. D 134, Public department, dated October 16, 1901, KRA.

Not surprisingly, tenant representatives in the twentieth century argued that there was nothing to show that the *janmis* had actually purchased their *janmam* rights over all their lands. MLTC II (1940).

[35]In pointing out the urgency of the need to survey and settle Malabar, Mc Watters, the Collector observed that, "we have no land registers, we have no regular register of gardens and we have no register of dry lands. In fact, we have nothing whatever reliable about the land revenues and we know next to nothing about them. The rice fields cannot generally be identified by means of the only register we have got and we have consequently no control over the apportionment of revenues." Innes (1951: 341).

[36]Prior to the settlement the principle upon which land revenue was assessed was seed capacity, based on what was gathered about revenue assessment during the Mysore regime. Colonial officials reasoned that three things were well known in the earlier period, the seed capacity, outturn multiple and the *pattam* (share paid to the *janmi*), and in the *pattam* the Mysoreans had "found the simplest and most expeditious way of assessing the land revenue". Innes (1951: 324).

cultivation was undertaken, the extent cultivated each year was assessed. The Settlement raised Warden's "unalterable assessment" bringing under assessment wasteland which had been declared the private property of ***janmis***.[37] It raised revenue demand by 77 % from within a range of Rs 16 - 18 lakhs to over Rs 31 lakhs though wet and garden land under cultivation had increased by only 34 % and 43 % respectively.[38]

4.3 Cultivation Regimes and Land Tenure Practice

> An officer who has examined south Malabar and then proceeds to north Malabar or vice versa finds that he has practically to start learning afresh... the tenures are different, the forms of cultivation are different and he has even to pick up an entirely new vocabulary of agricultural terms.
>
> Mac Ewan[39]

Malabar may be divided into two agro-ecological zones *i.e.*, the wet paddy-cultivation dominated south, with the exception of Calicut and the garden-dominated northern taluks, Chirakkal excluded.[40] North and south Malabar supported considerably different agrarian, in terms of the tenurial and crop components, as well as social and cultural systems.[41] The Malayalam-speaking portion of Kasargod taluk shared many of the social and agrarian attributes of north Malabar, though it was under the jurisdiction South Canara district.

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[37]Varghese (1970: 25).

[38]Revenue Dept., R.Dis. no. 12-A, 1930, dated March 5, 1930. For the purpose of assessment, land continued to be divided into wet, garden, occupied and unoccupied dry, under each of which depending on the class of soil, a different rate of assessment was charged. Unoccupied dry was assessed according to the extent cultivated each year.

[39]Report of the Settlement of eight plain taluks of Malabar. R. Dis. no. 12-A, dated March 5, 1930.

[40]North Malabar comprised Chirakkal, Kottayam and Kurumbranad taluks, while south Malabar comprised Calicut, Ernad, Walluvanad, Ponnani and Palghat. We have not considered British Cochin, Wynad, geographically in north Malabar, but considerably different from north and south Malabar in terms of ecology and social structure.

[41]We have drawn upon a distinction made by Gopinath (1993).

4.3.1 Kanam as Mortgage, Kuzhikanam as Lease: Tenures of North Malabar

The description of land tenures during the colonial period tends to assume uniformity of practice across Malabar. The multiple tenures of Malabar with small and sometimes important variations came under the sweep of a uniform land and revenue policy. The focus in the land policy was on the tenures of the south, accentuated by the focus on the ***Mappilla*** disturbances and the inquiries into tenures arising from them. This tendency found expression in research too with the overweaning focus on the conditions of south Malabar.

Under colonial rule ***janmam, kanam*** and ***verumpattam*** were understood in close approximation to ownership, mortgage and lease. Focussing on ***kanam*** and ***kuzhikanam***, we will argue that in Kasargod and in the northern taluks, particularly Chirakkal, Kottayam and north Kurumbranad, i) ***kanam*** was a mortgage with possession, ii) ***kuzhikanam*** was the more important form of tenure.

Kanam in north Malabar was a different kind of transaction in terms of i) the incidents of the transaction and ii) the notion of ***kudiyayma*** (tenancy). In south Malabar, ***kanam*** was primarily a tenure which involved the payment of an initial sum of money by the ***kanakkaran*** to the ***janmi*** as ***kanam,*** and an understanding of subsequent periodic rent payments to the ***janmi,*** for land made over to the ***kanakkaran***. The tenure was subject to periodic renewal during which time a fee, replacing the ***kanam,*** was paid to the ***janmi***. Logan pointed out that in the first half of the nineteenth century the ***janmis*** were in considerable debt to the ***kanakkar*** on account of the ***kanam*** advances, leading to the perception that the ***kanakkar*** were financiers and intermediaries and ***kanam*** was an expression of the ***janmi's*** need for finance.[42]

In terms of the incidents of the ***kanam*** transaction, in the south the money advanced as ***kanam*** was generally small when compared with the extent of the holding, and the rent reserved for

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[42]RMSC I (1881).

the ***janmi*** was substantial. On the other hand, the ***kanam*** amounts in north Malabar were substantial such that no rent was payable. The interest on the amount was expected to cover the value of the produce that would otherwise have to be paid as rent to the ***janmi*** (here a small ***janmi*** or cultivator).[43] The ***kanam*** or loan was made by ***janmis*** and the transaction was between two ***janmis*** or between people with surplus cash, such as well-to-do traders and businessmen. The point is that the transaction was not regarded as one between ***janmi*** and ***kudiyan***. There is no kudiyayma or the notion of tenancy attached to a north Malabar kanam.

> A North Malabar kanomdar is by no means regarded as a kudian under the janmi and he will resent the very idea of being called such... A kanomdar in south Malabar is always called a kudiyan or tenant and this accounts for the fact that unlike in north Malabar an aristocratic janmi in south Malabar will scorn the very idea of taking a kanam on lands belonging to an ordinary landlord.[44]

In north Malabar a ***janmi*** would be constrained to mortgage land, while in south Malabar a ***janmi*** considered it an honour to have a large number of ***kanakkar.***[45] The north Malabar ***'kanomdar'/janmi*** took possession of land as security for the money advanced. The accent here was not on cultivation of ***kanam*** land as a ***kudiyan***. Significantly, Gopinath accounts for crucial differences in the tenurial arrangement in north Malabar ***i.e.,*** i) in its approximation to a mortagage with possession unlike the correspondence to a lease in the south and ii) the prevalence of

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[43]Kurup (1995a: x), Subramaniam Tirumumb (1989: 99) recalls the difficulty he had in making the difference clear to the Minister for Agriculture, Madhava Menon, as late as during the inquiry into the Malabar tenancy problem in 1939.

[44]Varankot Krishnan Nambudiripad, (the sole representative from north Malabar) MLTR II, Appendix F, enclosure 1 (1887).

[45]The distinction continued to be made by persons from north Malabar in the twentieth century. See particularly K. T. Kammaran Nair and V. Anandan Nair, MLTR II, (1927: 299). Three major ***janmis*** in north Malabar belonging to the Vengayil and Kalliat ***taravads*** and the Kurmathur ***illam*** reported having no ***kanam*** transaction. Vengayil Chathu Kutty Nayanar reported that no ***kanam*** reported now or created before 1852 was now in possession of the family. Ibid II (152).

kuzhikanam (an improvement tenure more suited to the garden lands of the north and absent in the paddy-growing south). However he infers from the 'mortgage with possession' character of ***kanam*** that the ***janmis*** of the north were economically weaker, failing to note that often it was the dominant ***janmis*** who doubled up as ***kanakkar***.

The difference in the ***kanam*** tenure in the north has been understood in terms of a movement from the generalized form towards pure mortgage. For instance, Varghese suggests that by the late nineteenth century the ***kanam*** tenure, as a mode of transfer of land between ***janmi*** and intermediary tenant, was almost extinct in north Malabar, with the exception of the gardens of Kurumbranad taluk.[46] In 1881, in the north, 85.9 per cent of lands owned by the ***janmi*** was leased to actual cultivators as against 58.7 per cent for the south.[47] This is not to suggest that ***janmi*** and ***kanakkaran*** were exclusive categories, but that the ***kanakkar*** as a class of intermediaries, was unusual in the north. Further, the role of ***kanakkar*** as financier was filled in by affluent ***janmis*** and ***Mappilla*** traders.

Land transactions of the Koodali ***taravad*** in north Malabar between the sixteenth and nineteenth centuries indicate prevalence of two kinds of land transactions.[48]

i) ***Attiper*** (sale of ***janmam***) transactions on the basis of ***annuperumartham*** (current market value) and

ii) ***Panayam*** and ***kanam*** transactions, both of which in the deeds refer to mortgage with possession, making it difficult to distinguish between them.

The trustees of the Koodali ***kavu*** (shrine that ***Nairs*** and lower castes controlled and worshipped at, as distinct from ***kshetrams***, controlled by the the ***Nambudiris***) loaned money at a specified rate

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[46]Varghese (1970: 58).

[47]Gopinath, (1983: 375). The figures were based on RMSC, vol 2, Appendix IV. They reveal also that the ***janmies*** in the north retained for cultivation only 2.3 per cent of the land owned by them as against 4.2 per cent in the south.

[48]Kurup (1995a: x - xiii).

of interest and received land as a surety for the loan. No rent was paid to the property owner or cultivator who had made over land to the ***kavu***.[49] The dominant position of the ***kavu*** seems to have been that of a financial institution disbursing credit in the form of panams or paddy on the security of paddy land, a role that it combined with its ritual and juridical functions. Kurup points out that ***kanam*** often led to the transfer of *janmam* right, a situation out of which the ***kavu*** profited immensely.[50] The documents suggest, quite distinctly, a process by which the ***kavu*** consolidated its position as a major land holding institution in the area.

The ascent and dominance of the Koodali ***taravad*** in the eighteenth and nineteenth centuries is related to its control over the ***kavu*** as sole trustee. The shrine was recognized as the private property of the Koodali family under colonial rule.[51] As trustee the Koodali family had an important role in the administration of justice.[52] Their ritual authority extended to the local ***kalari*** (military training centre) where the documents attest to their having successfully contested the claims of two other families.[53]

In the coming together of ritual, and economic authority, the Koodali ***taravad*** was paradigmatic of other dominant ***taravads*** in the north.[54] The documents, as we have seen, attest to the process of the establishment of dominance by a single family over

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[49]Ibid (x - xiii).

[50]Ibid (xi).

[51](Ibid: x). Kurup adds that private ownership was established through litigation against other Nambiar families in the area. In the closing decades of the sixteenth century the family is seen to be playing the role of managing trustee of the shrine on behalf of local elders.

[52]Document no 53, ***Koodali Daivathar Uralarvaka*** (Records of the trustees of the Koodali ***Kavu)***, in Ibid (24).

[53]Ibid (x).

[54]The Achikanam and Kodom ***taravads*** in Kasargod taluk recount the annexation of property of Brahmin families associated with temples. See Kurup (1985: 2, 1989: 40).

considerable territory and people. In this we confront also the conflation of economic, ritual, and juridical authority, in a single ***taravad***. These forms of authority wrested by the ***taravad*** grew to be merely separate functions integrated and consolidated in the ***taravad*** and which in turn served to institutionalise the ***taravad*** as a locus of authority. These ***taravads*** were integrated into the lower administrative strata of the colonial state, vesting them with revenue and juridical functions, serving to consolidate their social and economic dominance.

4.3.2 Kuzhikanam and Other Tenures

By the close of the nineteenth century, ***kuzhikanam***, an improvement tenure widely prevalent in the northern taluks, particularly in the eastern hilly tracts, was sparse in the south. In 1880, Logan found that the trend with ***kuzhikanam*** leases was quite the reverse of ***kanam***, with 43 per cent of ***kuzhikanakkar*** having been in possession for more than 30 years and 32 per cent for less than 12 years.[55] Longer leases were necessitated by the fact that land had to be brought under cultivation, involving investment of capital as well as long gestation periods, at least ten years for coconut and six to ten for pepper.[56] The ***janmi*** was entitled to a fifth of the crop regulated such that he could claim the entire crop, two out of every ten years.[57]

The greater part of the land in the north, particularly in Chirakkal and Kottayam taluks was under this tenure. These tenants usually held directly from the ***janmi,*** though in Kurumbranad it was not uncommon to find ***kuzhikanakkar*** holding land under ***kanakkar*** and leasing the same to ***pattamkkar*** for shorter periods, creating sometimes a large number of sub-tenancies over a

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[55]RMSC I, (1881).

[56]***Kuzhikanam*** leases were for between forty and ninety six years in the eastern tracts of Chirakkal. MTCR I, (1927: 140)., Menon (1994: 23). Mayer (1974: 85, 63) attests to the continued dominance of ***kuzhikanam*** in Chirakkal in the 1950s and the wide cultivation of pepper in north Malabar under the tenure.

[57]Madhavan (1987: 15), MLTR II (1940).

piece of land.[58] Such leases were commonly given to junior members of the ***taravad***, which led to the growth of separate ***tavazhis***, sometimes in distant areas.[59] In Kasargod taluk, pepper was raised mostly on ***kuzhikanam*** given for 25 to 30 year terms.[60]

Table 4.1: Land (in acres) under direct cultivation by *Janmi* and tenants 1917-18.[61]

	Area under direct cultivation in 1917-18 by			
Taluks	Cultivation	*Janmi*	*Kanakkar*	*Kuzhikannakar*
Chirakkal	167369	24564	23799	48961
Kottayam	90377	17505	12799	42103
Kurumbranad	168786	19350	55977	93462
Malabar	1211283	182488	392027	308862

Source: MLTR I, 1927.

The shorter tenure in north Malabar was known as ***verumkozhu*** or ***verumkari*** for which the amount advanced was referred to as ***kozhukanam*** or ***kattakanam.***[62] These usually involved written agreements which specified the duration of tenancy. Oral tenancies, ***vakkal kaivasam,*** involving no advance and an understanding that it was a tenancy at will, were more common.[63] Garden land was almost never given on short term tenures even as paddy lands were cultivated either directly by ***janmis*** or given on ***verumkozhu.*** Short term lease of trees on a ***paramaba***, whereby the lessee had usufruct over the trees, was known as ***melpattam.*** Forested waste lands were let out on ***kuttikanam*** for felling of

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[58]E. Govindan Nayar, Vakil, Tellicherry, in Ibid, (147).

[59]RMMC II, (1891)

[60]M.K. Nambiar (Lawyer, Mangalore) MLTR II (1940: 311).

[61]See also MLTR II, (1927: 33, 185, 247, 299). Data for 1921-22 and 1926-27 reveal the dominance of ***kuzhikanam.***

[64]MLTR I, (1940: 13).

[63]MLTR II (1940), Radhakrishnan (1989: 202).

[64]MLTR I, (1940: 13).

trees and the *janmi* received a fee for every tree felled.[65]

4.3.3 Cropping Pattern

Despite being the largest paddy growing district in the Presidency after Tanjore, Malabar was a net importer of paddy in the colonial period.[66] Within Malabar, the five southern taluks accounted for 70 per cent of the rice cultivation. The eastern hilly tracts of Chirakkal and Kottayam and Kasargod taluks supported *punam* cultivation *i.e.*, a form of dry paddy cultivation on a slash and burn basis. The *kumaris* (forests in Kasargod, Chirakkal and Kottayam) were given on annual leases for *punam* (hill or highland rice) cultivation.

Table 4.2: Total grain crop acreage of each taluk and as a proportion of District Total.

Taluk	Acreage	Percentage
Chirakkal	73,470	12
Kottayam	26,655	4
Kurumbranad	35,349	6
Calicut	29,750	5
Ernad	76,000	12
Walluvanad	1,21,152	20
Palghat	1,31,242	21
Ponnani	98,128	16
Total	6,14,324	100

Source: MSCR I, (1881: 21).

Increasingly in the early twentieth century, when the economy of Malabar was being pulled into the world economy, with prices and production in Malabar responding keenly to triggers in the world market, there was a big increase in the area under the important garden crops, coconut, pepper and arecanut. Though revenue assessment was lower on garden produce, returns were less stable, dictated as they were by high initial costs, long

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[65]MLTR I, (1940: 13).

[66]Folk songs from pre-British Coorg record merchants going to Malabar to sell rice and other produce in return for salt. Poonacha (1996: 44).

gestation periods and violent price fluctuations.

Table 4.3: Paddy and Garden crops as a percentage of GCA*

Taluk	Paddy as a % of GCA			Garden crops Miscellaneous as a % of GCA		
	1904-05	1910-11	1920-21	1904-05	1910-11	1920-21
Chirakkal	53.29	50.71	50.38	28.96	45.84	47.97
Kottayam	54.16	42.45	33.60	37.75	56.34	66.00
Kurmbranad	30.79	30.68	35.93	65.45	67.48	62.97
Calicut	36.91	34.90	35.54	54.76	56.97	57.78
Ernad	44.86	46.04	52.46	41.49	44.61	44.28
Walavanad	75.27	60.89	61.74	11.74	29.51	31.33
Palghat	78.94	72.59	73.29	17.09	22.19	22.00
Ponnani	62.78	49.37	53.59	32.01	47.22	42.64
Total**	57.73	51.34	52.91	32.22	43.01	43.09

* GCA Gross Cropped Area
** District total including Wynad and Cochin
Source: Gopinath (1993: 369).

Table 4.2 indicates that increase in cultivation of garden crops was more pronounced for the northern taluks with Chirakkal showing about 48 % of gross cropped area under garden crops in 1920-21 as against 29 % in 1904-05. Except in Kurumbranad, where area under garden crop was higher even at the beginning of this century, paddy was replaced as the predominant crop. Kottayam recorded a drastic decline and Chirakkal a marginal decline in the percentage of gross cropped area under paddy between 1905 and 1921 and a considerable increase in the area under garden crops. In south Malabar, with the exception of Calicut, paddy continued to dominate, though there was a notable growth in the area under gardens in all taluks. We have seen that a large proportion of the increase in the gross cropped area visible in table 4.2 was on account of garden crops, the share of paddy declining in all but Ernad taluks.

Its pepper lands and its ***kumaries*** (unoccupied dry), set Kasargod taluk apart form the rest of South Canara. However, while pepper lands in Malabar were assessed at dry land rates, in Kasargod the considerably higher garden rates were paid on them. The vast ***kumaris*** of Kasargod were assessed at rates that varied

between one and three annas per acre, unlike in Malabar where only the extent of unoccupied dry cultivated every year was assessed.[67] These features underwrote greater distress for ***janmis*** and tenants in Kasargod in the aftermath of the depression. Pepper selling at Rs 400 - 500 per candy, at the post-war boom prices in the 1920s, had since the depression crashed to Rs 80 - 120 per candy.[68] Similarity in tenures alongside important differences in revenue policy placed ***janmis*** and tenants in Kasargod taluk in a considerably weaker position. This led, particularly in the depression years, in the 1930s to the sale of considerable ***punja*** (double-crop paddy) lands in Hosdurg and Kasargod.[69]

The very factors that went to make ***kuzhikanam*** a profitable tenure were to underline the vulnerability of the ***kuzhikanamdar***, and a combination of the effects of the depression and the fact of competition from suppliers in south-east Asia marked the decline of the prosperous tenant catering to the market.[70]

The subsistence needs of the landowning ***taravads*** were met from paddy land under direct cultivation or ***verumkozhu.*** In the ***cherikallus,*** land retained by ***taravads*** for direct cultivation, members of ***taravads*** controlled cultivation. They had a work force of ***karyasthans*** (supervisors) who supervized the labourers, mostly ***Cherumas***. A specified share of the produce had to be made over to

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[67]MLTR II (1940)., Accounts for fasli 1342 (1932-33) show that there was 144, 419.59 acres of ***kumris*** in 21 villages in Kasargod taluk. At the resettlement in 1933, the total assessment on these were raised by 12.55 % to Rs 21,446, when on an average only six acres out of every 100 of ***kumris*** were cultivated every year. In view of this the assessment at Rs 21 on 100 acres worked out to more than the rent payable to the ***janmi*** at current market prices Rs 15 per 100 acres. Note by K.R. Karanth, Revenue dept. G.O. no. 2108, dated September 2, 1940, KSA.

[68]Ibid.

[69]In 1939, 6000 acres of unoccupied dry land was sold for an anna, owing to paucity of buyers. M. K. Nambiar, MLTR II, (1940: 329)., See also Tirumump (1989: 99), and Note by K.R. Karanth, Revenue dept. G.O. no. 2108 dated 2/9/1940, KSA.

[70]Menon (1994)

the ***taravad*** and the member in charge could retain the rest.[71]

4.4 Caste, Ritual and Social Structure

There is evidence of a high degree of land concentration in Malabar in the colonial period.[72] In 1901, there were 57,040 ***janmis*** in Malabar as against 2,82,704 tenants but it is likely as Panikkar points out that most of them held very little land.[73] In 1915, 86 ***janmis*** were paying a revenue of more than Rs 3000 and in 1920-21 more than half the total cultivated area was held by 32 ***janmis***.[74] In north Malabar there were comparatively fewer major land holding ***taravads***. Of the 829 ***janmis*** holding more than 100 pieces of land in an ***amsam*** in 1881, 663 were in the southern taluks, 140 in the three northern taluks. This was out of 24,464 ***janmis*** identified, of which the remaining 23,635 were listed as minor ***janmis***.[75] That small ***janmis*** and peasant proprietors were numerous and ownership was widely diffused continued to be the impression in the twentieth century.[76]

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[71]Madhavan (1985: 14), Kurup (1989).

[72]In 1849, 86.3 per cent of landholdings contributed 20 per cent of revenue assessment while one per cent of landholding contributed 30 per cent of revenue. In 1873, 81 per cent of landholding contributed 21.5 per cent of revenue assessment while 1.5 per cent of landholding made up 30.75 per cent of revenue assessment. Panikkar (1989: 24)., See also Karat (1973).

[73]Census of Madras, 1901, in Panikkar (1989: 27). This is evident from the village registers of the Settlement for 1900-01, samples of south Malabar villages which Panikkar provides.

[74]C.A. Innes and F.D. Evans, Notes on Tenancy Legislation in Malabar, in Ibid (25).

[75]Logan (RMSC: 57) defined a principal or major ***janmi*** as one possessing more than 100 pieces of land in an ***amsam.*** He did not consider the size of a piece of land.

[76]MLTR I, (1927: 26), V.K. Raman Menon (President, North Malabar Tenants Conference, Badagara) maintained that there were few big ***janmis.*** MLTR (1940: 213).

Table 4.4 Classification of pattas according to assessment

Taluk	Total number of holdings	Percentage of revenue paid on pattas of		Percentage of total number of pattas on which assessment is	
		Rs 10 & less	> Rs 100	Rs 10 & less	> Rs 100
1	2	3	4	5	6
Chirakkal	29839	20	41	82	2
Kottayam	23055	29	28	83	1
Kurumbranad	19677	12	50	64	4
Calicut	17634	20	38	79	2
Ernad	23220	12	60	80	3
Walluvanad	13892	5	68	66	7
Palghat	25453	6	69	78	5
Ponnani	32667	12	54	76	4
Total*	191050	12	55	77	3

* including Wynad and Cochin.

Source: Statistical Atlas of Madras Presidency (Revised) 1913.

As is indicated in table 4.4 all taluks barring Kurumbranad and Ernad, around 80 per cent of the pattas pay Rs 10 or less in revenue. The difference seems to lie in that in the northern taluks of Chirakkal, Kottayam and in Calicut (which displays the character of a garden taluk) a significantly higher proportion of revenue was paid on the same proportion of pattas ***i.e.***, 20 %, 29 % and 20 % of revenue respectively as against 5 %, 6 % and 12 % for Walluvanad, Palghat and Ponnani respectively, indicating at least a marginally better land-holding postion among the lowest revenue paying \ land holding group for the northern taluks. The proportion of pattas paying more than Rs 100 as revenue is less for the northern taluks of Chirakkal and Kottayam though a significantly large proportion of revenue is collected from these fewer pattas, indicating greater concentration of land in the hands of fewer *janmis.* These trends are particularly marked for Kottayam, where assessment is more than Rs 100 only for 1 % of total pattas and almost 30 % of the total revenue was garnered from the group paying Rs 10 and less, though they constituted 83 %

of total pattas. Yet this does seem an improvement on the district average of 12 % of total revenue coming from 77 % of total pattas, paying Rs 10 or less. The 3 % of pattas that paid above Rs 100, covered nearly half the dry land and over 55 % of wet lands.[77]

The ***janmis*** of north Malabar then were not any less dominant, contrary to the inference drawn by Gopinath from differences in tenancy.[78] Karat's study of 20 ***desams*** in Chirakkal taluk indicate as much. He shows that 3 % of all title deeds paying more than Rs 100 as revenue, covered 53 % of all agricultural land.[79] Despite additional complications arising from the possibility that many pattas may have been issued for house sites,[80] and that prosperous tenants who owned little land could have been leasing in vast areas, we may still argue that the norther taluks supported, apart from the few major ***janmis,*** a large body of small ***janmis***-tenant cultivators in the place of the ***kanakkar*** of the south.

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[77]Karat (1973).

[78]Gopinath (1993: 374)).

Vengayil owned approximately 40,000 acres of land and paid Rs 10,000 in assessment; Kalliat owned 39,679 acres in Chirakkal and Kottayam taluks and paid Rs 6,200 in assessment; The ***karanavan*** of Koodali paid an assessment of Rs 5000 on ***taravad*** land and Rs 3000 in his name. MLTR II (1940: 267, 301). Prominent ***taravads*** owned a greater part of the land in certain ***amsams.*** Kalliat owned 1160 of 1256 acres in Blathur ***amasam*** and 2232 out of 2400 acres in Kalliatu ***amsam*** among substantial holding elsewhere in Chirakkal taluk. (Settlement Register 1900, Chirakkal taluk, no. 90, Blathur ***amsam***; no. 91 Kalliat ***amsam***). There was little change in extent of their holdings in the 1933 settlement registers. A similar picture emerges for a number of ***taravads*** in Chirakkal taluk including Karkatidathil, Kutur Vengayil and Varikara.

[79]In 10 of those villages 5 ***janmis*** and ***devaswams*** controlled 42 % of all cultivated land. Karat (1973). The Collector of South Kanara pointed out in 1940 that there were 29 ***janmis*** paying an assessment of between Rs 1000 and Rs 30,000 in Kasargod taluk. In 21 villages in the taluk 9 families recorded large ***kumri*** holdings, approximating: Tayakat mana 40,000 acres, Udmanthala 36,000 acres, Kunniyur 3000 acres, Nileswaram (Tekkemkur) Raja 40,000, Kakkat Arasu 12,000, Konath 20,000, Kinnanoor Arasu 3,500, Koteyil 25,000, Achikanam 25,000 and Kodom 45,000. Revenue dept. G.O. no. 2108, dated September 2, 1940, KSA.

[80]Innes (1921: 229).

> There (in north Malabar) with the exception of a the few Rajas, Naduvazhies, and a small number of big janmis all others are more of less both landlords and tenants at the same time... [T]he great bulk of the population is a body of peasant proprietors. Even the poorest tenant there is a janmi in the sense that he owns at least one paramba as his janmom.[81]

This then was clearly different from tenants and sub-tenants who owing to the permanent nature of the ***kanam*** transaction in the south built ***taravads*** and resided permanently on ***kanam*** land.[82] Hence eviction would have meant the beginning of a process of transformation of tenants into wage labourers, unless they were able to find other land on ***kanam*** or less favourable tenures. Those at the margins, unable to compete for the favourable tenures, advances for which were raised progressively, would increasingly have had to turn to agricultural labour. The greater adoption of ***melkanam*** or ***melcharth*** (overlease), increasingly resorted to by late nineteenth century, hastened this process, contributing no doubt to the heightened rack-renting and the continued presence in south Malabar of a very high proportion of agricultural labourers in the late nineteenth and in the twentieth centuries.[83]

Only two 'original' ***Nambudiri*** settlements in Kerala in Perincellur (modern Taliparamba) and Payyanur have been noted in north Malabar, separated from the others by more than 150 kilometers.[84] It has also been noted that all the ***Nambudiri*** settlements were in the plains, between the sea coast and the

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[81]T.V. Anantan Nair, Appendix F, MLTR, (1887). Anantan Nair was appointed in place of Varankot Narayanan ***Nambudiri***, who dropped out.

[82]T. Madhava Rao refers to the Sudder Court judgement setting a 12 year period for the renewal of ***kanam*** as a periodic earthquake, stating that ***taravads*** were built upon ***kanam*** land and represented by its name in all legal and other transactions. Cited in MLTR I, (1927: 22).

[83]Gopinath, (1993: 379).

[84]Narayanan and Veluthat, (1984: 412).

mountains, where conditions were ideal for paddy cultivation.[85] This answers for the few brahmin settlements in the north where the mountains rose close the coast, sometimes within 20 kilometers and where paddy cultivation was difficult except in parts of Chirakkal taluk.[86]

There was a concentration of ***Nambudiris*** and ***Pulayas*** (in north Malabar they were better known as ***Cheruma*** -- agrestic slaves attached and traded with the land) in the south with its dominant wetlands and rice cultivation.[87] Of 370 principal ***janmis*** from among the ***Nambudiris*** identified by Logan in 1881, 356 were in the southern taluks, 11 in Wynad and 7 each in Chirakkal and Kurumbranad.[88] Significantly, it was argued against the attempt in the 1880s to legislate reform of tenancy practice that the proposal to pay improvements at particular rates to tenants on eviction would press heavily on the ***Nambudiris*** of north Malabar, who owned comparatively less land, while not inconveniencing the ***janmis*** of south Malabar, whose major holdings were in paddy land.[89] In this sense, Kottayam taluk was paradigmatic of the 'garden-cultivating' taluk of the north. In Kottayam there were no principal ***janmis*** from among the ***Nambudiris*** and only one principal religious institution. Of 240 principal religious shrines (holding more than 100 pieces of land in any amsam), identified in 1881, only 26 were in the north.[90]

In north Malabar the dominance of major ***Nair*** and, in parts of Kottayam taluk, ***Tiya janmis***, at the inception of colonial rule was facilitated by the declining power of the Kolathiri, the ruler of

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[85]Ibid (420).

[86]Buchanan (1988).

[87]Gopinath (1993: 337).
In 1857 Kottayam recorded a population of 2,859 *Cherumas*, Chirakkal 13,380, Calicut 14, 082, Kurumbranad 16, 590 and the remaining taluks between 25,000 and 35,000. Logan I (1989: 177).

[88]RMSC (1881).

[89]***Kerala Patrika,*** April 1886, MNNR, 1886, 45, TNA.

[90]RMSC I (1881).

ancient Kolathunad, whose area of influence had been reduced to Chirakkal taluk.[91] In this state of relative political void, ***janmis*** exercized considerable autonomy over territory comprising a ***desam*** or a group of ***desams***. Major ***taravads***, as chieftains and later village headmen, combined their interest in land with ritual and juridical authority.[92] ***Nair yejamanans*** (chiefs) in the twentieth century continued to exercise juridical authority, attempting to prevent cases from their 'jurisdiction' going to court.[93]

If the ***Nairs*** comprised the prominent ***janmis*** of the northern taluks, the larger proportion of the caste group, with its myriad distinctions into sub castes, were small peasant proprietors, sometimes combining tenancy with owner-cultivation of small holdings.[94] Unlike ***Nambudiri janmis*** who were required to maintain a distance from cultivation which was seen as ritually polluting, ***Nair janmis*** sought to maintain closer links with cultivation, doing away with the functional role of the ***kanakkar*** class.[95] However, this did not mean extensive direct cultivation by all ***janmis***, and in fact most of the land of big ***taravads*** were given

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[91]Logan (1989: 343), Miller (1954: 416).

[92]Gough (1961b: 386), Miller (1954: 417 - 419).

[93]Miller (1960: 51). However, with the lack of legal sanction of customary restraints upon their powers and secure in their incorporation into the lower rungs of the colonial bureaucratic-juridical apparatus, in the early twentieth century, they have been known to deal cruelly with respect to cases brought before them. Andalat (1990: 22), Madhavan (1987: 15).

[94]RMMC I (1891), Shea (1959: 89), Sankaran (1965: 203). Mayer (1974: 84) finds that the fewer ***Nair janmis*** in the north were comparable to those in the south. Gough (1961b: 387) links their greater role in cultivation to i) their not having comprised a regular army as in the south, (Ibid: 317) but having been called upon, sporadically, to fight on behalf of local chiefs and ii) the smaller presence of agrestic serfs.

[95]The Kuttur Vengayil ***taravad*** emphasized their role as cultivators. Nayanar (1987: ix, 110)., At the beginning of each agricultural year, the ***karanavan*** of Kodom was required to perform the first act of cultivation, symbolic of their status as cultivators. Interview with Vengayil Kunhikrishnan Nayanar at Azhikode, May 6, 1996.

out to tenants on ***kuzhikanam*** for long periods and ***kozhukanam*** and other short-term tenures.[96] In the ***cherikallus*** and particularly among the small-owner and tenant ***taravads*** of Chirakkal and Kottayam taluks, ***Nairs*** and ***Tiya***, both men and women, laboured on the fields, though women from affluent ***taravads*** usually confined themselves to working on land owned by their ***taravads.***[97]

Census data for 1921 for Malabar corroborates this picture, though it is not disaggregated by region. More than half of all ***Nair*** 'workers' were cultivating landlords and / or tenants (504 for every 1000 workers), 172 were agricultural labourers and only 59 were non-cultivating landlords and / or tenants.[98] Significantly the data for women indicates their high degree of involvement in agricultural labour (1575 women for every 1000 men). For every 1000 male workers among the ***Nairs,*** there were 481 ***Nair*** women workers. There were 575 non-cultivating landlords and tenants, 303 cultivating landlords and tenants who were women for every 1000 men and a preponderance of women in rice pounding.[99] The ***Tiyas***, expectedly, had a higher proportion of women workers -- 664 for every 1000 men, whose presence was marked in agricultural labour (1300 for every 1000 men) and coir work and textiles sales. Significantly, of every 1000 ***Tiya*** male workers, 444 were agricultural labourers and 209 were cultivating landlords and

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[96]MLTR II, (1927)

[97]Kunhappa (1981: 4)., Significantly he recalls the absence of ***Cherumas*** and ***Pulayas***, the customary labouring castes, in Peralasseri in Chirakkal taluk and the surrounding ***amsams.*** K.R. Krishna Menon RMMC (1891: 214) points out that in contrast to south Malabar, women even in well-to-do families in north Malabar, work in the fields. Mayer (1974: 97) found in north Malabar in the 1950s that the big ***janmis*** were ***Nairs***, while the smaller ***janmis*** were ***Nairs, Tiyas*** or ***Mappilla.***

C.K. Revathiamma (1976) writes that at the turn of the century there were few affluent ***Tiya taravads*** and "unlike in the present day", most ***Tiya*** women were engaged in some form of agricultural activity, prominently processing paddy after the harvest.

[98]Census of India, Report Madras Part I, (1921: 245).

[99]Ibid.

tenants. In their 'caste occupation' of toddy tapping there were only 70 of every 1000 ***Tiya*** men and no women.[100] Apparent also is the difference in caste profile of the ***Tiyas*** and ***Ezhavas*** (***Illuvans***), a comparable caste in south Malabar. There was a slightly greater proportion of ***Tiyas*** in cultivation as landlords and cultivators, and far fewer ***Tiya*** than ***Illuvan*** agricultural labourers.

4.4.1 Social and Cultural Practices

The Korapuzha (Kora river) which flows about nine miles north of Calicut was the customary boundary between north and south Malabar. A significant marker of sociological and political difference between the territories was the prohibition against women from north Malabar crossing to the south. While we have little information about whether and how curtailing the rule was perceived to be in the pre-colonial period, it was in keeping with the provision against women of the north establishing *sambandhams* with men from the south.

Marumakkatayam was considerably different among the ***Nairs*** of the north, important distinctions growing out of virilocal post-marital residence. This suggested closer kinship ties with the father's matrilineage as well as the possibility of rights to maintenance and property from the father.[101] On the other hand, the preference for ***sambandham*** with ***Nambudiris*** was not as unambiguous as in the south.[102] It is revealing that Kodom and Achikanam, prominent ***taravads*** in Kasargod taluk during the colonial period, trace their land holdings to Brahmin families, whose property they forcefully gained.[103] On the other hand, Kutur Vengayil, a

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[100]Ibid.

[101]See Chapter 3 for a discussion on patrilineal inheritance.

[102]For instance K.R. Krishna Menon (RMMC II, 1881: 214) pointed out that the ritual requirements of a ***podamuri*** (term for marriage) in north Malabar were observed by the ***Nambudiris*** as well, unlike in the south, where the ***Nambudiris*** "being big ***janmis***" did not observe the rituals of a ***sambandham.***

[103]On shifting the ***taravad*** residence south from Ajanoor in Kasargod

prominent ***taravad*** in Chirakkal taluk traces itself to a marriage alliance with the Ryramangalam ***mana***, a branch of the Tazakat family in Chirakkal taluk, clearly contrary to the injunction against gift of property from the Brahmins.[104] Importantly for us this indicates the lower bargaining power of the ***Nambudiris*** as social group in north Malabar.

Buchanan tells us as early as 1802 that the ***Nairs*** of the north were far more 'orthodox' in their sexual observances relating to women.[105] Considering the stigma attached to women marrying castes or sub castes ranked lower than their own, the distinction was a pointer of caste 'status'. As Gopinath points out, if a woman from the north was to settle south of the river she was likely to find herself in a region which was, in a number of ways, very different from her home".[106] The same could be said to apply to the ***Tiyas*** and the ***Mappillas*** as well.

Importantly the ***Tiyas*** and ***Mappillas*** of the north lived in matrilineal families which has been cited as the reason for other differences. The ***Tiyas*** considered themselves superior in terms of caste to the ***Ezhavas*** of south Malabar leading to barriers against intermarriage. During the colonial period they attained a certain prominence, particularly in the towns of north Malabar. A ***Tiya*** elite influenced by their early encounter with the English and the

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to Madikkai in Hosdurg, the ***karanavan*** of Achikanam, Koman Nayar is said to have killed the Palamangaltha Namboodiri, a large land owner and annexed land belonging to his ***illam.*** To atone for the wrong the ***taravad*** used to distribute offerings every year on the ***karanavan's*** birthday. Achikanam is also known to have wrested ***melkoyma*** (right of a patron) over the Kanikulom temple from the Nileswaram Kovilagam. Kurup (1985: 2). Kodom is said to have appropriated, forcefully, the lands of a brahmin family, Kodothoru, and assumed authority over local ***maniyani*** (lower sub-caste of the ***Nairs***) families, Ayarotan, Mekkotan, Vengare and Punkalu. Kurup (1989: 40).

[104]Upon ***sambandham*** the Tirumump (as the matrilineal ***Nambudiris*** in Payyanur ***gramam*** were known) is said to have founded a ***tavazhi*** at Matamangalam near Kutur. V. Kunhiraman Nayanar (1987: ix).

[105]Buchanan (1988).

[106]Gopinath (1993: 367).

missionaries, and drawn from the professions of law and trade, particularly abkari, was instrumental in the social reform movement initiated in the first decade of the twentieth century, something we shall detail in Chapter 6.

The relative affluence of the ***Mappillas*** in the north has been attributed to their matrilineal family organization which prevented fragmentation of property.[107] Prominent ***Mappilla*** families with substantial interests in trade, extending back into the pre-colonial period are known to have invested in land[108] though they continued to evince little interest in agriculture.[109] In certain areas of Kasargod taluk, ***Mappilla taravads*** were major ***janmis,*** holding ancestral rights to the post of ***adhigari*** (village head) of these ***amsams*** in the colonial administration.[110]

Their presence in the local caste cosmology was until even the turn of the twentieth century, expressed through a well defined place in a shared ritual order.[111] It is significant that ***Mappilla taravads*** were known to have had specific ***avakasams*** (rights) in local festivals, increasingly defined in the nineteenth and twentieth centuries as 'Hindu'.[112] They were part of the division of labour that accompanied ***kaliattam,*** festivals organized around the performances of ***teyyam*** (a ritual dance where the performer assumes the form of god through a particular

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[107]Logan (1989), Shea (1959: 91).

[108]Shea (1959: 125), Gough (1961d).

[109]C.K. Muhammad Keyi, MLTR II (1927: 335).

[110]K. Madhavan (1987: 13).

[111]Miller (1954: 417).

[112]***Tara avakasam*** (***tara*** was described as a social unit, larger than a ***desam*** but smaller than a ***nadu,*** the 125 ***desams*** in Calicut ***nadu*** comprising 72 ***taras***) was an institution that reserved for a member /s of a ***tara*** the monopoly of their services in that ***tara***, assuring a livelihood to all ***jati*** groups within its jurisdiction. The laws of ***tara avakasam*** continue in certain socio-religious aspects. Raghava Varier (1994: 14, 22)., See also Miller (1954: 413) and Kala (1982: 56).

deity),[113] and the annual festivals at local 'Hindu' shrines. For instance, in preparation for the ***perunkaliattam*** (celebrated every 12 years) of the ***Muchilot Bhagavati*** at Kanhangad, in Kasargod, it was a local ***Mappilla taravad***'s ***avakasam*** to provide the rope and vessel, used to draw water from the well.[114] On a different plane of involvement, ***Mappillas*** were inscribed into the pantheon of ***teyyam*** deities in the coastal and midland amsams, where their role in local economy was crucial.[115]

Miller has argued that territorial segmentation, in the absence of centralized political authority, stressed the interdependence of castes / social groups at the level of smaller units such as the desam, inhibiting the development of caste solidarity over wide areas.[116] Cleavages then were not between castes or social groups as between chieftains of desams or between dominant ***taravads.***

The ritual space was used to cement socio-economic relations through negotiation of tensions and latent caste antagonisms. ***Teyya***m was organized by different castes, ***Nambudiri illams*** acting only as patrons in exceptional cases, though in most cases ***Nair***

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[113]***Teyyam*** a form of ***daivam***, means god.

[114]Interview with K.K. Marar in Tellicherry, May 6, 1996.
Itenerant missionaries in north Malabar at the turn of the century record regular ***Mappilla*** presence at most 'Hindu' shrine festivals, mostly as traders. Kurup (1995). See also Miller (1954: 419).

[115]Kampaloor Kottayil, a prominent ***Nair taravad*** in Payyanur, celebrated a ***Mappilla*** deity. The ***teyyam*** of Aryappunkani and Bappiriya are performed together, in the coastal ***amsams***. The ***tottam*** recounts the rescue from shipwreck of Aryappunkani a brahmin woman by Bappiriya, a ***Mappilla*** seaman, who is then deified as her brother. M. Vishnu Namboodiri (1990: 182).

[116]Miller (1954: 417). This could be seen in the organization of the Vanniar (oil mongers) caste of north Malabar into numerous ***Muchilots.*** Every twelve years they organized a grand ***teyyam*** festival called the ***Muchilot perunkaliattam***, which brought together the ***Vanniar*** caste from a group of villages, a jurisdiction referred to as the ***Muchilot***. The forum was utilized importantly to sort out rifts, dissensions and disputes among members of the caste. Interview with K. K. Marar in Tellicherry, May 10, 1996., Kalliyal Muchilot Yuvavedhi (1996).

janmis acted as patrons. Invariably, a lower caste man, usually a ***Vannan*** or a ***Malayan***, donned the role of the deity. In his role as god, a caste inferior could chastise ***Nair janmis*** for perceived excesses, standing on its head, momentarily, the caste hierarchy. Over a longer period it served to hold in check the powers of caste superiors and to regulate patronage.[117] On the other hand, these performances underwrote, through the ritual, the social and economic authority of ***taravads.*** For instance, ***teyyam*** performances in front of a ***taravad's*** principal granary, yoked together the ritual and economic authority of the ***taravad***, regenerating it even while blunting its edges.[118] In the ritual space then caste hierarchy was chastened and regenerated, simultaneously.

4.4.2 Ritual Mediation of Matriliny

The ritual space afforded by ***teyyam*** was used to negotiate tensions specific to ***taravads*** in north Malabar, arising from virilocal post-marital residence. The presence in matrilineal households of wives of ***taravad*** men has been documented for over 300 years through genealogical data from several ***taravads***.[119] However, women visited their natal ***taravads*** and were expected to stay for longer durations on occasions like childbirth. On the death of their husbands they usually returned to their ***taravads***.

The ***teyyam*** of Kadangoda Makkampothi (pothi for Bhagavati),

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[117]The ***tottam*** of Palantayi Kannan is evocative of these aspects. The ***taravad*** of a ***janmi*** who in anger slays a ***Tiya*** boy for having fallen in love with his niece is visited by misfortunes. To neutralize the ***dosham*** (evil) from his excess, Kannan is deified as a ***Teyyam.*** For a detailed analysis of this theme see Dilip Menon, (1994: 53-61).

[118]Kurup (1989: 42)., He argues that the performance of ***teyyam*** served to hold together the economy of the ***taravad*** by enforcing, ritually, the moral authority of the ***karanavan*** and the ***taravad***, among the 'dependent' castes, particularly the agricultural workers and service castes.

[119]E.J. Miller, "An analysis of the Hindu Caste System in its interactions with the total social structure in north Kerala", Unpublished PhD dissertation, University of Cambridge, 1950, cited in Dilip Menon (1994: 11).

engages with the tensions arising from ***ammaiyammamar*** (wives of ***karanavanmar)*** having to cope with the primacy of matrilineal kinship and affection.[120] Makkam is the only daughter of Unnichira of the Kadangota ***taravad*** in Kunhimangalam ***desam.*** One sister among 12 brothers, she is cherished. We are told that at five years of age she started to learn to read and write and on completion of her education her teacher was given a a gold ***ezhutanni*** (instrument used to write on palm leaves) as ***gurudakshina***, indicating her favoured status. She married her cross cousin and had two children.

Makkam's ***nathunmar*** (sisters-in-law) however, did not share their husbands' affection for Makkam and looked for ways to harm her.[121] One day, when the brothers are away fighting a duel on behalf of the Kolathiri and when Makkam is under seclusion owing to menstrual pollution, the ***nathunmar*** leave her alone in the house. They are aware that the ***Vanniyan*** (oil monger) would soon come by to deliver oil to the family. When he does, Makkam requests him to place the vessel of oil inside requiring him to enter the house. Makkam's ***nathunmar*** reappear just as the ***Vanniyan*** is emerging from the house, contriving to bring her under suspicion of sexual transgression. The brothers return victorious and are told of Makkam's 'transgression'. Using deceit they kill her and her two children. Upon doing so, however, they forget themselves and turn upon each other with their swords until they are all dead. The Kadangota ***taravad*** in Kunhimangalam was razed to the ground and the ***nathunmar*** die, afflicted with madness.

Affirming in the first instance the primacy of matrilineal relationships, the ***tottam*** engages with the fragility of that tie, the contest and dissensions that it could generate and meanders to a denouement of utter devastation. The scale of the tragedy

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[120]Vishnu Namboodiri, (1990: 194), C. Balakrishnan Nair (1979: 160 -222).

[121]Popular sayings expressed these tensions. '***Ammayi ammayea kallinmel vecchetu, mattoru kallekonde narayana'***, 'Place your ***ammayiamma*** on a stone, and with another stone, Narayana'. Sankaran (1965).

underlines the potential for trouble arising from fractious relations, from resentment of matrilineal ties and the threat to the ***taravad***. In the retelling of this ***tottam*** we have an expression of the resentment against the flouting of matrilineal ties, as well as the use of the ritual space to regenerate, and caution against attempts to tamper with matrilineal ties.

Some of the passages of the ***tottam*** are particularly instructive of the relationships among women, men and ***taravad*** property. For instance, after rigorous penance, Unnichira beseaches god, who appears before her, for a ***pennu varam*** (gift of a girl child), a 'guardian' for the immense wealth of the Kadangod ***taravad***, at risk of being without one.[122] Just as significant, however, is her reference to her ***moksham*** (salvation) being in a girl child, an allusion to the 'ritual' significance of the girl child.[123] On the other hand, Makkam is under the tutelege of her brothers and requires their consent and escort to travel.[124] We will argue that these particularities had important implications, evident in the specific resonances of the struggles for land and for reorganization of family and property spaces in the late nineteenth and early twentieth centuries. Mapping of variations in tenancy and family practices should help us identify the triggers of differences in agrarian struggle. The greater diffusion in agrarian \ tenancy struggle in the north up to 1930, reflects the differences in tenurial practice -- the absence of a powerful class of intermediate ***kanakkar*** as apart from the *janmis*.

4.5 Dominant Discourse on Tenant Rights and Tenancy Legislation

The early decades of the twentieth century saw tremendous changes in the villages of Malabar associated with the land settlements of 1900 and 1935; the growing sensitivity of prices in Malabar to trends in the world market; the efforts to mobilize

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[122]Ibid (161).
[123]Ibid (161).
[124]Ibid (204).

around issues of caste and tenancy in the struggle over land linked to which were the attempts to deploy religion in new ways along the lines of pan-Indian categories of 'Hindu' and 'Muslim' in the effort to challenge and rework the existing caste and social order.

It must be mentioned that the population of 'Hindu' ***marumakkatayees***, which included the ***Nairs*** across Malabar and ***Tiyas*** and ***Mukkuvas*** (fisherfolk) of north Malabar was less than 30 % of the total in 1881, of whom more than two third were described as ***Nairs***, Kshatriyas and allied castes.[125] The nineteenth century witnessed the emergence of a section of the ***kanakkar***, noticeably ***Nair***, as a powerful social and economic force.[126] This class with access to a greater share of the net produce than the ***janmi*** or the cultivator, was able to pay high renewal fees as well as match the ***janmi*** in the civil courts.[127] Crucially, they grew to achieve a high degree of 'visibility' in the official realm, having been the first to take advantage of English education and the employment opportunities it opened up. In the campaign for security of tenure, the representatives of the ***kanakkar*** were advantageously placed, with the kind of access to government that was not available to the ***janmi*** or the cultivator.[128] They contested the grant of security of tenure to ***verumpattamkar*** on the grounds that they traditionally lacked such rights, but argued ***vis-a-vis*** the

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[125]RMMC I, (1891: 5)., There were 696,414 people (344,629 men and 351785 women) following ***marumakkatayam*** out of a population of 2,365,035. ***Nairs*** comprised 470,329. In 1941, 20 % of Malabar's Hindu population was ***Nair***, one per cent was ***Nambudiri*** and about 35 % was ***Tiya***, including patrilineal ***Tiyas*** and ***Ezhavas***. Miller (1954: 411).

[126]Panikkar (1978: 881).

[127]Ibid. Panikkar argues that much of the litigation around tenancy was between ***janmis*** and affluent ***kanakkars***. The intermediary ***kanakkar*** were able to appropriate a larger surplus than the landlords themselves. Innes (MLTR 1927: 16) makes a crucial distinction between poor ***janmis*** forced to resort to ***melcharth*** (overlease) against dominant ***kanakkar***.

[128]Ibid (883). Panikkar cites a minute dated December 12, 1895, by C.S. Crole, member Board of Revenue to this effect.

janmi, that they (the *kanakkar*) were the ancient *ryotwari* proprietors of land and hence the real owners.[129]

The Malabar Compensation for Tenants Improvement Act, 1887, the outcome of sustained pressure from *kanam* representatives, tortuous official procedures and resistance by *janmis*, with the state ranged on their side, was, however, a feeble piece of legislation.[130] It failed to check evictions which on the other hand continued to increase.[131] In 1900 it was amended to specify the rates of compensation to be paid. Even as the scope of the act was limited by the fact that there was little possibility of making improvements on wet lands, that dominated the agrarian economy of the south, it was not entirely without bite. Especially in the north, where garden cultivation was widespread, it had some leading *janmis* in the dock for not being able to meet the rate of compensation.[132]

A proposal to protect tenants against rack-renting, heavy renewal fees, evictions and exactions and to grant occupancy rights for cultivating tenants in possession continuously for more than 15 years met with resistance from the Board of Revenue:

> [The] janmis of Malabar were a political force on the side of the government, there can be no doubt that the tenancy legislation of the kind now suggested would be a grave political mistake, as it would alienate this force from the

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[129]Krishnan Nayar cited in MLTR I (1927: 21)., See also C. Sankaran Nair's note on the Tenancy Bill in the MLTR (1887).

[130]Even Revenue department authorities pointed out that the Act of 1887 failed to provide any security, its provisions being so carelessly worded as to permit evasion of its object. Shea (1959: 180).

The Government instituted two successive committees to look into Logan's suggestions and to go into the question of legislation between 1884 and 1887

[131]Logan (1951: 619), Varghese (1970: 63).,

[132]The Raja of Chirakkal and the Raja of Kadathand were unable to redeem their lands from tenants. E. Govindan Nair, MLTR II, (1927: 181).

The grain cultivators were the worst off in terms of rack renting. The Act provided little to benefit them, as little improvement was possible on rice land. RMSC I (1881).

government.[133]

Representatives of the ***kanakkar*** turned to local organization of the tenantry as a response to the inadequacy of methods resorted hitherto -- through petitions and memorials and through the newspapers.[134] Their efforts crystallized by 1920 in the Malabar Kudiyan Sangham and the names most closely associated with it were almost all ***Nair***, prominently G. Sankaran Nair, Secretary of the MKS, M. Krishnan Nair, K. P. Raman Menon, M. M. Kunhirama Menon. The professional middle class educated in English and employed in the towns of Malabar and in Madras, had grown out of the intermediary ***kanakkar*** class.[135] It was pointed out against the ***kanakkar*** that they were most often professional lawyers or government officials living in a distant station and that no economic argument could justify legislation in their favour.[136]

Having moved out of the traditional joint families, to take up government employment or other occupations, it is likely that they felt the inconvenience of the legality of matrilineal inheritance and family practices. A curb on the free wheeling powers of the ***janmi***, advocated by the ***kanakkar*** would have translated into a degree of independence for them. For the ***kanakkar*** of the southern taluks independence from the ***janmi*** signified the possibility of a break with customs such as ***sambandham***, that were welded into the tenancy structure. The rise of tenancy and social reformers was mediated by ***sambandhams*** with ***Nambudiris***, which enabled ***Nair taravads*** certain privileges regarding tenancy.[137] As Namboodiripad maintains this class,

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[133]Board of Revenue Orders dated September 26, 1917, on Proposals of Charles Innes, cited in Panikkar (1978: 885)., See also MLTR I, (1927: 17), and Herring and Hart (1977: 257).

[134]Panikkar p 885.

[135]Out of 3169 government service employees in Malabar in 1871, 1919 were ***Nairs***. Of 3577 military and police employees, 1155 were ***Nairs***, a considerable presence by any account.Census of the Madras Presidency, Vol I, (1871: 353).

[136]MLTR (1927: 18).

[137]Panikkar (1989: 28), Kala (1982: 126) records four cases of such

educated in the 'modern' way, was constrained by their social and economic dependence on the ***janmis***, a conflict that gave rise to the new leadership of the peasant movement.[138] In this task of reform, reformers drawn from the ***Nair*** middle class were addressing intertwined factors, importantly i) the incompatibility of matrilineal practices with their life styles, ii) the crisis of legitimacy arising from the lack of legal sanction of matrilineal marriages and the associated perceptions of sexual permissiveness of matrilineal women and iii) exploitative land (economic) relations that were seen as facilitating ***Nambudiri*** male access to ***Nair*** women, expressed in ***sambandham.***

Until 1920 which marked a decisive moment in nationalist mobilization in Malabar, the Indian National Congress was patronized by the ***janmis***. Attempts to introduce the tenancy agenda in Congress forums were resisted successfully by the ***janmis*** until the Manjeri Conference in 1920, when a tenancy resolution was passed leading to ***janmi*** protest and withdrawal from the organization. In the aftermath of the ***Mappilla*** uprising of 1921 and the doubts expressed about the Congress-Khilafat alliance, until the enactment of the MTA, 1929, the Congress was to 'retreat' to what was almost a single point agenda -- the advocation of the tenant cause.

The same identifications were, however, not available in the northern taluks, where we have argued there was not always a clear distinction between the ***janmi*** and the ***kanakkar***, (unless we talk in terms of the ***kuzhikanakkar*** who were mostly small tenant-cultivators) impeding the development of a distinct class of rent-seeking intermediary tenants as in the south. Further ***Nairs*** generally saw themselves as ***janmis*** even where they had little property though there were few ***Nairs*** with no ***janmam*** interests at

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sambandhams between 1890 and 1930 in her central Kerala study village, where the concerned ***tavazhis*** benefited through ***kanam*** from the ***Nambudiri illam.*** See also Moore (1983).

[138](1985: 174).

all.[139] While most ***Nairs*** combined ***janmi*** and tenant interests, barring a few dominant ***Tiya janmis*** in Kottayam taluk, ***Tiya*** households combined small tenancies with agricultural labour for a livelihood.[140]

The Malabar Tenancy Act was passed on the recommendation of a Committee instituted in 1927 after the Governor had refused permission to a bill passed by the Madras Legislative Council in 1926 on the grounds that it interfered seriously with the rights, long established of the ***janmis***. The Act restricted the ***janmi***'s powers of eviction, fixed rent and renewal fees. The conditions upon which the ***janmi*** could reclaim land, denial of title, willful waste, failure to obtain renewal on expiry of lease, and the ***janmi*** requiring the land after expiry of lease for his own or his family's use, left the ***verumpattamkar*** vulnerable to annual evictions, while providing greater cover to the ***kanakkar***.[141] In recognition of differences in ***kanam*** in the north, all ***kanam*** where the amount was more than 60% of the ***janmam*** value of land was excluded from the purview of the Act.

4.6 Tenancy Struggle, the Taravad and Women's Property Rights

How did tenant / ***Nair*** (male) reformers perceive the position and rights to property of tenant / ***Nair***, women, in the context of land control and related social influence by the ***Nambudiris***? To understand something of this we need to address the engagement in the tenancy discourse with the dominant perceptions of matrilineal women, and how the need to deal with these perceptions (of moral 'degeneracy' associated with ***sambandham)*** forces itself, on the agenda of the tenancy agitation. In order to gain a fuller picture of how women's relation to property, were being negotiated we attempt to relate the agenda and demands of the tenancy struggle with that of social reform.

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[139]Sankaran (1965).

[140]M. Anandan, MLTR II, (1927: 387), Revathiamma (1976).

[141]Panikkar (1978: 886), Shea (1959), Radhakrishnan (1989).

We have seen in the preceding chapter that there was visible anxiety in the latter half of the nineteenth century about sanction of 'permissive' sexual behaviour by women in ***marumakkatayam*** law.[142] If the demand for a marriage law was grounded on its powers to curb such behaviour,[143] seen as emerging from the the absence of legal control over women's sexuality, the moral 'degeneracy' of ***sambandham***, associated with the exploitative edge of land control by the ***Nambudiris***, formed a major reason for legislation to check capricious eviction.[144] The refrain that ***Nambudiri janmis*** misused their landed privilege to gain sexual access to women of ***Nair*** / tenant families was common enough in the late nineteenth century. For instance, it was pointed out that "a ***Nambudiri*** landlord, one of whose tenants had refused to give her daughter to satisfy his lust punished the tenant by putting her land on melcharth."[145] A District Munsif recounted a "recent instance" of the wife of a lawyer being sought persistently by a ***Nambudiri,*** until the ***Nair,*** "consented to accept a position of subordinate co-husband of his former, full wife, which he now fills, with what feeling it may better be imagined than described." He adds that the "young ***Nambudiri***" was the ***janmi*** of

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[142]Significantly, the ***sambandham*** relationship between ***Nambudiri*** men and women of tenant classes existed during the late Cera period. For instance, as a measure that was likely to blunt the edges of power, Narayanan and Veluthat, (198 : 421, 436), note that members of the ***Sabha*** (assembly or council constituted through hereditary membership from families that jointly owned temple property) at Avittatur and Sukapuram, two ***Nambudiri gramams*** in south Malabar, were prohibited from entering into ***sambandham*** with women of tenant families. Often there were proscriptions against the establishment of tenancies with members of the council or their close relatives.

[143]***Kerala Patrika,*** May 31, 1890, MNNR, 117.

[144]Ibid, August 23, 1890, 180.

[145]Ibid., In ***Indulekha***, Chandu Menon lampoons a ***Nambudiri*** whose turn for beautiful women is underwritten by his wealth. When his advances are refused by ***Indulekha***, the ***karanavan*** of her ***taravad*** is forced to arrange a ***sambandham*** between the ***Nambudiri*** and a 12 year of girl of a distant and not so well off ***tavazhi.*** Chandu Menon (1965).

the girl's ***taravad.***[146] The particular coding of instances of exploitation by ***Nambudiri janmis*** reflect also the 'terms of reference' of the ***Nair*** educated class, as well as the 'silence' of the woman, as merely an object of contention in the narrative.

The use of landed privilege by the ***Nambudiri*** male to gain sexual access to ***Nair*** women continued to form a part of the coercive mechanisms employed in the twentieth century.[147] Held together by the intermediate tenant interests, both family reform and tenancy concerns coalesced in the south where demands for partition of ***taravad*** property were voiced even in the last decades of the nineteenth century. Significantly the growing resistance to the greater influence of the ***Nambudiris*** led to a discourse of reform that sought to cleanse matrilineal practice of the least taint of 'deviance'. The resolution, worked out in the interlocking interests of morality, and enterprise, was in the realm of the "Paternal family". It is instructive that the resolution worked out, in the late nineteenth century, went beyond 'liberating' women from the exploitative 'land for sexual relations' network. It sought to establish a form of control over women, that was hitherto unavailable to ***Nair*** men.[148] It is instructive that in north Malabar there was dissension against such a resolution, reflected in Chandu Menon's position on the marriage law and the early efforts by the North Malabar Nair Samajam to reform caste practices within the framework of matriliny. North and south Malabar supported distinct tenancy and

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[146]A.C. Kannan Nambiar, RMMC II (1891· 205)., Pathayingal Kovilagatha Nedungatiripad told the marriage commission that he knew of a few cases where ***Nambudiris*** had "persuaded wives of tenants to accept them as husbands". Appendix IV, Ibid.

[147]Mencher and Goldberg (1967: 100).

[148]Srinivasan (1988: 187) cautions that the leading role played by men of the community in the reform movement to abolish the female profession of temple dancing cannot be understood without reference to the absolute non-availability of the ***devadasi*** to their own men. This aspect was underscored by their privileged access to rich patrons and their wealth, which combined to underline the power and influence of the ***devadasi*** as ***women*** and as artists.

matrilineal practices, which triggered differences in demands for reform.

It is at the different intersections of the land and family questions in north and south Malabar that we could locate productively the question of women and property relations. To do so, however, we needed to map out the differences in tenancy and ***marumakkatayam***.

In this chapter, we sought to map out a phase of the battle for land in Malabar. What is striking and for us significant is the very different kinds of tenancy-caste-nationalist alliances in the north and south leading to the domination of intermediate tenant interests in the Malabar Tenancy Act of 1930. The intermediary tenants trained their sights upon legislative intervention and tenancy associations were more in the nature of adjuncts to this mode of intervention. In the realm of family reform too they followed the same lines of intervention. Hence it is only in the latter part of the 1920s that caste associations of ***Nairs*** begin to spring up in the southern taluks. By which time in the northern taluks the North Malabar Nair Samajam, the inception of which in 1911 was a response specifically to legislative efforts emanating from the southern taluks to reform matriliny, was already rethinking and gradually reworking its founding agenda ***i.e.,*** to reform and reclaim the ***taravad*** in a viable form.

CHAPTER 5

REFORM OF THE MATRILINEAL FAMILY, 1908 - 1933

5.1 Introduction

Attempts to legislate reform of ***marumakkatayam*** in early twentieth century Malabar were marked by a sense of caution reflected, prominently, in silence on the question of the legitimacy of ***sambandham***.[84] The debate on ***marumakkatayam*** in the last decade of the nineteenth century had foregrounded the question of ***sambandham,*** the legitimacy of which was tied to a particular understanding of the rights of women. The overriding impetus for the Malabar Marriage Act, 1896 was moral-ideological. The problem was formulated such that opposition to the Bill, within the legal-political processes of the colonial state, had to be on moral-ideological terrain, as is evident in the attempt by a section of English-educated ***Nairs*** to establish that ***sambandham*** was a sacrament. As Patricia Uberoi points out questions of sexuality have underlain and informed much of the agenda of social reform in the modern period and in social reform debates definitions of normal and abnormal were linked to questions of group identity.[85]

It was not until 1933 that a comprehensive legislation addressing the key areas of marriage, inheritance / succession, adoption and partition was adopted by the Madras Legislative Council. The Madras Marumakkatayam Act, 1933 was advocated and worked towards by a number of local-level organizations formed to promote reform of caste practices. Nor was this peculiar to the matrilineal castes, for the period that we are concerned with in

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[84]Until the latter half of the 1920s, these attempts were partial, sporadic and inconclusive. One early attempt at comprehensive measures the Malabar Partition and Succession Bill, 1913, came in the wake of separate bills that attempted bye laws on inheritance and partition. The inheritance Bill which sought to address descent of self acquired property in a limited way was less controversial than the partition Bill which sought to introduce compulsory partition among ***tavazhis***. The Tarawad Management Bill, 1924 sought to address the problem of the ***karanavan's*** powers but like the earlier attempts at legislations was not prosecuted. Law (General) Dept., G.O. 363 (Mis), dated January 30, 1930, KSA.

[85](1996: xvi)

this chapter was dotted with reform movements among the major social groups in Malabar which attempted to rework the existing markers of caste identity and the notion of community based on caste. ***Nair*** social reform at the local level was a part of this climate of reform to purge customary practice of aspects that were seen as retrogressive. Simultaneously, reform efforts marked a crucial move towards the endorsement of a pan-Indian religious-community framework in their understanding of personal law. Yet it would be misleading to group the Hindu matrilineal castes (under which rubric the Act of 1933 grouped these castes) together on their approach to reform of ***marumakkatayam*** for the form and content of reform were mediated importantly by caste.[86] Legislative intervention affecting the Hindu matrilineal castes of Malabar was undertaken at the initiative of the ***Nairs***.[87] The ***Tiyas***, as we will see in the following chapter, were involved in a process of rethinking socio-religious practices and matrilineal customs were debated within this larger canvas.

The reform efforts in the early twentieth century were attempts to articulate the crisis of the ***taravad***, i) within the

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[86]Carroll (1978: 249) suggests that by viewing caste categories as units of patronage or proscription (***e.g.,*** in employment or political representation) the colonial administration forced a predictable and swift Indian response in caste organizations. With reference to the ***Kayastha*** movement in upper India, given its prominence in government documents, she argues that the founding of an organization and petitioning in its name did not say anything about the degree of mobilization or about the 'ubuquity' of caste sentiment. The ***Nairs*** in Malabar and the ***Tiyas***, particularly in the towns of north Malabar, however, were well represented in government employment and had generous access English education, suggesting that caste organizations were a response to diverse conditions influenced by colonial rule, changing socio-economic conditions and seemingly 'anomalous' customary rules. It is not without import that some of these organizations, the Sri Narayana Dharma Paripalana Yogam (***Tiyas***) and the Nair Service Society, founded in the early twentieth century, continue to be not insignificant players in the socio-economic and political stage in contemporary Kerala.

[87]On appeal from the community the ***aliyasantana*** castes were removed from the purview of the Act of 1933 though the Acts of 1896 and 1898 were applicable to them as well. The Madras Aliyasantana Act, 1949 was passed at the behest of the community and included similar reforms as the matrilineal castes in Malabar had access to. Law General Dept., G.O. 555 dated February 16, 1933, TNA.

family, in terms of family management, and ii) arising from the implications for the ***taravad*** of the emerging socio-economic conditions. The processes of modernization, linked importantly to economic transformation, only underlined the contradictions generated in the process of legal interpretation of ***marumakkatayam.*** We have argued that the colonial interpretation of ***marumakkatayam*** was a process of 'normalization', such that the concepts and customs of that system were made to answer to more familiar definitions. While legal interpretations were contested for most part of the nineteenth century in the civil courts, local-level reform efforts which sought to maintain the framework of the ***taravad*** tended to fall back upon it. Caste organizations founded to cradle these efforts claimed to speak on behalf of the group.[88]

We will look at the successive formulations of the problem of social reform among the ***Nairs*** in Malabar. The gathering momentum of the tenancy struggle in the 1920s was one reason to rework the earlier assumptions that the ***taravad*** was workable. It added a powerful dimension to contest over the resources of the ***taravad***, this time from the outside--tenants. The foregrounding of economic imperatives during the process of reform marked a shift from the concern over morality linked to sexual usages. It underlined the urgency of the threat to the resource base of the ***taravad*** and added to the complexity of the crisis confronting the ***Nairs*** in the twentieth century.

While our focus will be on the social reform discourse among the ***Nairs***, it would be useful to draw upon the experience of the ***Nambudiris*** in so far as they impinge of each other and work towards a common center in advocating monogamous marriage framed by the conjugal family, as the locus of domesticity and property. The use of terms such as reform project and reform process does not assume homogeneity of thinking within a social group. While dissensions against the dominant strand of thinking in the reform

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[88]In addressing the lack of 'representative' character of the North Malabar Nair Samajam, Chandu Nambiar takes refuge in an analogy between the social reformer and the physician -- the former in treating social ills were akin to physicians who were only a small proportion of the community. Chandu Nambiar (1932: 5).

discourse and the gradual eclipse of the latter are better documented for the reform movement among the ***Nambudiris***, there are indications of conflict among voices in favour of reform among the ***Nairs*** too. We seek to address four sets of issues / questions.

i) How did successive generations of ***Nair*** social reformers in the twentieth century engage with the crisis of legitimacy, tied to a particular understanding of the sexuality and agency of women, that lent controversy to ***sambandham***? Our concern, here will be to interrogate the engagement by ***Nair*** reformers with the hitherto 'disturbing' agency of women in relation to their sexuality.

ii) What picture of gender relations was articulated / implied in the reform project as formulated and reworked in the process that led up to the Act of 1933? How were women perceived and what was the extent and nature of their participation?

iii) What implications did the Act of 1933 have for women *i.e.*, How did it situate women in relation to inheritance, marriage and rights to property and maintenance in contrast to their rights arising from the colonial interpretation of the ***taravad***? How far did the Act go in meeting the demands of reformers and what do we make of the imprints of dissent against a more complete endorsement of patriliny, of the possibility of the persisting relevance of matrilineal practice in the legislation?

iv) The efforts to cleanse ***marumakkatayam*** of ***anacharams*** (irregular customs) and ***duracharams*** (retrogressive customs) come up against practices that concern the ***Nambudiris*** as well, as in the instance of ***sambandham***. How did these efforts affect and otherwise engage with the question of women? What implications did it have for the reform agenda, part of which was written into the personal laws codified in 1933?

This chapter is in four sections. In the following section we will attempt to provide an outline of the organization of family and property among the ***Nairs*** in the pre-reform period. In

section three, we will attempt to form a gendered understanding of the project of ***Nair*** social reform in Malabar through the instance of the North Malabar Nair Samajam, the better known and more widespread in terms of influence of such groups in Malabar. We will draw upon the project to explore the first three of the four specific issues concerning women laid out earlier. In section four, we will look at the ***Nambudiri*** interface, to understand how it tied in with the efforts to reform ***marumakkatayam.***

5.2 Organisation of Family and Property among the Nairs

In this section, we will review some of the customs of the ***Nairs*** in pre-reform Malabar, in an effort to garner from them an understanding of the relations among women, men and property. This should provide us with a working understanding of the customs that were targetted for elimination or reworking by reformers in twentieth century.[89] This is not to suggest that, with existing information, it is at all possible to capture, objectively, practices during the colonial and pre-existing periods.[90] In fact,

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[89]Our use of the term ***Nair*** itself needs to be defined. Ethnographers have identified several sub groups which are hierarchically placed and which varied according to region (Gough, 1961a: 308, Fawcett, 1991). Importantly, they were divided into the higher and lower caste ***Nairs,*** and the latter were referred to by their ***jati*** (local-caste category) names. There were fewer sub groups in north Malabar and fewer restrictions upon mobility (Miller 1954: 416, Gough 1961b: 388). A greater degree of generalization seems to have been achieved through colonial categorization followed by reform efforts to eliminate distinctions.

[90]Despite awareness of considerable political upheaval in Malabar between the late fifteenth and late eighteenth centuries, Gough (1952) suggests that the basic 'pyramidal' form of each kingdom, headed by a ***naduvazhi*** (feudal chief) and below it a ***desam*** headed by a subordinate chief, remained the same as did, importantly, the ***marumakkatayam*** system. In a later work (1961b: 387) she recognises greater political and social mobility among north Malabar ***Nairs,*** citing also a popular saying 'when a high-caste ***Nair*** becomes ripe, he turns into a King". Miller (1954: 416) pointed out that the decline of the Kolathiri (ruler of ancient Kolathunad or north Malabar) went alongside the ascent of autonomous ***Nairs*** chiefs. It is not unlikely that variations in ***marumakkatayam,*** even within north Malabar, was associated with this greater decentralization or autonomy, both political and social.

as we have suggested in an earlier chapter, during the colonial period practices were often constructed upon different sites, 'custom' being one of them. Unlike in the late nineteenth century, local efforts at reform in early twentieth century north Malabar were not so much concerned with the legality of custom, focussing instead on practices that were outside the legal framework.[91] For a working understanding of the customs that were targetted by reformers we will draw upon ethnographic accounts from the early and mid-twentieth century.[92]

Our engagement with marriage-related customs such as ***tali-kettu kalyanam*** or ***sambandham***, that reformers sought to eliminate or rework, has to do with a set of not unrelated concerns. One, these customs could give us important insights into the relations between women, men and property arising from the organization of family and property in the pre-reform period. Two, it could help us read into the agenda and rhetoric of reform, the anxieties of the reformers in the context of an emerging new morality. This section will address the first concern.

The ***taravad*** was the immediate property-holding group, a group that was held together by community of property. Members of the group traced lineage to a common ancestress. In the official legal discourse, the ***taravad*** was defined as a co-residential unit to be represented in all transactions by its ***karanavan***, the most senior male member. Although property was held jointly by all members of the ***taravad***, the ***karanavan*** had considerable authority over ***taravad*** property and members, restricted only in the cases of partition and alienation of property,

Unlike in south Malabar, where the ***Nairs*** constituted a section of the tenantry, prominently, the class of intermediary ***kanakkar*** (though some ***Nair tarwads*** were ***janmis***), in the north,

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[91]Cohn (1987: 605) points out that while the British governments refusal in most cases to intervene in matters of breach of caste custom denied redress to individuals against actions of their caste council, it also allowed of dominant groups or individuals to defy caste norms. In some ways this underlined the ability of reformers to resist caste censure.

[92]In the following account, we have drawn upon Gough (1952, 1955, 1959, 1961a, b), Mencher (1965), Miller (1960, 1954), Thurston (1907), Fawcett (1991), Gopala Panikkar (1900).

they ranged from large and socially dominant ***janmis*** with considerable political autonomy to small, independent ***janmis,*** who combined tenancy with owner-cultivation.[93] In the sparsely populated northern taluks, where the coast was narrow and a hilly, forested terrain predominated, ***taravads*** were located at considerable distances. Land holdings of the wealthy ***taravads*** were dispersed over a number of villages and were not necessarily contiguous.[94] It was not uncommon for junior members or ***tavazhis*** represented by their oldest member to take land on ***kuzhikanam*** from their own ***taravad.***[95] In instances, individual men took land on tenure from their wives ***taravad***s.[96] The gains of such exertions were defined in the civil courts as self-acquired property and by the turn of the century individual men increasingly channeled self-acquired property to their wives and children.[97] Also there were growing allegations of misappropriation of ***taravad*** properties by the ***karanvan*** to benefit his 'natural' family.[98]

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[93]Gough (1961a: 314, 1961b: 390), Miller (1954: 412). Mayer (1974: 96) finds in 1950 that in south Malabar ***kanam*** interests were almost entirely in the hands of ***Nairs***, unlike in the north where ***Nairs*** were big ***janmis*** and along with ***Tiyas*** and ***Mappillas*** small ***janmis.*** See also discussion in chapter 4.

[94]Gough (1961b: 388) points out that this increased with the opening up of new areas for cultivation in the nineteenth century. That ***Nairs*** in the north were not separate retainer castes attached to families or territory helped mobility as did the virilocal residence.

At the time of partition, Kodom, had substantial land and property in over 23 villages in Kasargod taluk, besides Coorg. 14 th Report submitted by the Commissioner, B.S. Kakkilaya, Advocate, Kasargod, dated 15.12.52, in O.S. no. 122/1934, RIA no. 464/1945 in the Court of the Sub Judge of South Kanara. For south Malabar it has been pointed out that Kavalapara had holdings scattered over 18 ***amsams***. RMMC I, (1891).

[95]At partition 39 of 228 members of Kodom had land on ***kuzhikanam***. 14th Report of the Commissioner, O.S. no 122/1934.

[96]Gough (1961b: 391), Kurup (1989) points out that men married to women of landed ***taravads*** with large wastelands were sometimes given land along with agrestic slaves for cultivation.

[97]Depositions of witnesses, Koroth Kannan, Karai Krishnan, Vengayil Kannan Nair, Appendix IV, RMMC II (1891).

[98]RMMC II (1891), Memorandum submitted by the members of Kalliat ***taravad*** (MSS) Calicut University Archives, cited in Jothi (1992), Sankaran (1965: 17).

The organization of marriage seems to have derived from two important rites, ***tali-kettu kalyanam*** and ***sambandham***. The former was a pre-pubertal rite that did not lead to the establishment of sexual relations. A girl invested with the ***tali*** had necessarily to go through ***sambandham***, post puberty, to establish cohabitation.

Samabandham was governed by the codes of caste, hypergamy being the norm.[99] Transgressions of caste codes were dealt with severely. Children of ***sambandhams*** with ***Nambudiri*** men belonged to their matrilineages. Post-marital residence in north Malabar was virilocal, with the wife taking up residence in the matrilineal home of the husband. This encouraged the development of patrilateral ties more than in the south, where women and children had less exposure to their husband's / father's kin. It is reflected in the absence of kinship terms for patrilateral kin in the south, though they existed in the north.[100] More importantly, in north Malabar, children were among the chief mourners at their father's death and a woman observed ritual pollution for her husband, unless they were divorced.[101]

Nairs in north Malabar, unlike in the south, did not comprise a regular 'army'. They were only called upon sporadically to fight on behalf of their chiefs. This corresponded with greater direct involvement of male members in cultivation.[102] Wives of ***taravad*** men and ***taravad*** women who were in residence were responsible domestic management and took part in agricultural activities like harvesting, threshing and winnowing paddy.[103] Wives and children in virilocal residence were maintained by the ***taravads*** of their husbands. However, women were also entitled to a share of grain and clothing from their matrilineal ***taravads***

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[99]Gopala Panikkar (1900: 26).

[100]Gough (1959: 27).

[101]Gough (1955: 55)., B. Kammaran Nair (District Munsif, Chowghat) pointed out that no tenant in Walluvanad taluk, unless he be a government official or an educated man would dare preform the funeral rites for their father for fear of his ***Nambudiri janmis***. RMMC II, (1891: 220).

[102]Gough (1961b: 387).

[103]Moyarath Sankaran (1965: 204), Kunhappa (1981: 4)., See also discussion in Chapter 4.

following each harvest, generating a sense of continuity with their natal ***taravads***. On the other hand, when a woman spent long periods at her matrilineal ***taravad***, during pregnancy and confinement, her husband was expected to supply her with grain and other food. The entire expense of confinement was borne by the husband. Among the children of ***taravad*** men, sons usually left for their matrilineal ***taravads*** at puberty and daughters, upon marriage, took up residence at their husband's matrilineal homes.

In the south, husbands visited their wives after supper and left before breakfast, staying to share a meal only on invitation. They had fewer responsibilities to their wives and children than in the north, the only binding obligation being the payment of expenses of child birth which seems to have constituted an acknowledgement of paternity. Here matrilineal kinswomen did not need to leave their ***taravads,*** unlike their northern counterparts who were likely to find themselves scattered over over wide areas. In north Malabar, upon divorce or on the death of her husband, a woman returned to her natal ***taravad***. When she was in straitened circumstances, however, it was possible that she remained in her husband's ***taravad*** or was given property by the latter.[104]

This made for important differences in property rights in the two regions. In the north, women could end up spending a greater part of their lives at their husband's ***taravads***, where they had distinct rights to maintenance and where mediated by generational status they exercised domestic authority. There are indications, contrary to the tenets established by the civil courts, of a form of patrilineal inheritance.[105] Centrally, however, throughout the period of virilocal residence, matrilineal ties and property rights of women and children were maintained through periodic receipt of grain and clothing from their ***taravads.*** In the south, uxorilocal post-marital residence served to underline the property rights of women in their natal ***taravads.***

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[104]M. Othena Menon (Sub Registrar, Payyoli), RMMC II, (1891: 307).
[105]See Chapter 3 for discussion of patrilineal inheritance.

5.2.1 Some Important Customs

i) ***Tali-kettu kalyanam:*** Arguably, the most important of the life cycle rituals of women, ***tali-kettu kalyanam*** was a pre-pubertal rite that marked the ritual transformation of girls into women.[106] The significance of the rite is apparent in a number of factors. Its non-performance before a girl attained puberty could lead to severe penalties, including excommunication, and was usually hushed up. The rite was conducted over four days and was elaborate, to say the least. It involved huge expenditures, and the participation of a large number of people including besides the ***taravad's*** kin group, its retainers, artisan and service castes and labourers, and those of the neighbourhood, as well as linked lineages located at a distance. In view of these considerations, the rite was conducted every twelve years or so for a group of girls of the ***taravad.***

On the first day of the rite in north Malabar, the girl was invested with a ***tali***, preferably, by a ***Nambudiri*** man. In the south, a member of a linked lineage or ***enangen*** was required to tie the tali.[107] An important aspect of the ritual was the ***Brahmini pattu***, rendering of songs on the theme of cohabitation in ***Rig Veda swaram*** by a ***Brahmini***, usually a woman of the ***Nambisan*** caste (a lower sub caste of the ***Nambudiris)***.[108] Tying the ***tali*** was followed by the seclusion of the couple for three days, days that witnessed feasting and music for the assembled people. After a ceremonial

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[106]After the ***tali rite*** women attained the title of 'amma' and in certain ***taravads*** specific names such as Nethiaramma, Akkalamma, Pullayaramma. Subramaniam Tirumump (*Janmi,* Payannur ***amsam***) RMMC II, (1891: 140). Gough (1955) records a proverb ***'tali ketti amma ayi***.

[107]Gough, (1955: 48). ***Enangars*** were lineages linked by ties of ritual cooperation with two or more other lineages. In the light of her interpretation that it constituted group marriage in the south, Gough is hard put to explain the relevance of the rite in the north, speaking of it as merely an initiation rite. In a later work, Gough revises her position on the status of ***sambandham*** defining it as marriage. For us the the debate that the engagement with ***Nair*** practices sparked off among anthropologists recalls the debate in the late nineteenth century on the status of ***Nair*** marriage. See Gough (1959), Dumont (19).

[108]C. Karunakara Menon, RMMC, II (1891 289), Sankaran (1965: 16), Gough (1955).

bath on the fourth day, the couple parted ways.

The details of the ritual differed spatially.[109] In Walluvanad and Kozhikode for instance the ritual bridegroom was required to tear his loin cloth into two, retaining one piece and handing the other to his ritual bride. This has been interpreted as ritual divorce and the sanction of cohabitation by women with men of her choice within caste codes.[110] The ***tali-kettu kalyanam*** has been regarded in the light of ritual marriage, ritual cohabitation, ritual deflowering and ritual divorce.

What has attracted attention to the rite is precisely its marriage-likeness accompanied by the fact that it did not constitute conjugal relations. It has been suggested that ***tali-kettu kalyanam*** amounted to a negotiation by the natal ***taravad*** of the fear of incest across Malabar. Significantly the rite initiated an etiquette of distance and if possible avoidance between the girl and male members of the ***taravad***.[111]

ii) ***Sambandham / Podamuri:*** ***Sambandham***, better known in north Malabar as ***Podamuri***, established cohabitation. It was conducted after the celebration of the first menstruation of a girl. The central rite of ***sambandham*** varied regionally and in north Malabar comprised the 'giving of new clothes' by the bridegroom to the bride in the presence of the ***ashtamangalyam*** (eight symbols of marriage). The ceremony, conducted at night, was also more elaborate in the north, where unlike in the south it was also accompanied by feasting.[112] The next morning the girl was escorted to her husband's ***taravad,*** which was to be her home for the duration of the marriage. Most observers have noted that in north Malabar while polygamy was tolerated, polyandry was virtually unknown. If a woman 'erred', however, her husband could deal violently with her 'lover' and resort to divorce, but neither the

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[109]Importantly, the person who ties the ***tali*** on a girl was forbidden from entering into a ***sambandham*** with her in south Malabar. Gough (1955: 51).

[110]Gough (1955: 51). For readings that emphasize the links between ***tali-kettu kalyanam*** and sexual permisiveness see Thurston (1907), and RMMC I, (1891), Fawcett (1990: 231).

[111]Gough (1955: 55, 1959: 26).

[112]Note by Chandu Menon, RMMC I, (1891).

woman nor her children were excommunicated. However, transgression of caste barriers by women who had sexual relations with a man of a lower caste invited severe penalty.[113]

5.3 The Nair Reform Project: Reclaiming the Taravad or Abolition?

There were two sets of issues that exercised the minds of *Nair* social reformers in the first decade of the twentieth century, and around which the the new self-definition of community was sought to be built. On this larger project involving i) the elimination of 'retrogressive' customs, considered anachronistic and shameful, and ii) the adoption of the path of modern education and the need to build a sense of 'enterprise', sections of reform effort, otherwise in conflict, were agreed. It is this overarching consensus that brought together in the North Malabar Nair Samajam (NMNS), contrary strands of thinking that led, eventually, to the reworking of its founding agenda.

5.3.1 Missionaries, Education and Protest

At the turn of the century there was growing dissatisfaction with missionary sponsored education in Malabar. The Basel Mission Society, a leading player in the field of education particularly in north Malabar and South Kanara, had established a school in Tellicherry as early as in 1839 and in 1895 it counted among its schools, 46 in Malabar with 2361 boys and 631 girls.[114] Schools were seen as a powerful tool of evangelism and texts in South Kanara and Malabar printed in the local languages and in English were sharply critical of local customs.[115] Resentment against proselytization was manifested in a number of ways by the end of the century. There were reports of Christians being denied

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[113]Note by Muthuswami Aiyar RMMC I, (1891: 29).

[114]The Eighth Report of the German Evangelical Mission, Bangalore, 1848, p 8 in Kurup (1991: 102) and 55th Annual Report, Basel Mission Society (henceforth BMS), Mangalore 1895 in Ibid.

[115]The curriculam included Bible reading, biblical stories, and learning scriptural passages and hymns. Annual Report, BMS, 1872: 35, Kurup (1991: 100). It was the policy that at least half the staff were to consist of Christian teachers so that the "Christian character of the school might predominate". Annual Report, BMS, 1889: 53, Ibid (101).

employment on paddy fields or compounds of ***Nairs***.[116] From Hosdurg, in Kasargod, a missionary wrote in 1901 that, "the higher the position of the Hindus as to caste and education the more his opposition to Christ... especially since they have heard of Vivekananda and his books".[117] This tied in with the efforts of the Brahmo Samaj and the Theosophists, operating out of Calicut, to turn the local people away from mission schools as they "tend to turn the heads of India's younger generation".[118] Prominent *janmi* and a well known writer, Vengayil Kunhiraman Nayanar, appealed to the ***janmis*** to set up schools. In the context of missionary activity, he urged the ***janmis*** to educate their ***Pulaya*** and other lower-caste labourers, to prevent proselytization and the possibility of loss of work force, altogether.[119] Not surprisingly the school set up in Kadachira by K. Rairu Nambiar, a founding influence on the NMMS, counted among its students later leaders of the ***Nair*** reform movement.[120]

5.32 North Malabar Nair Samajam

The NMNS known at first as the Randuthera Nair Samajam, was formed at the initiative of a group of ***Nairs***, from influential ***taravads*** in north Malabar in the context of the debate on partition of ***taravads***, sparked off by the Malabar Partition Bill, 1909.[121] The Bill was widely debated in Malabar and the weight of public opinion was against it. That public opinion referred to what was mostly ***Nair*** opinion, was characteristic of the debate on reform of ***marumakkatayam*** through legislative intervention. K.T. Chandu Nambiar, a prominent lawyer attached to the Tellicherry bar

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[116]Annual Report, BMS, 1893: 64 in Ibid (107)., The 1897, the annual report of the mission mentioned that a landlord in Chombala had offered a tenant land at low rent for reisiting conversion.

[117]Annual Report, BMS, 1901: 37, Ibid (108).

[118]Annual Report, 1904: 65 in Ibid.

[119]Address at the 9th Annual Session of the Kerala Janmi Sabha on 11 May, 1911 in Nayanar (1987: 112).

[120]A.K. Gopalan (1995) cites the instance of K.T. Chandu Nambiar, who was to be the dominant influence on ***Nair*** reform efforts in north Malabar in the 1920s.

[121]Chandu Nambiar (1932: 3).

and one of the two dominent influences on the NMNS (the older and founding influence being that of K. Rairu Nambiar), links the inception of the Samajam to what threatened to be a turning point in the debate.[122] At a mixed-caste meeting in Kuthuparamba organised by Rairu Nambiar, a resolution in favour of the Bill was received enthusiastically as a result of a campaign, by a group of ***Nair*** youth, to build favourable opinion for the Bill. Their efforts included prominently the mobilization of ***Tiya*** opinion and presence at the meeting.[123] The possibility of overturning the reform agenda of the hitherto dominant section of ***Nairs*** was taken seriously enough to warrant the formation of an organization that was exclusive to ***Nairs*** and closed to students.[124]

The failure of the attempt to build opinion across caste served to show that caste-inclusive mobilization in the fledgling public arena had very clear limits. A retreat, at this point, to the fully mapped-out space within castes had implications for the existing cleavages between them, with separation being articulated increasingly in a perceptible sense of hostility.[125] Nor for that matter were the ***Tiyas*** clamouring to have their say on legislative interventions such as the partition Bill. Emerging from their

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[122]Ibid.

[123]Ibid., A section of the ***Tiyas***, mostly, in the towns of north Malabar, were known to be strongly in favour of abolition of *marumakkatayam*. RMMC II (1891).,
We have discussed the issue in greater detail in Chapter 6.

[124]Chandu Nambiar viewed the founding of the samajam as an attempt, clearly, to isolate the opinion of the ***Nair*** youth. (Ibid).
The need for separate caste organizations continued to receive emphasis. The need for "a Nair samajam for all Malabar", stemmed also from dissatisfaction with the limited scope and independance of even the most prominent of such efforts ***i.e.***, the NMNS. Advocating their role in building community necessarily within the caste did give rise to the anxiety that it could be perceived as a process of separation from other castes and that such a self conscious caste identity could work against the interests of a cross-caste community. K. Madhavan Nair, ***Mathrubhumi*** January 16, 1930. However, the anxiety did not result in any thing more than the mandatory not of caution against such an inference.

[125]For accounts of hostility between ***Nairs*** and ***Tiyas***, particularly in the public realm in the major towns of north Malabar, in the early twentieth century, see Kunhappa (1981), Sankaran (1965), MLTR II (1927).

position in the caste hierarchy and the hierarchy of ***janmi-kudiyan*** relations, the churning among ***Tiya*** reformers involved socio-religious issues.

Delimiting membership served also to structure the agenda of the Samajam to one that would not alter the institutional framework ***marumakkatayam***. The two main tasks of the organization were i) the reform of the particularly controversial ***anacharams***, the ***tali-kettu kalyanam***, and ***sambandham*** with ***Nambudiri*** men and ii) the unification of the numerous sub castes "which maintained distinctions of the smallest order with intricate care", connoting as these distinctions did, the place of each sub caste in the social order.[126] It was argued that the preoccupation, hitherto, of the ***Nair*** 'elite' with landed interests was limiting and vastly inadequate in the context of changing economic conditions. The imminent decline of feudalism and the ascent of capital, required that ***Nairs*** train their sights upon commercial activities.[127] Efforts to generate a 'commercial temper', however, received an early set back with the failure of the Koodali Bank and a trading company set up in Tellichery by a group of affluent ***Nairs***.[128] They were appeals to resort to 'scientific' agriculture and the recognition of the need for specialised education for the farmer.[129]

5.33 Erase Custom, Erase Bondage

Among the important customs to be targetted by social reformers were i) the ***tali-kettu kalyanam***. ii) ***sambandham,*** iii) the prohibition against women from north Malabar crossing the

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[126]A. K. Gopalan (1995: 3), Chandu Nambiar (1932: 8).

[127]Moyarath Sankaran (1965: 23)., He recalls that his uncle, Moyarath Anandan Nambiar, a lawyer and an advocate of liberal reform, pushed this view at a meeting of ***Nairs*** in Tiruvangad. He advocated that the ***Nair*** aristocracy should reach out to trading activities in Tellichery, Kannur, Badagara and other towns, now monopolised by traders from Gujarat and Karachi. For similar views see also V. K. Nayanar (1987: 110).

[128]They included Vengayil Kunhiraman Nayanar, better known as Kesari Nayanar for his writing, Kalliat Chathukutti Nambiar, and Chandroth Valiya Nambiar. Sankaran (1965: 24)., With the failure of this commercial experiment the NMMS shifted its emphasis to the reform of custom.

[129]V. K. Nayanar (1987: 98).

Korapuzha to the south, iv) ***vannathimattu***, change of clothes made available by the ***vannathi***, washerwomen, to end of ritual pollution.

i) ***Tali-kettu Kalyanam:*** Perhaps the campaign most significant for our analysis was the one against ***tali-kettu kalyanam***. Most social commentators of the period document the role of the NMNS in eliminating the custom.[130] The custom was targetted for a number of reasons. On account of the large expenses incurred on it, the ***tali-kettu kalyanam*** was seen in the reform discourse as wasteful and ruinous. It was a drain on ***taravad*** resources and the cause of debt and ruin among formerly prosperous ***taravads.***[131] The rhetoric of the reformers, however, betrayed another and for us more significant anxiety, articulated in the perception of a sense of shame around the rite.

The ***tali-kettu kalyanam*** has been described as occasion that brought women together, established and renewed relationships among them, and one on which men were on the periphery.[132] The interpretation that even the role of the priest was played by a woman, the ***Brahmini***, strengthens the possibility that it held together through periodic renewal a community of women. The decision of "male reformers in sabhas" to put an end to the custom was deeply resented by women.[133] However in the absence of documentation of the responses of women and, possibly, their role in the campaign, we will have to turn to the what may have been the deeper significance of ***tali-kettu kalyanam*** in the social reform discourse.

The Report of the Malabar Marriage Commission stated that while a small minority contend that the ***tali*** rite constituted real marriage, a majority of the informants describe it as a fictitious marriage and a large section described it as an initiation rite

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[130]Sankaran (1965: 15-17), Gopalan (1995: 9), C. H. Kunhappa (1981: 44). See also ethnographic accounts particularly, Puthenkulam (1970: 55), Gough (1961b).

[131]Ibid.

[132]Sankaran (1965: 16).

[133]Ibid (17).

preliminary to "the formation of sexual relation".[134] The description of the rite as marriage, real or mock, suggests its marriage-likeness. Here as in the case of ***sambandham*** the point of reference and of validation was 'Hindu' custom.[135] Defence of the ***tali*** rite by observers as constituting betrothal, a sacrament and one of two elements of marriage, the other being cohabitation, was dismissed by the commission as not widely different from the views of,

> European writers who have supposed that Marumakkatayam usage intends the tali-kettu to be the only ceremony which a girl approaching womanhood needs to fit her for cohabitation with one or more men of her own or higher caste.[136]

The significance of the campaign against the ***tali*** rite in the reform discourse were betrayed by references to it as 'meaningless' and simultaneously 'shameful'.[137] The call to eliminate it in the process of streamlining the marriage rite suggest the need to establish the 'completeness' of *sambandham*, by closing the gap between the ***tali*** rite and *sambandham.* In this gap, was located the perceptions of sexual permissiveness of women. Further, in asserting that marriages in Malabar conformed to a 'normative' morality, it was necessary to shape a befitting marriage rite. This suggests that the campaign against the ***tali*** rite was no less the articulation of the need to wipe out what was

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[134]RMMC, I, (1894: 18).

[135]Muthuswami Aiyar, an eminent judge of the Madras High Court, in deciding the status of ***sambandham*** pointed out that,

> it must be remembered that the essential elements of a brahminical marriage ***viz.,*** taking the bride by the hand or panigrahanam and saptapadi and the homam are not to be found among its details. RMMC I, (1891: 29).

Anthropologists in the early and mid-twentieth centuries tended to substantiate such a framework by viewing customs within it. Yalman (1963: 48) placed the ***tali-kettu kalyanam*** within the Hindu practice of pre-pubertal marriages for girls linked to the anxiety about female sexuality and caste purity. See also Dumont (19), Gough (1952, 1955). Significant here is Muraleedharan's contention that the 'Hindu' was produced on different sites through a colonial discourse and generalised across castes.

[136]Ibid. Fawcett (1991: 231) compared it to the initiation rite in the ***Basivi*** tradition, where girls were dedicated to temples. Mencher (1965: 172) wrote that it did bear a strong resemblence to it.

[137]Chandu Nambiar (1932: 10), Kunhappa (1981: 44).

perceived as a celebration of the 'permissive' sexuality of the ***Nair*** woman. The elimination of such a ritual constituted a pre-requisite to the 'normalization' of ***sambandham.*** The sensitivity of reformers to the importance of such detail is evident in the move to reshape ***sambandham***, importantly to generalise it in a reworked version of the ***podamuri*** form.[138]

ii) ***Sambandham:*** The continued prevalence of ***sambandham*** of ***Nair*** women with ***Nambudiri*** men, in the 1930s, among important ***taravads*** was a powerful reminder that the project of reform was far from complete.[139] However, Chandu Nambiar argues not for the elimination of ***sambandham*** altogether but for reworking its etiquette. If the language of deference employed to address and refer to the ***Nambudiri*** husband of a ***Nair*** woman perpetuated a sense of inferiority among the ***Nairs,*** how appropriate then, he asked, was the term, ***sambandham,*** to describe an unequal relationship?[140] This kind of engagement with ***sambandham*** is instructive for its disjuncture with the formulation of the problem of marriage and sexuality by ***Nair*** reformers in the late nineteenth century. It was assumed now that ***sambandham*** as an ideal was alright but in practice had been sullied. In denying legal stature to ***sambandham***, it was held that as an ideal it permitted license even if in practice is conformed to normative marriage. However, in foregrounding issues of equality and self respect rather than legitimacy, Chandu Nambiar refuses to confront the question of women's agency and sexuality.

iii) ***Korapuzha Rule:*** By the turn of the century the customary rule against women from north Malabar crossing the Korapuzha to the

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[138]Notable here was Chandu Nambiar's decision not to attend any ***Nair*** marriage until ***Nair*** marriages, customarily conducted at night, "were performed during the day time". 12, March 1927, Diaries of Chandu Nambiar, cited in Gopindranath (1996: 38).

[139]Chandu Nambiar (1932: 13)., ***Nambudiri*** reformers were unable to stop ***sambandhams*** in the 1920s and 1930s, despite tactics such as picketing, owing also to the support for the custom among the affluent ***Nair taravads***. Sumati (1995: 85 - 93).

A number of ***Nair taravads*** including Pozhavayi, Kavalappara, Kongat and Mannur observed the rule of ***anuloma*** (marriage of women to higher caste men). T. Gopalan Nair (Deputy Collector, Coimbatore) RMMC II, (1894: 211).

[140]Chandu Nambiar (1932: 13).

south had become an inconvenience to the increasing number of ***Nair*** men employed outside north Malabar.[141] The ***Korapuzha*** and ***Chandragiri*** injunctions prevented women from crossing the rivers that formed the southern and northern boundaries respectively of north Malabar at risk of loss of caste. It has been suggested that the ***nadu*** divisions were units of kinship relations as well as administration, and crossing the boundaries of one's own ***nadu*** was, at least in principle, taken to be a reason for pollution, and the pervalence of such an idea implies a strongly-imagined territory of one's own.[142] However, in the nineteenth century the prohibition was only against women. The reasons associated with it -- i) an edict from the Kolathiri as an expression of hostility with the Samudiri (who ruled the territory south of the Korapuzha) and ii) an expression of caste superiority and greater orthodoxy of north Malabar ***Nairs*** -- suggest its basis in a social construction of the woman as the repository of certain values. Attempts to defy and eliminate the rule in the late nineteenth century were not successful and remained isolated instances.[143] The practice of women crossing the Korapuzha to the north became common only in the 1920s.[144] Chandu Nambiar recalls that it was women of the older generation who braved censure and took the initiative in breaking the taboo.[145] Needless to say, breaking the barrier provided women with greater mobility. Yet what was striking about the campaign was that the rule was seen as an index of extreme 'backwardness', and rather than any association with women its elimination was

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[141]A growing number of men employed outside north Malabar, resorted to ***sambandham*** with women in south Malabar. V. K. Kelappa Kurup (RMMC II, 1891: 230) documents a number of such cases, mostly judicial officials and bureaucrats.

[142]Raghava Varier (1994: 23)

[143]A Sub Judge of south Malabar, Kuvukal Kelu Nair, attempted unsuccessfully to break the taboo. A few women had crossed to join their husbands in Calicut., A.C. Kannan Nambiar, Ibid (199).

[144]Puthenkulam (1970: 55). In recent memory the first woman to defy the custom was Kalliat Lakshmi Amma who went to live in Madras with her lawyer husband, V. Rairu Nambiar. The break with custom is supposed to have met with social disapproval. Gopindranath (1996: 95), Sankaran (1965: 23).

[145](1932: 25).

necessary for 'progress'. It helped underscore the inconvenience caused to ***Nair*** men. iv) ***Vannatimattu:*** The Korapuzha rule has been linked to the difficulty in observing such customs as ***vannathimattu*** if women moved out.[146] The ***vannathi*** was required to supply fresh clothes to the ***Nairs*** only to end ritual pollution. Customarily they were the washerwomen for the ***Tiyas***, who exercised a degree of juridical control over them. The ***vannathi*** could be prohibited by a caste ruling of the ***Tiyas*** from giving ***mattu*** to ***Nair taravads***, which would bring them under ritual pollution.[147] Precisely this aspect of the custom, was used effectively by the Karshaka Sanghams (peasant organizations) in the 1930s against big ***janmi taravads*** in the interior tracts of north Malabar.[148] While the custom underlined the subversive edge of such markers of caste hierarchy and purity, in the campaign for reform lines were blurred between caste privilege and bondage. ***Nair*** reformers castigated such customs as designed to keep the caste in bondage.[149]

5.3.4 Reclaiming the Taravad

Underlying the framework of reform up to the 1920s was the conviction that the ***taravad*** could be reclaimed in a sustainable form purged of ***anacharams***. However this resolution at the local level was temporary and tensions apparent in the resolution itself along with questions set off in the process of reform of custom were soon to push at the boundaries of the reform agenda. This movement is apparent in the reluctant endorsement by Rairu Nambiar, as Secretary of the Randathara Nair Samajam, of the Malabar Inheritance Bill in 1912.[150]

Though not ***in strict accordance with the main principles of***

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[146]Puthenkulam (1970: 55).

[147]Murkkoth Kunhappa (1985).

[148]Puthenkulam (1970), Dilip Menon (1994).

[149]Chandu Nambiar (1932: 20).

[150]The Bill was drafted to step in where the Malabar Wills Act, 1898 could not reach ***i.e.***, intestate property. Introducing the Bill in the Madras Legislative Council, C. Vasudeva Raja maintained that it was an attempt to redress an errorneous contention by the civil courts that intestate property was to descend to the ***taravad*** rather than the ***tavazhi*** or the 'natural' family. Home Judicial dept., G.O. 60-62, 1912, NAI.

> ***the Marumakkatayam system*** yet, as there is a widespread feeling that such a measure is necessary under the altered state of things and as it does not affect the Marumakkatayam system in the main the samajam beg to support it.[151] (emphasis ours).

It is not difficult to see that the right to partition, more so on individual lines, would be perceived as affecting 'the ***marumakkatayam*** system in the main'. And yet as we have argued elsewhere the right against partition was an interpretation of the colonial civil courts that affirmed the notion individual rights and excluded an entirely different conception of rights. In asserting the right against partition as the last frontier of the ***taravad***, the early reformers were trapped into calling upon a postulate that arose from a colonial interpretation. This possibly underlined the eventual inevitability of partition.

For Rairu Nambiar, like Chandu Menon in the 1890s, affirming the institutional framework of the ***taravad*** was an act of reclaiming it as a space of community.[152] However, focusing on the elimination of customs and building of community within caste, belied the need to address the ***taravad*** as a space of property and power. The conflicts arising from the polarization of power and dependance between the ***karanavan*** and junior members was not addressed.[153] Also dealing with such issues as the powers of the ***karanavan,*** inheritance practices and partition brought one within the realm of the law and the need for legislative intervention.

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[151]Ibid.

At a meeting on August 5, 1910, the Randathera Nair Samajam had decided unanimously, that the Bill was unnecessary and uncalled for and that it would destroy the ***marumakkatayam*** system. The Bill was seen as an attack on the religious beliefs of the ***Nairs*** and it was charged with seeking, the "abolition of several charitable institutions,... a blow to ancestral worship and the worship of family deities." G.O. no. 108, Legislative Dept., 1911, TNA.

[152]Significantly, this did not mean a non-recognition of other forms of family and interestingly enough both of them lived away from their ***taravads*** with their 'natural' families. For an engagement with the conjugal family see also Chandu Menon (1965).

[153]Noteable, even if it was a cry in the wildreness, was the appeal to ***janmis*** as ***karanavanmar*** to involve younger members of ***taravads*** in governance, to build trust and a viable institution. Address to the Kerala Janmi Sabha, 1911 in Nayanar (1987: 113).

In the 1920s there were efforts to create a legitimate space in the discourse of social reform at the local level for legislative intervention. This is not to suggest that efforts to legislate reform had passed by them, but that local activity was not directed towards and certainly did not privilege legislative intervention.[154] On the other hand, activities of the NMMS were, as we have suggested, well within the existing legal framework of the ***taravad.*** In the 1920s the government was seen increasingly as culpable for not intervening to cleanse such 'deviant' practices as modes of worship.[155] These efforts not only saw a legitimate space for government intervention in cultural practices, but fed into the creation of a particular "moral" climate. One reason for the tardiness of reform in Malabar was held to be the relative unfamiliarity and lesser degree of involvement of the government with the ***marumakkatayam*** system.[156] In this respect as on the question of strong and unified organization "to lend support to a weakened community", proponents of reform in Malabar looked up to Travancore and Cochin.[157]

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[154]Law General dept., G.O. 3709, (mis), dated Nov 6, 1928, (KSA).

[155]Sahodaran Aiyappan, an intensely rationalist voice in the discourse of reform, chastises the government for its failure in checking "hellish" practices incorporated in the Kodungallur Bharani and Palluruthi festivals. During these festivals the sexual prowess of the goddess was celebrated through such 'deviant' modes of worship as songs peppered with obscenity, toddy drinking and fowl sacrifice, "It would be far easier for the government, if they set their minds to it, to eliminate these practices." ***Mathrubhumi***, March 29, 1923

[156]Mathrubhumi, editorial, April 19, 1923. It was pointed out that the members of the legislative council were not properly briefed on the question of the system in Malabar.

[157]At this time, Travancore was considering individual partition and there were taunts that it took the legislative activity in Travancore and Cochin to stir awake, occassionally, the Malabar members of the Madras Legislative Council. Ibid.

The fascination with ***Nair*** mobilization and organization in Travancore was to be continue. Referring to a resolution passed in the annual convention of the Travancore Nayar Samajam in 1932, that all Malayalees should be considered ***Nairs***, Chandu Nambiar (1932: 18) notes that ***Nairs*** in north Malabar were far from "worthy" of such a position for unlike in Travancore other castes would not think it an honour to be considered a ***Nair*** in north Malabar.

5.3.5 Nair Reform Discourse and Tenant Rights

Increasing efforts at mobilization of the tenantry had an important resonance on the NMNS. In north Malabar ***janmis*** as ***Nairs*** attempted with considerable success to tie together their interests, despite the greater proportion of ***Nairs*** being small ***janmis*** and cultivating tenants and hence unlikely to gain from such an association. If missionary intervention among tenants and lower castes was viewed suspiciously, the mobilization of tenants for ensuring their 'rights' was perceived as a threat of destabilization of ***janmi-kudiyan sampradayam***. At the fifth Malabar district political conference at Manjeri in April 1920, a resolution demanding legislation in the interests of the tenants was introduced and passed for the first time in a political forum in Malabar. Twenty one landlords present at the session, including Chandu Nambiar, submitted their written protest against passing a controversial resolution when landlords were not properly represented.[158] The conference was a turning point for political activity in Malabar. With the failure of non-cooperation, nationalist activity came to be dominated, if not sustained, by the tenancy issue a condition that continued up to the adoption of the Malabar Tenancy Act, 1930. The close ties between the Karshaka Sanghams and the Congress were reflected, succintly, in the profile of the Congress, with virtually its entire leadership being office bearers or well known associates of the tenancy agitation.[159] After the Manjeri conference, anyway, the majority of landlords had moved away from the Congress.[160]

In north Malabar, however, tensions arising from strained ***janmi-kudiyan*** relations was perceived as a communal problem between ***Nairs*** and ***Tiyas***.[161] While this was a telling comment on the scope and depth of the tenancy struggle in the early 1920s, it bolstered the efforts of the ***janmis*** to represent their interests

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[158]P. K. K. Menon (1972: 82).

[159]Radhakrishnan (1989: 78) documents the formation of the Karshaka Sanghams after the Manjeri conference and the knitting of its agenda and personal with that of the district Congress.

[160]Perunna Nair (1965: 21).

[161]C. H. Kunhappa (1981: 47).

as the interests of all ***Nairs***. That the leadership of the Nair Samajam came from prominent ***taravads*** helped sustain this identification. Caste rivalry, the distrust with which the ***Tiya*** leadership viewed nationalist aspirations during the 1920s, particularly in the bigger towns like Kannur and Tellicherry, on the other hand, compounded the difficulty in breaking it.[162] There were efforts however futile, initially, to expose this elision. Moyarath Sankaran recalls an attempt in 1923 to bring together the feuding castes and question perceptions of a ***janmi-Nair*** nexus at a meeting in Kottayam taluk.[163] However with the arrival of prominent ***Tiya*** / tenant leaders, Kottieth Krishnan and Murkkoth Kumaran, it turned into, virtually, a meeting of the Karshaka Sangham.[164] In the muddied waters of ***Nair-Tiya*** relations, the NMMS lent itself to hostile and derogatory perceptions, in nationalist and tenant quarters, as it served as a backdrop to upsurges of caste assertion and heightened rivalry on ocassion.[165]

In the major towns of the northern taluks, particularly Tellicherry and Kannur, the ***Nairs*** shared the professions of law and bureaucracy with the ***Tiyas***. The ***Tiyas***, unlike the ***Nairs***, however, had a foothold on trade as well, in which realm they were in keen and sometimes unhappy competition with the ***Mappillas***.[166] Further, in the countryside, ***Tiyas*** were tenants of ***Mappilla janmis*** as well and the latter shared the resentment of their ***Nair***

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[162]Sankaran (1965: 118 - 119) refers to the suspicion in which ***Tiya*** leaders in north Malabar, among them Kottieth Krishnan, prominent lawyer and Murkkoth Kumaran, journalist and writer, held the nationalist sentiments, associating it with upper caste interests. It was only in 1930 that the Congress was able to gain the support of the ***Tiya*** leadership.

[163](1965: 203).

[164]Ibid.

[165]C. H. Kunhappa (1981: 47).

[166]The rivalry between the castes spilt over into the media and electoral politics. This was expressed at its most complex in the personal rivalry between Murkkoth Kumaran and K. T. Chandu Nambiar. Both of them were eminent figures in Tellicherry who more than dominated the caste-based social reform efforts of the ***Tiyas*** and ***Nairs***, respectively in the northern taluks. See Gopindranath (1996), Murkkoth Kunhappa (1985), C. H. Kunhappa (1981).

counterparts against ***Tiya*** 'assertion'.[167] A number of ***Mappilla*** and ***Nair janmis*** from Puthur and Kalavallur were reported to have assaulted a ***Tiya*** tenant for wearing a turban, coat and shoes.[168]

Both, the acts of defiance of the customary codes and the violence generated against such defiance were triggered by the social reform efforts among the ***Tiyas*** that began in the first decade of the twentieth century. ***Janmis***, ***Nair*** and ***Mappilla***, alike, resented the efforts of reformers to organize ***Tiya*** tenants around issues of caste and tenancy. ***Janmis*** also sought to break up efforts to organize ***Tiya*** tenants, by supporting conservative sections among them and through threats of eviction or ***melcharth***, aimed at stirring dissension among the tenants, at which they were successful.[169] Caught between the hostility of the ***janmis*** whose patronage they could scarcely afford to risk and the pulls of a new doctrine that sought to upset conventional markers of deference, sustained mobilization of ***Tiya*** tenantry could not have been more difficult. There was then no coming together of tenancy concerns with nationalist concerns in the north. The fractured tenancy alliance in the north worked to handicap further the voice of the small tenant and cultivator and there was little to their advantage in the Malabar Tenancy Act, 1930, which was weighted heavily in favour of the intermediary ***kanakkar***.[170]

However, conflict between ***janmis*** and ***kudiyan*** has other implications for women, who even in affluent ***taravads*** were known to have worked in ***taravad*** fields, harvesting and threshing paddy. ***Janmis*** began to forbid women from entering the fields as workers.[171]

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[167]MLTR (1927).

[168]M. Anandan, MLTR II, (1928: 373). A similar incident had occurred at Panniyannor amsam in Kottayam taluk.

[169]Those involved in reform efforts organized themselves into groups in the villages so as to prevent customary practices such as the annual pilgrimage to Kottiyur. There was a strong group in Kadachira in Chirakkal taluk for this express purpose. M. Anandan, MLTR II, (1927: 373).

[170]For analysis of the Act see Shea (1959), Panikkar (1978), Radhakrishnan (1989).

[171]Sankaran (1965: 203) recalls that his ***karanavan*** stopped his mother from working in the fields, something that generations of women had as a matter of routine done.

On the other hand, the relationship of the NMNS with nationalist aspirations was at best ambiguous and so long as the latter was tied to the tenancy struggle, wrought with tension.[172] Chandu Nambiar had been an enthusiastic participant in the Home Rule League until its eclipse in 1920.[173] His retreat from political activity, however, went alongside a deeper involvement with the question of community reform. The need to set your own house in order seems to have been brought up front by the vigour of the tenancy struggle in the taluks of south Malabar and the efforts to mobilise on the issue in the north.

For the NMNS, its resistance against advocating additional rights for tenants was deeply undermined by its inability, simultaneously, to keep the issue out of its discussions. Significant then was the tirade against a resolution which sought to condemn the Malabar Tenancy Bill during the annual session of the NMMS in 1925 at Mavilayi, though it was passed with only one dissenting vote.[174] In May 1928, at the North Malabar Nair Conference held in Payyanur, a resolution in favour of protecting the rights of tenants was passed after a heated debate in which members from north Malabar pointed out that there was considerable opinion against granting permanance of tenure. The resolution, however, avoided mention of permanance of tenure seeking instead "protection" of their rights and "security".[175] While the endorsement of tenant rights by the NMNS was qualified, the alignment was remarkably different in South Malabar. In the taluks of Malabar south of Kurumbranad, concern for tenant rights merged easily with nationalist ideas, as also with the idea of

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[172]For instance, Rairu Nambiar's respect for Mohandas Gandhi and Jawaharlal Nehru did not translate into toleration, let alone enthusiasm, of his son, A. K. Gopalan's, involvement with nationalist work. Ironically, Gopalan had cut his teeth on the social reform initiatives of his father, taking charge of the latter's newsletter ***Samudaya Deepika,*** and letting his mind soak in the reform ideas of his pioneering father. Gopalan (1995: 9).

[173]Chandu Nambiar's diaries cited in Gopindranath (1996: 7). Chandu Nambiar was instrumental in establishing a segment of the Home Rule League in Tellicherry.

[174]Sankaran (1965: 203).

[175]***Mathrubhumi***, June 2, 1928.

building a viable ***Nair*** community. At the inception of the Malabar Nair Samajam at Pattambi in January 1930, close associates of the tenancy struggle were hard pressed to distinguish it from the Kudiyan Sangham.[176]

In north Malabar the threat, particularly to ***janmi-taravads***, from nationalist and ***kudiyan*** sources impinged upon the question of the ***taravad*** as the property space. This once again underlined the need for an alternative to the ***taravad***, pushing partition to the foreground. The churning on this question in the NMNS led it to an endorsement, if uneasy and partial, of partition, bringing it in greater conformity with the position of ***Nair*** reformers in south Malabar.

5.3.6 Centering Economic Morality and the Conjugal Family

Marumakkatayam was increasingly seen as culpable for breeding a sense of the inferior across the caste.[177] The atrophied physique of the ***Nair*** youth was to provide the perfect metaphor for the predicament of the caste, shifting the ground of morality and related decline from sexual 'depravity' to economic dissipation. The growing sense of boredom, ineptitude and subserviance among the ***Nairs*** was targetted with particular anxiety.

There has been no abatement in the number of ***Nair*** youth who do

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[176]Ibid., Its links were transparent and its organization drew heavily upon the tenant lobby with K.P. Raman Menon as Chairman, G. Sankaran Nair as founding Secretary. M.M. Kunhiraman Menon, while endorsing the resolution to form the Malabar Nair Samajam, anticipates such criticism when he says that there is no reason to fear that the Kudiyan Sangham has turned into the Nair Samajam and he added that the programme of the Nair Samajam would be to combat untouchabilility and other ***anacharams***., ***Mathrubhumi,*** Jan 16, 1930.

[177]Chandu Nambiar (1932: 3).

This was by no means undisputed though. K. Madhavan Nair addressing the a gathering of ***Nairs*** in Pattambi gives voice to the ambiguity. "Though there are strong differences of opinion on abandoning the ***marumakkatayam*** system altogether, that there is a need for some vital changes is not disputed." ***Mathrubhumi,*** January 16, 1930.,

The efforts towards change in Travancore, Cochin and Malabar were brought together as for instance in bringing together important functionaries of each area at annual meetings, but more importantly in the perception of a unified 'Kerala'. "That ***marumakkatayam*** needs to be changed for the better is a prevailing opinion in Kerala. There are differences however on how this is to be accomplished." ***Mathrubhumi,*** editorial, April 19, 1923.

> nothing useful. It is not difficult to see that the Malayalees' lack of success in the economic sphere is the inevitable result of the marumakkatayam system.[178]

This was held to be particularly true of wealthy ***taravads***, where it was not uncommon for younger members to waste their youth and resources in attending to the long-drawn procedures of the civil courts, hoping to obtain decrees against the ***karanavan*** or in favour of maintenance.[179]

In the 1920s, reformers stressed the need to foster a sense of community, centered not on the ***taravad*** but on self respect which could be achieved only by inducing a sense of 'enterprise'.[180] However, it was not the only reason why the ***taravad*** had to go. "The marumakkatayam sampradayam places men in a position of acute conflict with 'natural' inclination pointing in one direction and the dictates of the law in the other."[181]

Change that was desirable, that would usher in a viable as well as "natural" form of family, came together in the projected move to the patrilineal family. However the transition from ***marumakkatayam*** to ***makkatayam*** (patriliny) could be achieved only through individual partition.[182] The Madras Marumakkatayam Bill, 1930 in so far as it restricted the right of partition to ***tavazhis***, was clearly dissatisfactory for individual partition, held the key to the institution of the conjugal unit as family. It is instructive, however, that the question of individual partition continued to be a thorn in the flesh for the Nair samajams. At the sixteenth annual session of the NMNS, in 1928 a resolution in favour of individual partition had to be set apart.[183] The session concurred, however, that "***marumakkatayam*** practice, being harmful to social progress, it was imperative to mobilise opinion in favour of the demand by the ***anandiravans*** that

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[178]***Mathrubhumi***, editorial, April 19, 1923.

[179]Ibid, June 5, 1928.

[180]Chandu Nambiar (1932: 10).

[181]Ibid (25).

[182]***Mathrubhumi***, editorial, April 19, 1923.

[183]***Mathrubhumi***, May 29, 1928.

individual partition was essential".[184] For a reform project formulated on these lines, the Madras Marumakkatayam Act, 1933 was a half-way measure. There is no ambiguity in Chandu Nambiar's appeal to the NMNS on the need to center the conjugal family. "You must demand that the husband and wife be given the right to inherit each other's property".[185] The conjugal family was now being evoked almost entirely in the interests of economic 'progress'.

5.4 Social Reform and the 'Women's Question'

5.4.1 Female Sexuality and Nair 'Marriage'

We have seen that the failure of the Act of 1896 was attributed to the resistance against the implication that *marumakkatayam* could not support a legal form of marriage. The Madras Marumakkatayam Act, 1933 contrary to the position taken by the civil courts and a section of ***Nair*** reformers, legalized *sambandham*, although in a form that provided for compulsory monogamy. This step resolved, categorically, the 'crisis' of legitimacy by legalising *sambandham.*

In arguing that *sambandham* held together a 'normal' form of marriage, it seemed necessary, simultaneously, not only to deny the picture of permissive sexuality of women but also to produce a sexually 'disciplined' woman-wife. The 'normalization' of ***Nair*** marriage, given the terms of the discourse, required no less. Chandu Nambiar's reference to the question of marriage in his address to the NMNS in 1932 was as fleeting as it was significant for the way in which it recalls the earlier controversy even while seeking to avoid its provocative edge.

> Though we are proud that our marriages are no less enduring and endowed with the possibilities of happiness than marriages among other communities, yet it remains for us to remedy the shortcoming in the eyes of the law.[186]

The legitimacy of *sambandham* then was implicit. Though the question of marriage was not dealt with in the idiom of the

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[184]Ibid.

[185]Ibid

[186]Chandu Nambiar (1932: 25).

earlier debate, the reference reveals an anxiety arising from that debate and from the resentment against the Act of 1896. The 'crisis of legitimacy' had been overtaken by the concern for self respect, in the face of the resistance to the marriage act and of economic ruin.

While Chandu Nambiar may be seen as distancing himself from the earlier formulation of the question of marriage and the sexuality of women, he seems painfully aware of its lack of legal status, added to the problems ***sambandham*** with ***Nambudiri*** men.

While in many ways Chandu Nambiar's position on the ***taravad*** is similar to that of Sir C. Sankaran Nair, on the question of marriage he invokes Chandu Menon's argument that ***marumakkatayam*** had a perfectly valid form of marriage in ***sambandham*** and all that was called for was to grant it legal recognition. The 'normalcy' that Chandu Menon claimed for ***marumakkatayam*** marriages was based on their stability, endurance and establishment as a sacrament. The effacement of the sexuality of women altogether from the discourse of social reform formed the core of the moral position of the reformers of the early twentieth century. Chandu Nambiar sought to combine, deftly, this resolution with the demand for centering the conjugal family through individual rights to partition and mutual rights of husband and wife to inheritance in supersession of the rights of the ***taravad.***

The concern during the process of codification of matrilineal law in the twentieth century, over the question of polygamy is richly suggestive.[187] It was argued, in support of an amendment that sought, unsuccessfully, to introduce polygamy into the ***marumakkatayam*** Bill that the provisions for monogamy and unconditional divorce made it impossible for a man to marry a second time without divorcing the first wife and divorcing her would amount to throwing her out on the streets.[188] Knocking upon

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[187]U.C.S. Bhatt a member from South Canara sought to introduce restricted polygamy. The amendment, however, when put to vote was lost by a substantial marigin of six votes against 59. Proceedings of the Madras Legislative Council, vol. lxiii, Oct-Nov 1932: 357.

[188]Proceedings of the Madras Legislative Council, vol. lxiii, Oct-Nov 1932: 349.

matrilineal law then were the postulates of the pan-Indian framework of Hindu law, a process that was to be elaborated during the enactment of a common personal law for Hindus by the post-independent Indian state. The provision of statutory monogamy was also seen as a move against the royal families. It was argued that legal sanction to the customary form of marriage would affect women of the royal families, among whom ***sambandham*** with ***Nambudiris*** was pervasive, as ***Nambudiris*** may refuse to enter into ***sambandham*** with ***Kovilagam*** women on account of the legal responsibility sought to be enforced under the Bill.[189] This then gave way to the formulation in favour of polygamy argued by R.M. Palat in the Select Committee on Bill 20 of 1931. "While polygamy is prevalent in every part of India including Malabar; this anxiety to enforce monogamy in Malabar seems more of a veiled attack on the ***stanis*** than anything else."[190] While the case in favour of polygamy sought to use a pan-Indian framework, it is of interest to note that polyandry no longer raised its head.

5.4.2 Nair Social Reform and Women

At a time when reformulation of caste identity could no longer stop at opening up its structures in radical ways, new dimensions were added to earlier problems. Parameshwaran Pillai, a prominent ***Nair*** social reformer from Travancore, cautions an audience of the NMNS that the lack of legal stature of *sambandham* was a positive danger.

> The burden of protecting the property of women is their husbands'... So long as our marriages want for legal sanction, husbands (of ***Nair*** women) will resort to irresponsible ways. Hence it is not advisable to partition ***taravad*** property before enacting a marriage law.[191]

The breaking down of the legal structure of the *taravad* had to wait until responsibility for women had been properly assigned *i.e.*, the conjugal family as the legitimate property space had to be affirmed, legally. The vulnerability of women, was also used

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[189]Law, General dept., G.O. 363, (mis), dated January 30, 1930.

[190]Report of the Select Committee, Madras Marumakkatayam Bill, *Fort St. George Gazette*, August 30, (1932: 172).

[191]***Mathrubhumi***, June 5, 1928.

to argue against the provision for free divorce, which "has a tendency to breed a sense of irresponsibility".[192]

A controversy in the local media preceding, immediately, the Act of 1933 is instructive for the way in which conflicting positions on the question of partition invoke the position of women. The question of the property of ***stani*** (here a reference to royal) families was subject to intense debate in the Select Committee on the Bill and eventually ***stani*** families were excluded from the partition clause in accordance with the stance championed by R.M. Palat, a ***janmi*** member. The then ***Samudiri*** (the title of the former rulers of Calicut), had submitted a memorandum to the District Collector arguing in favour of exclusion the Samudiri (formerly the ruler of Calicut) claimed that ***marumakkatayam*** held a privileged place for women.[193] In ***janmi taravads*** and in the ***kovilagams*** provision was made to meet all the needs of women and while misuse did exist it did not arise from any inherent problem with the system. Crucially, he went on to claim, enforced partition would deliver the property of women into the hands of their husbands, leaving it open to misappropriation by them and rendering women helpless to halt their slide into abject poverty. He suggested instead that the powers of the ***karanavan*** should be curtailed. This intervention provoked dissenting responses. It was pointed out that exemption of these families would be a great injustice to the ***anandiravans***, and that whatever was deplorable about ***Marumakkatayam*** was particularly rampant in ***stani*** families.[194] They claimed that women in the ***kovilagams*** led miserable lives.

This included a hard-hitting intervention by a female member of the ***Kizhake Kovilagam*** in Kottakal, where she took up what she claimed was the ***Samudiri's*** "last resort argument" that partition would render impossible man-woman relations as prevailed under the matrilineal system. "Is it the desire of the ***karanavans*** to retain forever the relations that prevail today?"[195] She claimed that

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[192]Law, General dept., (mis), G.O. 363, dated January 30, 1930, KSA.

[193]***Mathrubhumi***, October 9, 1932.

[194]Ibid, October 29, 1932; November 5; November 10.

[195]Ibid, November 10, 1932.

families desired to adopt "normal husband-wife relations and father-son relations and lead ordinary lives, which ***marumakkatayam*** had been unable to furnish for them so far.[196]

The perception that the position of women was tied, precariously, to the structures of one kind of family or other and dependent upon the provisions available within these pre-determined structures of relations, lent itself easily to different positions in the debate. It formed a dominant aspect in the prioritization of the issues of marriage, and partition and was availed of by proponents of reform to frame women within the structure and relations of the "ordinary" or conjugal family with considerable ease. In his address to the annual convention of the NMNS in 1932, Chandu Nambiar calls to mind the question of the ***Nair*** Woman.

> It remains for me to say a few words about *our* women. Regardless of whether they (women of north Malabar) compare favourably with their sisters in south Malabar on points of education and/or sophistication, they have never come in the way of attempts to build a progressive society. Far from it, it is a matter of pride that they have been a source of support... They have helped in the achievement of every kind of reform, desired by us.[197] (emphasis ours).

Needless to say, the primary agent in the project of ***Nair*** social reform, was distinctly male. In a programme of reform, designed self consciously by ***Nair*** men in the direction of 'progress', women had played and continued to 'merit' an important if supporting role. The education and 'progress' of women assumes greater significance in the context of the 'backwardness' of north Malabar, where it had been asserted at different points that ***podamuri*** partook of the character of marriage in patrilineal societies and women were "less refined and less educated than their sisters in south Malabar".[198]

> We have not directed our attention, sufficiently, on their education and independence. Hence support and participation, coming from women whose concerns have been constrained to the 'domestic' and fostered sometimes in blind faith, as well as their meritorious character should be a matter of astonishment

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[196]Ibid.

[197]Chandu Nambiar (1932: 18, 19).

[198]Ibid (19).

to us.[199]

Chandu Nambiar has in mind a more general role for women for which the lack of education and refinement, specifically in the context of a reformed ***Nair*** community, would be a constraint. The role and place of women were determined in relation to the central role in the post-reform family.

> Their (women's) involvement in the process of reform apart, in view of the role that they ***should*** play in relation to men ***i.e.***, as a source of support and as an aid in carrying out the responsibilities of life, it is a shame that we have not been able to achieve for them their righful place...[200]

The imperative seems to have been not so much the "education and independence" of women in itself as much as their securing for them (women) capabilities that would be necessary in the context of the formation of the ***Nair*** male through the process of reform.

5.4.3 Legislative Intervention: Anxieties and Imperatives

The Madras Marumakkatayam Act, 1933 may be seen as the culmination of legislative efforts of almost half a century. It contained provisions that were to pave the way for significant changes. Important among them being i) legal sanction to ***sambandham,*** ii) patrilineal inheritance of self-acquired property and iii) the right to partition of ***taravads*** on the basis of ***tavazhis***. The right to partition was the most controversial. The provisions for registration as impartible ***taravads*** on one side and the restriction of partition to ***tavazhis*** on the other, were measures to contain opposition and it was hoped that ***tavazhi*** partition would work as the thin end of the wedge to arrive at partition on individual lines.[201]

The special concern for women in the Act of 1933 as also in the Act of 1896, was translated into defining their rights arising from marriage, no attempt being made to alter in any significant way their rights arising from the ***taravad***. Under the provisions of marriage in the Act of 1933, women and children were the primary heirs to the self-acquired property of the husband /

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[199]Ibid.

[200]Ibid (19).

[201]Law, General, dept. (mis), G.O. no. 363, dated January 30, 1930.

father dying intestate. The self-acquired property of the woman dying intestate would devolve upon her children and lineal descendants of daughters, and in the absence of whom it would go to her ***tavazhi***. Only when she left behind no ***tavazhi*** could her husband claim a share along with the ***tavazhi*** of her maternal grandmother.

Far from being a clear move to the patrilineal nuclear family, as advocated by the reform movements, the Act of 1933 seems to be a record of conflict, imbuing the conjugal family, which it facilitated, with matrilineal possibilities. The patriarchal character of the family was not in doubt, arising most clearly from the provisions on maintenance and guardianship.[202] Such guardianship was not to extend to the right and interest of the wife or children in respect of their ***taravad*** properties.[203] In the official legal discourse, within a ***sambandham***, women were posited with agency, at the cost of a property connection arising from 'marriage' and enforceable by law. The Act of 1933 legalized ***sambandham*** and defined a legally enforceable property connection arising from it, however, within the framework of the patrilineal conjugal family. Yet, the rights arising from marriage could not affect the right to maintenance of any person from his or her ***taravad*** properties. The implications of this right for the nature of the emerging family has been largely unexplored.[204]

5.5 Caste Associations and Reform: The Nambudiri Interface

We will cut through much of the material, on social reform among the ***Nambudiris***, to deal with concerns that impinge, directly, upon our study. i) Reorganization of marriage, with

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[202]Wife and minor children other than married minor daughters, under the guardianship of their husbands / fathers were to be entitled to maintenance from the latter subject to the wife not refusing to live without just cause. The husband was to be the guardian of his minor wife, the father of minor children other than married minor daughters under the guardianship of their husbands. Law (General) dept., G.O. 555, dated Feb 16, 1933, TNA.

[203]Ibid.

[204]On the one hand, we have the increasing crime rates against women in Kerala and on the other the considerably better position in terms of human development indicators and resource position.

critical focus on ***sambandham,*** woven, as it was, into the ***janmi-kudiyan*** system. ii) We will examine the proposition that social reform during the period tended to affirm a notion of community based on caste / religion. This is indicated in the approach to the questions of family, marriage, rights to property and inheritance, which relied upon an emerging idea of the 'Hindu'.

The most compelling factor that brought the ***Nambudiris*** face to face with the need for reform was economic decline.[205] For almost a decade after the formation of the Yogakshema Sabha on March 1, 1908, reform efforts that it propagated were limited to making accessible to ***Nambudiris,*** mostly men, 'modern' education and the avenue of trade, hitherto considered polluting. If primogeniture was a mode of preventing fragementation of immovable property, it had been honed to inhuman perfection among the ***Nambudiris***. Property descended through the eldest male. Only the eldest male was entitled to enter into a ***veli*** (marriage with a ***Nambudiri*** woman). Younger male members entered into ***sambandham*** with women of the Ambalavasi and ***Nair*** castes.[206] This necessitated compulsive polygamy and practices like that of aging and decrepit fathers exchanging daughters in marriage, which was one way of circumventing the demand for large dowries.[207]

Inevitably, the reform agenda came up against questions that knocked at the customary framework of caste. The setting up of

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[205]Cloistered in their ***illams*** and deeply resentful of change, the march of 'progress', it would seem had passed the ***Nambudiris*** by. Unlike the ***Nairs***, sections of whom (***kanakkar*** and ***pattomkar***) stood to gain from the restrictions that were to be placed through long struggle on the freewheeling powers of the ***janmis***, the ***Nambudiris*** were invariably ***janmis***. More importantly, they had little idea of the intricacies of cultivation and most of their lands were in the hands of intermediary tenants. Right up to the twentieth century they depended almost entirely on land owned directly by them or on temple lands of which they were trustees.

[206]There was, however, nothing to prevent a ***Nambudiri*** entitled to ***veli***, from establishing ***sambandhams*** simultaneously.

[207]Though there was every pressure to conduct the marriages of daughters, it was not held to be against religious precepts for women to be unmarried. While pre-pubertal marriage was not the norm, ritual necessity was satisfied by marrying the corpse of an unmarried ***Nambudiri*** woman to any object, a tree or even a stool would do.

the Yuvajana Sangham in 1919 was perhaps the most visible expression of a more radical opinion on reform. This group raised the question of ***kanista vivaham*** (marriage of younger ***Nambudiri*** men within the caste) and questions concerning women which included their education, modification of their dress code, and gradually their participation in public debate and widow remarriage.[208] However these were contentious issues and reform efforts drew flak from the conservatives and even from moderate voices like the Yogakshema Sabha.[209] The ***Nambudiri*** Family Welfare Regulation, 1920 in Cochin State which sanctioned ***parivedanam*** (the marriage of a ***kanista*** before the ***veli*** of the eldest brother) in an attempt to promote marriage within the caste, was not very successful.[210] By 1930, particularly after the Raja of Cochin used his veto against the ***Nambudiri*** Bill, these efforts were marked by impatience and rebellious energy, which left it's mark particularly on women's issues. Local activism, to prevent practices like ***sambandham*** and polygamy and to mobilise opinion against such practices, was combined with further efforts at legislative intervention.

5.5.1 Reorganization of Family: Recasting the Antarjanam

A key focus of ***Nambudiri*** reformers, particularly in the

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[208]At the eighth annual session of the Yogakshema Sabha, in 1916, the lack of education among women was raised as an important cause of the backwardness of the caste. The need for special institutions for the education of girls on the lines of those that existed for males was raised. This demand included the need to make available educational opportunities for married women and widows. Sumathi (1993).

[209]Kurumathur Parameshwaran ***Nambudiri***pad sent his daughter to an elementary school in north Malabar in 1911. P.K.K. Menon (1972: 469).

By the 1920s many ***Antarjanam***'s had begun to attend school braving conservative opinion, though Pattiyil Priyadatta, the first ***antarjanam*** to be employed, matriculated only in 1937. Interview with Priyadatta in Sumathy M., 1993: Appendix II. Difference of opinion continued to plague the issue of women's education with the conservatives opposed to the very idea of 'modern' education ***Yogakshemam***, 25 April 1928.

[210]Despite restrictions imposed by the Nair Regulation on ***Nambudiris***, ***sambandhams*** continued and ***Nambudiris*** argued against ***sajathi vivaham*** in the pages of the ***Yogakshemam***, 16, 19 ***Etavam, Kollam Era*** (***KE***), 1098.

1930s, was on liberation from the ***anthapuram*** (women's quarters). This included provocative references to the "repulsive" appearence of the ***Antarjanams.***[211] Reformers wrote that the first step to avert educated ***Nambudiri*** youth from marrying women of other communities was the removal of ***gosha***.[212] The 'production' of the ***Antarjanam*** in a particular form (attractive, desirable) was seen as necessary in order to promote ***sajathivivaham***. The confinement of women to the ***anthapuram,*** their lack of sophistication were barriers against the progress of the ***Nambudiris*** as a community.[213]

In engaging with the question of women the reformers touched precariously and suggestively upon their sexuality. The exhortation to the ***Antarjanam*** to jettison ***gosha*** opened up a space for the transformation of their sexuality, hitherto shrouded in the determined effort to produce a 'non-sexual' woman. Assertions that "remarriage should be possible for a widow as well as a ***sapathni*** (co-wife under polygamy)", and more importantly that the efforts to make marriage accessible to all ***Nambudiri*** men did not mean that it should be mandatory for women, contained radical possibilites.[214] It would then be reducing the tremendous possibilities opened up by the reform movement to read their efforts as ***merely*** seeking to re-cast the ***Antarjanam*** in accordance with the requirements of the emerging ***Nambudiri*** male.[215]

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[211]V.T. Bhattathiripad (1987: 125).

[212]***Unni Nambudiri,*** Sept-Oct 1925. See also V. T. Bhattatiripad 1981, P..

[213]***Unni Nambudiri,*** Sept-Oct 1925.
Drama was used powerfully to mobilise opinion against conservative practices. Importantly performances were held in ***illams***, which was one way of reaching women. For an account of the writing and staging of the first of a series of plays, ***Adukalayil Ninnu Arangatheleku,*** on the theme of marriage see Bhattatiripad, (1987: 177 - 189).

[214]As the reform movement targetted polygamy remarriage of the ***sapathni*** was seen as a temporary measure. Ibid (1988: 346).

[215]While emphasising the urgent need for an Antarjana Sabha to deal effectively with the women's question, Bhattatiripad (1988: 343) potrays dramatically the 'disturbing' possibilities for a reform project such as theirs, of such a sabha cut off from the moral-ideological moorings of the reform project. In a farcical, but self reflexive, account of his encounter in the very distant future with such an Antarjana Sabha, he finds himself leaving the

An Antarjana Sabha was formed under the guidance of Parvathi Nenminimangalam, who had been a member of the Cochin Legislative Assembly, and Arya Pallom, both of whom played crucial roles in mobilising women, despite social boycott by conservatives of whole families of reformers and consequent hardships.[216] The combined their work among the ***Nambudiris*** with appeals to build bridges among women across caste and work against caste disabilities.[217]

Anxieties of the reformers regarding sexual, moral, and ideological codes for women were just beneath the surface. They are evident in the tenuous involvement of reformers in and with Uma Antarjanam's (Uma Ben) life. Uma Antarjanam lived through the period of ***Nambudiri*** social reform, flouted the norms of orthodox ***Nambudiri*** society but grew to be a 'problem' for the reform movement as well. We will examine an account of Uma Antarjanam's life, as narrated by V.T. Bhattatiripad, among those at the vanguard of attempts to reform ***Nambudiri*** practices along radical lines.[218]

Uma Antarjanam defied orthodox ***Nambudiri*** codes when she walked out of her marital ***illom***, following her husband's second marriage. So far within the codes of the reform movement, she however gets involved in sexual liasons making way for their disapproval as well. "Heady with the emerging possibilities of women's liberation, she began to lose her grip on good behaviour"[219]. Her husband's family formally severs ties with Uma Antarjanam, claims and takes custody of one of her children, her son. At this point, when her brother is reluctant to 'take her

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meeting after an angry outburst at the petty but distinctly 'modern' preoccupations of the Sabha.

[216]Bhattatiripad (1987: 177 - 189). Women who participated were particularly vulnerable. Nalur Sridevi Antarjanam, a widow who remarried, lost her second husband after a year of marriage and was forced into considerable hardship. Appendix , in Sumati (1993). Interview with I. Priyadatta in Kozhikode, May 23, 1996.
The education of younger members of these families were often disrupted or they had to travel long distances to school for want of accommodation.

[217]Pallom (1991:).

[218]Bhattatiripad (1987: 284 - 296).

[219]Ibid, P386.

back', through the intervention Devaki Narikattiri, a social reformer from the ***Nambudiri*** community, she is sent away to Wardha, presumably in the hope that she will 'reform'. Barely a year later, however, she returns from Wardha surrounded by rumours that she was asked to leave on account of having been involved in sexual liasons. She continues to invite the censure of the conservatives and the reformers by not conforming to established and / or emerging sexual codes. Having returned to her brother's house, she gets involved with a Muslim by the name of Idon, converts to Islam and marries him.

> This excess (the relationship) could hardly go under the name of love. Idon (Uma's husband) was already married, had children. Uma Ben was a mother and scandal scarred. There could be little doubt that Idon sought to exploit her for the property she had received from her husband's illom.[220]

The marriage runs into trouble and Uma Antarjanam once again seeks refuge at her brothers house. This time through the agency of the Arya Samaj she is taken back into the 'Hindu' fold and 'exiled' at Lahore.

Bhattatiripad's engagement with Uma Antarjanam through periodic encounters in the early twentieth century and in commiting her life in print in the 1970s is a troubled one. More than once he attempts to 'salvage' her by turning her into a victim of exploitation by different men. Thus in his narrative she falls from one trap into another. Yet, the reformers were unable to cope with her and had to resort to sending her away under two circumstances in the hope that she would "reform". Exile, here, seems to have stepped in for the ***smarthavicharam*** (trial of ***Antarjanams*** accused of adultery) of an earlier time. Uma Ben's life could be read as evoking the anxieties of the reform movement ***vis-a-vis*** the 'new' woman, particularly the unease with sexual 'indiscipline'.[221] The relaxation of the repressive sexuality of the ***Antarjanam*** was contained within the construction of the sexually 'disciplined' woman by the reform movement. To

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[220]Ibid.

[221]Lalitambika Antarjanam deals with the sexual tensions of the ***Antarjanam*** in ***Pratikaradevata***. Her novel ***Agnisakshi*** and her short stories reflect the brutal social conditions under which ***antarjanams*** lived, their passions and anger.

achieve a sexually disciplined woman, however, the ***Nair*** reformers had to assert the conformity of ***Nair*** marriage, achieved through the erasure of picture of permissive sexuality.

In the ***Nair*** reform discourse, arising from the resentment against the 'crisis of legitimacy', ***sambandham*** had to be affirmed as an implicitly legitimate practice. This meant endorsing ***sambandham*** as 'real' marriage, something the ***Nambudiris*** had hitherto denied, and establishing the responsibility of the ***Nambudiri*** husband and / or the rights of the ***Nair*** wife and children arising from marriage. In contrast, ***Nambudiri*** reformers saw ***sambandham*** as the denial to ***kanistas*** of the possibility of marriage within their caste. Among ***Nambudiri*** youth, agitating for marriage within the caste, the position of a ***sambandhakaran*** was held to be most degrading.[222]

The reform discourses came together, however, in reaching out to similar ideals of family and marriage. Muthiringot Bhavathrathan Nambuthiripad, considered the spokesperson of the Yuvajana Sangham[223], is far from optimistic about the possibilities of the customary family.

> "Joint families in Kerala are particularly lacking in any favourable aspects and when it happens to be a Marumakkatayam family there is no end to its inconvenient and disastrous possibilities".[224]

In paving the way for the break up of the ***taravad***, the legislations also served to facilitate the kind of families that were to replace it.

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[222]"More despicable than that of a man declared an outcaste in the Kudiyerathi Tatri incident". V.T. Bhattatiripad (1987: 233). Tatri became notorious after a ***samarthavicharam*** (trial by a smartha of ***Nambudiri*** women charged with adultery) in the early twentieth century in which she revealed the identities of 65 men who were declared outcastes along with her. The Raja of Cochin is said to have called the trial to a halt and it was rumoured that he feared being exposed by her. In 1905 a new set of rules for the conduct of trials requiring the deposit of Rs 10,000 was framed which made it difficult to conduct such trials. Fuller (1976: 165).

[223]***Unni Nambudiri, Etavam*** 1112, ***K.E.***

[224]***Mathrubhumi*** June 6, 1929

5.5.2 Legislative Intervention

The Madras ***Nambudiri*** Act, 1933 made polygamy a punishable act and indicated the right of every member of the family to marry within the caste. As introduced into the Council, the ***Nambudiri*** Bill provided that every ***sambandham*** by a ***Nambudiri*** after the commencement of the Act was void. This was deleted by the Select Committee in view of the conflict with the Marumakkatayam bill which recognized such ***sambandhams***, whether entered into before of after the date when the bill became law, as valid marriages. It was added in the Select Committee that any major male ***Nambudiri*** shall be at liberty to marry in his own community but he can do so only subject to the provisions of the Marumakkatayam Act ***i.e.,*** compulsory monogamy and unencumbered divorce, and of course subject to any other law for the time being in force. "We are against further provisions being made for the enforcement of monogamy".[225]

In the Legislative Council however V. T. Arasu moved to amend this provision in favour of monogamy. It was urged that the younger section and the women of the community, had in the press and through memorials, spoken out against polygamy. Further, "under the Hindu sastras, although... marrying a second wife is subject to so many conditions, these injunctions are given the go by absolutely by the ***Nambudiri***... When a ***Nambudiri*** has a daughter to be married, he takes a girl from another family and gives his daughter in exchange to the eldest daughter in that family. It is more or less like the exchange of chattels... We want to put an end to polygamy ... I would say that if possible such a restriction should be introduced into the Hindu law itself".[226]

The amendement, however, was withdrawn in favour of another

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[225]Select Committee Report, ***Fort St. George Gazette,*** 30 August 1932.

[226]K. P. Raman Menon, PMLC, November 3, 1932.
K. Alamelumangathayamma pointed out that she had received a mass of letters, about 300, telegrams and reports of meetings in various places requesting her to intervene against the decision of the Select Committee. "Some of them have been signed by a large number of ***Nambudiri*** women." One such petition was emphatic that only by universlising caste marriage among ***Nambudiris*** and prohibiting polygamy could the condition of women be alleviated. Ibid.

which allowed polygamy on certain grounds and which had the effect of making punishable, but not void, polygamy outside of three cases: a) where the wife was afflicted with an incurable disease for more than five years; b) where the wife had not borne him any child within ten years of her marriage; c) where the wife had become an outcaste. It was stated in explanation that "Nambudiris being Brahmans and the obtaining of a son for their spiritual benefit being essential, this monogamy (opinion in favour of monogamy) and polygamy have to be reconciled..."[227]. Constrained to support the amendment, "because the leaders of the Nambudiri community were very anxious that these conditions should be incorporated", V. T. Arasu warned that each of these cases failed to consider that a) when a woman contracted some disease the husband may have been the active agent for the disease, it being so in 90 per cent of the cases; b) when she failed to conceive, it could be due to some latent defect in the man; and c) in the context of orthodox resistance to reforms, ***Nambudiri*** women were being declared outcastes on very flimsy grounds such as for not observing ***gosha***. The Nambudiri Act, 1933 allowed for partition, "provided that the shares of a husband and wife shall be alloted to them together and save as provided in sec 22 neither of them shall be entitled to claim partition from the other." Less forthcoming was the Marumakkatayam Act which in permitting partition restricted the right to ***tavazhis,*** though demands "that the husband and wife be given mutual rights to property" were raised even prior to the Act.

The ideal of monogamous marriage, the conjugal family and patrilineal inheritance that were sought to be legitimized by reform movements and legislations were, however, attempted within a canvas of Hindu law, reworking in the process both the notion of 'Hindu' and the personal law of these communities. Instructive, in this context, is the negotiation of monogamy in the Marumakkatayam Act, where it is ***vis-a-vis*** polygamy, one of the grounds being that Hindu law permitted it, that monogamy was defended. Even the ghost of polyandry had been wiped out and

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[227]U.C.S. Bhatt, Ibid.

Marumakkatayam stood vindicated, normalized.

Both ***marumakkatayam*** and ***Nambudiri*** law invoke a notion of the 'Hindu' that was still being negotiated. "The Marumakkatayam Bill should establish the regular marriage practice... Instead of the current practice of sambandham, why shouldnt those who follow Marumakkatayam get married according to vedic rites?[228] However, the negotiation of the notion of the Hindu and of a new ideal of family required that customs be 'normalized'. Among the ***Nairs***, we have argued that the ideal of the conjugal unit as family, was premised on the construction of a new female subject marked by sexual 'self-discipline'. The assertion of the legitimacy of marriage could be achieved only through a disavowal of the picture of sexual permissiveness attached to the ***Nair*** woman. The ***Nair*** reform movement's refusal to confront the question of the sexuality of women ***i.e.,*** its silence on the question is linked to its assertion of the implicit legitimacy of marriage. From the denial of legal sanction to ***sambandham*** in the official legal discourse, proceeding from the reading of sexual permissiveness among women, to the affirmation in the social reform discourse in the early twentieth century of its implicit legitimacy, involved on the one hand the reworking of ***sambandham*** itself, through for instance the elimination of ***tali-kettu kalyanam***, the emphasis on marriages by day light and the formalization of the ***podamuri*** form, and on the other hand the assertion of its conformity ***i.e.,*** stability and endurance, through the construction of a sexually-disciplined woman-wife.

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[228]***Mathrubhumi*** 8 June, 1929.

CHAPTER 6

ENGENDERING REFORM: CASTE, RELIGION AND MATRILINY IN MALABAR

6.1 Introduction

In the first decade of the twentieth century and particularly in the towns of north Malabar, a ***Tiya*** middle class came together to shape a project of reform that centered and questioned the notion of caste. This group had its roots in the opportunities generated under colonial rule, in terms of work and education. Their efforts at reform were framed by their understanding of the 'complicity' of caste practices and customary institutions in defining and regenerating an 'inferior' caste position. In the scholarship on ***Tiya*** social reform, the concern with the questions of caste, religion and community have virtually subsumed the 'women's question'. We will contend that the transformation of customs that specifically concerned women and were symbolic of their relations within the family and to property in a matrilineal economy was a defining aspect of the aspired 'new' community.

The ***Tiyas,*** not unlike the ***Ezhavas***, were described as ***avarnas*** (outside the ***varnas)*** and ranked below the myriad sub castes of the ***Nairs.*** They were restricted from entering even the outer precincts of 'Hindu' temples where the ***Nairs*** were allowed. ***Tiyas*** were required to maintain a distance of 20-30 feet from ***Nairs*** and other 'upper' castes and in turn could be polluted by the approach of ***Cherumas*** and other lower castes.[1] Only a small proportion of ***Tiyas*** were engaged in toddy tapping, widely described as their caste occupation.[2] Most ***Tiyas*** were tenant farmers and

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[1]How rigorously this was observed is not clear. Alongside descriptions of ***Nairs*** and ***Tiyas*** working together in the fields and their proximity in shared rituals (Kunhappa 1981), there were instances of ***Nairs*** being students of ***Tiya gurus*** and utilising the services of ***Tiya vaidyars*** (medical practitioners). Aiyappan (1965: 117), Kunhappa (1985).

[2]As low as three per cent in some areas in 1921. (Aiyappan, 1965: 117). Only 72 out of 1000 workers in each occupation were toddy tappers as against 204 .3 workers in cultivation as land owners and / or tenants, and 436 in agricultural labour and related occupations. Census of India, Madras, 1911, 245. The

agricultural labourers, and a small section of them business men, medical practitioners and teachers.[3]

Reformers, under the guidance of Sri Narayana Guru, an advaita scholar and social reformer from Travancore, directed their energies towards eliminating customs such as ***tali-kettu kalyanam***. Alongside they attempted to shape a new mode of worship and marriage rituals around which they sought to mobilize ***Tiyas***. We will use their engagement with ***marumakkatayam*** in the process of reform as our entry point into the attempt to redefine gender relations and the consequent reconstitution of patriarchy, within a matrilineal society.

The difference in the preoccupations of ***Tiya*** and ***Nair*** reformers in Malabar reflect their different positions in the caste hierarchy. If, for ***Nair*** reformers in north Malabar up to 1920, redefining rituals was a mode of 'salvaging' the ***taravad***, ***Tiya*** reformers had expressed themselves in favour of radical reform of ***marumakkatayam*** (favouring partition and patrilineal inheritance) at the turn of the century. Unlike in Travancore, however, they did not organize to demand legislative change. In understanding the agenda of reform, it must be kept in mind that there were very few affluent ***Tiya taravads*** in north Malabar. In the last decades of the nineteenth century, many ***Tiya*** men, educated in English and professionally employed, attested to having adopted their fathers' names in recognition of their support suggesting a relatively smooth adoption, locally, of the patrilineal mode of family.[4] At the forefront in education and in gaining professional employment in the major towns of north Malabar, and equal to the ***Nairs*** in these spheres, their 'lower' caste status assumed a different dimension. This aspect was intricately linked to the 'problem' that the social reformers sought to address.

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figures in the 1921 Census varied little at 70, 209 and 444 out of 1000 workers in each occupation in toddy tapping, cultivation and agricultural labour.

[3]Ibid, Kunhappa (1981), Government of India (1921).

[4]Appendix IV, RMMC (1891: 340).

An important factor that set a section of the ***Tiyas*** thinking on the need for 'reinventing' a specifically ***Tiya*** community was the growing influence of Christian missionaries and the growing advocation of conversions to Christianity and Buddhism by prominent ***Tiyas***. The 'new' community was to provide a viable alternative to conversion to an altogether different faith.

Attempts to read these efforts as conforming to a process of 'sanskritization', discount the multiple contestations engaged in by the reformers.[5] For instance, even while eschewing a mode of worship/endorsing a distinctly upper caste idiom of worship, some of the reformers were vociferously against moves to gain entry into temples that were hitherto not open to them.[6] The ***Tiyas*** had access to the 'higher' gods (and Brahminical modes of worship) even earlier, but in different forms that combined dimensions of 'higher' and 'local' gods (and of worship) in the same diety. What was new at this points was the attempt to separate these dimensions and eliminate the more local aspects of gods and modes of worship.[7] However, it is difficult to extend this to explain the introduction of entirely different customs such as the new marriage rite, which swept away the ritual expression and legitimization of matrilineal ties, while articulating for matrilineal families an entirely different set of relations among women, men and property.[8]

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[5]Lemercinier (1988) sees it as upward mobility through claims to higher practices. Rao (1987) reads the ***Tiya*** reform process as an instance of backward class organization contesting 'traditional' values through laying claim to practices and learning that were hitherto considered the preserve of the ***Nambudiris***.

[6]Murkkoth Kumaran, prominent writer and reformer from Tellicherry, resented efforts by ***Tiyas*** to gain entry into the temples of the upper castes. He saw the temple-entry campaign as breaking the unity of the ***Tiyas*** and a hoax by the upper castes as social and economic power was no longer centered around the temple but was to be found in the realms of 'modern' education and employment. Kunhappa (1985).

[7]For a detailed look at this aspect of reform see Menon (1994: 70)

[8]Like Rao (1987) who fails to examine critically the endorsement by ***Tiya*** reformers of a patrilineal marriage rite and patrilineal inheritance, Chandramohan's (1987) reading of Narayana Guru's interventions into 'traditional' society as an attempt "to

Reformative zeal fuelled a process of 'assertion', which resonated in multiple directions, 'religious' and 'secular'. In a sense, this was inevitable for the way these categories intermeshed in the economy of north Malabar at the turn of the century. Religious processions marked the cynosure of conflict between ***Mappillas*** and ***Tiyas*** in north Malabar in the first quarter of the twentieth century, a conflict that drew upon competition in the sphere of business and finance. In south Malabar a history of revolts by ***Mappilla*** tenants against 'Hindu' landlords and against the colonial administration had fractured relations and sharpened, considerably, perceptions of 'religious' identities in terms of their differences. In the northern taluks, however, caste identities continued to be dominant at the turn of the century and alliances were perceived, often, across religious groups but along the lines of occupational classes. In the taluks of Chirakkal, Kottayam and parts of Kurumbranad, the ***Mappillas*** like the ***Nairs*** and ***Tiyas*** observed ***marumakkatayam*** and shared in a common ritual order. By 1915 there was pressure from a section of the ***Mappillas*** to bring their family law in conformity with Islamic law. On the other hand, efforts at social reform among the ***Tiyas*** drew upon a larger framework of 'Hindu' practices, even while advocating a community apart. Drawn into a circuit of conflict around worship, it contributed to the sharpening of 'religious' identities.

The question of women's property rights, that we seek, to address, will be posed against caste mobilization for socio-religious reform, a context that lent itself to emerging categories of 'Hindu' and 'Muslim'. Like in the preceding chapters, we will approach the transformation of gendered rights to property through the agenda of reform of family, marriage and

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transform it in the image of, but distinct from the upper caste culture", ends up echoing the rhetoric of ***Tiya*** reformers about "irrational and backward" practices. More recently, Menon, (1994) studies a complex of factors that came together in the ***Tiya*** reform efforts in north Malabar to carve out a new and exclusively ***Tiya*** community. In looking at attempts by reformers to intervene and transform the 'moral' economy of practices that welded together religious and secular aspects, he does not however confront the question of the transformation of gender relations.

inheritance.

This chapter is organized is in seven sections. In the following section, we will attempt to address the understanding of property relations among the ***Tiyas*** in the pre-reform period, a task that is complicated by the rapid transformative aspect of this period, as well as the scanty information about practices in the immediate pre-colonial period. In section 3, we will provide an outline of the reform project elaborated in the first decades of the twentieth century in the context of different influences. In the next section , we will look at the gendered implications of efforts to rework practices that concerned and involved women. The assertion of notions of 'Hindu' and 'Muslim' in the context of conflict around religious processions will form the discussion in section 5. In section 6 we will outline the understanding of matrilineal institutions among the ***Mappillas*** in the transformative period, in order to the mark the differences with the demands for reform. The demands by a section of the ***Mappillas*** for reform of aspects of ***marumakkatayam*** law and the assertion during the process of reform of a more homogeneous 'Muslim' identity will be looked at in section 7.

6.2 Organization of Family and Property: The Tiyas of North Malabar

In the region north of the Korapuzha, the ***Tiyas*** practiced ***marumakkatayam***, as distinct from the taluks of south Malabar where they were patrilineal, though with strong matrilateral ties.[9] Before British land policy was fully exploited by the land 'owning' class, matrilineal property groups among the ***Tiyas*** were more stable as their ***taravads*** enjoyed hereditary right to tenure of plots of land.[10] The ability of ***Tiya*** tenants to retain tenure

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[9]We have drawn upon Gough (1961c, 1955) and Thurston (1987). Revathiamma (1976) and Kunhappa (1985).

In an earlier chapter, we have examined the 'production' of a corpus of matrilineal law through a particular understanding of the notion of custom. While 'court-made custom' did not wipe out fthe plethora of local practices, it helped bolster certain customs, directed and reinforced changes in specific directions.

[10]Gough (1961: 407).

over the same land for long periods was cut into in the second half of the nineteenth century with the increasing tendency towards eviction of tenants. As short term tenants and agricultural labourers, individual members were forced to move out sometimes into distant areas in search of lease-hold land or work, where they built houses or found accommodation on the ***janmi's*** estate.[11] Such movements splintered successively the larger property group for, the shifts involved a mother and children or male tenants and their sisters or merely a married couple.

6.2.1 Marriage and Property

Like the ***Nairs*** in north Malabar, post-marital residence among the ***Tiyas*** was virilocal. Important among the marriage-related customs observed by the ***Tiyas*** was the ***tali-kettu kalyanam*** and ***mangalam*** (***sambandham*** among the ***Tiyas***).[12] The ***tali-kettu kalyanam*** was an elaborate and expensive ritual which brought together other ***Tiya taravads*** and their service castes. The preferred groom was a cross cousin. If a girl did not marry him, her paternal cross cousin was entitled to a token fine during her ***mangalam*** (marriage among ***Tiyas)***. The fine was paid by the girl's ***karanavan.***

During the ***mangalam***, conducted, after a girl attained puberty, the bride was provided with jewelry and cooking vessels, constituting her "dowry".[13] Unlike among the ***Nairs***, a ***Tiya*** woman's jewellery belonged to her marital ***taravad,*** and could be used by

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[11]Ibid.

[12]We have described the ***tali-kettu kalyanam*** among the ***Nairs*** in Chapter 5. The rite among the ***Tiyas*** was a variation it. An important distinction being in that an older female and not a male was required to tie the ***tali.*** Gough (1955).

Revathiamma (1976: 80-91) describes the enormous resources and energy that went into a ***tali-kettu kalyanam*** and more importantly how it, like other life-cycle rites, served also to redistribute resources to service caste and ensure their livelihoods.

[13]Gough (1961c: 411). Revathiamma (1976: 67 - 71, 109) points out that jewelry constituted a major head of expenditure during ***Tiya*** marriages, recalling that her mother sold land in order to finance jewellery and other expenses during her own marriage in the first decade of the twentieth century.

them in times of need.[14] Alongside this another custom that set ***Tiya*** marriages quite apart from the ***Nairs*** was the ***kanapanam,*** a sum of money paid by the bridegroom's ***karanavan*** to the ***karanavan*** of the bride.[15] Constituting a bride price, the practice reflected the occupational status of the ***Tiyas***, as small cultivators and labourers and the importance of the labour of women in ***Tiya taravads***.[16] Gough suggests that it was an acknowledgement of a 'lease' of the wife by the bridegroom's ***taravad***.[17] The custom indicated the nature of the shift, within the framework of matriliny, by women to their husband's property group and the anticipation of their return. In return for work, wives and children were supported entirely by their marital ***taravads***. Further, women as wives were entitled to take a share from each harvest to her natal ***taravad***. This apart from underlining their labour contribution, established the continuity of their matrilineal bond. Divorce was regulated by custom. Where the divorce was without good cause the woman's ***taravad*** was expected to return the ***kanapanam***.[18] On divorce or upon the death of their husbands, women returned to their ***taravads.***[19] However, they seem to have had a claim to a customary portion from their husband's

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[14]Gough (1961c: 411).

[15]The term varied and in some areas ***kunhikanam*** was used. Puvadan Cheria Raman and Potheri Kunhambu, both Second-Grade Pleaders in Kannur, Appendix IV RMMC II, (1891).

[16]Revathiamma (1976: 17, 41) records that ***Tiyas*** unlike the 'higher' castes worked as labourers 'outside' and also that young ***Tiya*** brides were expected to do heavy work in their marital ***taravads.***

[17](1961c: 412).

[18]Gough (1961c: 412), The practice of divorce was referred to variously as ***nyayam kodukuka*** or ***acharam tirkuka.*** Koroth Kannan, a First-grade pleader, notes that he had acted in several cases involving the recovery by civil suit of the ***kanapanam*** when marriages were terminated without sufficient reason. Puvadan Cheria Raman maintained that such suits, several of which were brought to the courts, were always dismissed. Appendix IV, RMMC II (1891).

[19]In the late nineteenth century many women were known to have remained in their marital ***taravads*** after the death of their husbands. Kottieth Ramunni, Appendix IV, RMMC II(1891).

taravad known as ***kattu stanam***, which comprised movables, clothes and money.[20]

The growing trend in the late nineteenth and early twentieth centuries, particularly among ***Tiyas*** in business and in government service, was for men to leave a considerable portion of their property to their 'natural' families.[21] This led to the founding of separate ***tavazhis*** when such property included a house and land. On the other hand, the identification with the 'natural' family was at best partial, even in the towns where it was best illustrated. ***Tiya*** witnesses before the Malabar Marriage Commission, even those who had received property and education from their father, expressed the need to leave a part of self-acquired property to their ***taravads.***[22] An instructive instance is that of Murkkoth Ramunni, an extremely wealthy man whose wide-ranging business interests included control over the entire abkari trade in north Malabar and Kozhikode, was diligent and generous in the interests of his ***taravad.***[23] During this period when there was no substantial property group for women to return to owing to the hostile edge of interpretation of land relations, women turned to

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[20]Kottieth Ramunni, RMMC II, (1891: 242), T. Kunhambu, Tehsildar, Ponnani taluk, Appendix IV, Ibid.

[21]For instance, Karayi Bapu, a prominent businessman and exporter from Tellicherry in the second half of the nineteenth century, provided his wife with substantial property during his life time Revathiamma (1976: 48). Karai Krishnan, a Sub-Registrar in Kannur maintained that people left between one fourth and three fourth of their property to their children. Vengapatta Appi and Koroth Kannan stated that they had taken their fathers' name in recognition of 'education and protection' and that this was so in a number of leading ***Tiya*** families in north Malabar. Appendix IV, RMMC II, (1891: 340).

[22]Murkkoth Ramunni, Koroth Krishnan, Appendix IV, RMMC II (1891).

[23]Kunhappa (1985: 33). He invested in property in Vayalalam ***desam,*** a few miles east of Tellicherry, which he gave to his two sisters, virtually establishing ***tavazhis***. The Murkkoth ***taravad*** house was during this period located in Tellicherry. He, however, does not seem to have endowed his son, Murkkoth Kumaran with any property, leaving the boy, instead, in the care of his nephew. When Kumaran returned many years later to live in Tellicherry, it was to his ***taravad*** house, a small thatched house and a far cry from the wealth of his father's ***taravad.*** Kumaran (1985: 26).

their 'elementary' matrikin, their brothers and mother, preferring to live in close proximity with them.[24]

6.3 Towards Equality: The Tiya Reform Project

The better known efforts to reform caste practices in the early twentieth century were preceded by effort to define a notion of community in by a section of ***Tiyas*** that found itself at a cross road. Their response reflect as much their association with the colonial administration and with Christian missionaries as an effort to retrieve a now threatened 'customary' framework.

6.3.1 Early Efforts at Reform: Reinforcing the Customary

If the better known of ***Tiya*** reformers had sought to distance the caste from customary 'caste' practices, an earlier generation of ***Tiya*** men had made efforts to knit community in a differently. Prominent among them were Churyayi Kanaran, who was a deputy collector in the second half of the nineteenth century and his contemporary Murkkoth Ramunni, the abkari tycoon. They took the initiative to revitalize and use caste institutions prominently the multi-layered caste panchayats and practices such as the denial of ***vannathimattu*** to restrain practices that had grown with colonial rule.[25] Churyayi Kanaran with the support of Karai Bapu, a prominent trader, and many ***Tiya*** officials attempted to reshape the ***tali-kettu kalyanam***, insisting that the ***tali*** be tied by the person who was to marry the girl later.[26]

Until the second half of the nineteenth century, instances of cohabitation of ***Tiya*** women with European men had not drawn adverse comment. These connections were marked in the towns of Kannur and Tellicherry where European presence was at its strongest and "***Tiya*** men in government service often looked for wives among the 'white' daughters of ***Tiya*** mothers".[27] A prominent intervention by the

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[24]Gough (1961c), Revathiamma (1976).

[25]Kumaran (1985: 12).

[26]Puvadan Cheria Raman, P.V. Kunhambu, Appendix IV RMMC II (1891).

[27]Ibid, (16). In a work published in 1884, Logan (1989: 144) wrote that the women were not as a rule excommunicated, if they

amorphous group of ***Tiya*** men was the passing of an order in the caste panchayat ostracizing 'white' ***Tiyas*** and their ***Tiya*** mothers.[28] It is an indication of the moral crisis perceived by the ***Tiyas*** and the significance of the reform effort that i) the document which contained the decision of the panchayat, represented collective skills, the ideas of Murkkoth Ramunni, with the scholarship of Kakkazhi Kunhappa Gurukkal, a respected teacher in the conventional tradition, and the legal skills of Churyayi Kunhappa Vaidyar, known both as a ***vaidyar*** and a second-grade pleader. ii) the document was widely circulated and iii) those excommunicated included a close friend of Murkkoth Ramunni, indicating also the degree of integration of these groups.[29] The term 'white' ***Tiya***, like '***chelavan***' ***Nair*** retained its derogatory character into the twentieth century, when ironically it was sought to be combatted during the process of reform.[30]

Significantly, this 'protectionism' was confined to the 'inner' domain of caste and of the family, where the self-definition of community was sought to be located. In the 'outer' or 'public' domain, the same group actively courted a different set of practices, importantly English education and government

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lived with Europeans and as a consequence the caste had benefited materially. Thurston (1907) noted otherwise ***i.e.***, that the "progress of education and the growth of wholesome public opinion have made shameful the position of a European's concubine".

[28]Kumaran (1985: 16, 17).

[29]In an instance of a different kind of 'aberration' that came up against the barrier of caste, Revathiamma (1976) mentions two generations of her matrilineal ancestresses in the first half of the nineteenth century who had married Gujarati businessmen in Tellicherry. While this had evoked little disapproval at that time, the issue constituted a point of considerable anxiety for the family in relation to the marriage of girls at the turn of the century. At her own marriage in 1908, her mother was taunted with reference to her "lack of ***jati***". Earlier, following her sister's marriage, to a 'respectable' man, employed as a police inspector, Revathiamma recalls that her mother's hope that the "***jati*** problem" would not haunt them anymore.

[30]Gopindranath (1996). ***Chelavan*** was a reference to ***Nairs*** who were converted to Islam during Tipu Sultan's occupation of Malabar, who later reverted to their earlier faith. ***Nair*** reformers in the twentieth century decried the distinction as divisive.

employment, as being in the interests of 'progress', constituting an important disjuncture.[31] The ***Tiya*** middle class that initiated reform in the early twentieth century was shaped by this disjunture. It is not without import that while they eschewed the customary framework, their response to the call for conversion to Buddhism and Christianity, as a way out of caste disability, was deeply fractured.

6.3.2 Christian Missionaries and Tiya Adherents

It was among the ***Tiyas*** that the Basel Mission Society found its early adherents in Malabar and Kasargod. Apart from setting up schools which were seen by the mission as instruments of proselytization, they established weaving and tile factories, importantly, to provide employment to converts.[32] The mission operated out of centers in or near some of the important towns, in Nettur near Tellicherry, Kannur, Chombala, Kozhikode and Palghat. Besides, groups of itinerant missionaries traversed the countryside defining routes between important shrine festivals that attracted large numbers of people.[33]

The missionaries tended to visit and work mostly in villages dominated by ***Tiyas***.[34] This was inevitable considering the impossibility of finding accommodation with upper caste families.

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[31]Kumaran (1985: 36, 37) notes that the ***Tiya*** community was the first to take advantage of the school set up in Tellicherry in 1839 by the Basel Mission Society. Significantly the poorer sections of the ***Tiyas*** were encouraged to attend this school as many needy students were granted fee remissions.

[32]Menon (1994: 65) notes a direct connexion between the mission's ability to provide employment and the numbers of converts. Later ***Tiya*** converts were to branch out and set up their own factories.

[33]Kurup 1995. The aptness of local shrine festivals as the venue for preaching is a dominant theme in the reports of the missionaries. Ironically, Samuel Ambat, convert and missionary, rues the decline in scale and pomp of these festivals, owing to conditions of scarcity and disease.

> I cannot rid myself of the belief that people showed greater enthusiasm for mission activities when the festivals were attended with greater pomp and festivity.

Half Yearly Report of the mission (henceforth HYR) VII, 1902, Ibid, (95).

[34]HYR I, 1899, Ibid.

Repetitive visits helped define a network of relations with interested ***Tiyas***. The reception of the missionaries ranged from friendly but circumspect to openly hostile.[35] In Naduvil, east of Kannur, en route to the Payyavur festival, they could find no place to stay even when the people seemed "interested and kindly".[36] Quite in contrast, a ***Tiya*** from Pinarayi resented the lack of a more permanent missionary outpost "which would improve, immensely, the neighbourhood".[37] The missionaries in turn had learnt to be circumspect, particularly with the upper castes. Ambat expresses surprise at an invitation from some prominent ***Nairs*** to visit their village and stay in their homes and cautions that the missionaries could not afford to take them at their word.[38]

Missionary perception of differences between the towns and their surroundings and the villages are telling of their greater influence in the former. In contrast to the eastern inland tracts where caste practices were carefully observed, Ambat notes appreciatively the infusion of 'Christian' practices among the people of Talayi, then a suburb of Tellicherry.[39] This was evident in their eagerness to attend gospel sessions and to observe the teachings of Christ. "Christian practices have taken root and pictures of Christ adorn many homes".[40] Not only is a particular

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[35]In one instance, Samuel Ambat, noted that a ***Nair*** landlord had threatened to close a ***kanam*** if the ***Tiya*** tenant at Pattuvam, with whom the missionaries had stayed on earlier occassions, put them up at his house again. HYR V, 1901, Ibid (82).

[36]HYR IX, 1903, Ibid (124).

[37]Ibid (73).,

[38]HYR IV, 1900, Ibid (75).

[39]Visiting an ***utsavam*** in inland Mattanur ***amsam,*** the missionaries with great difficulty find accommodation with a ***Tiya*** family. Almost immediately, however, they step on customary codes of hospitality. They find themselves in a spot for preferring a drink of rice gruel to toddy. Rice gruel was served only to caste inferiors, toddy being the drink shared among equals. "We had lost caste and hence had to move out of the house. Instead, they gave us the balcony of a shop on the adjoining land". HYR IX, 1903, in Ibid (120).

[40]HYR IV, 1900, Ibid (72).

etiquette perceived as specifically 'Christian', but it was in relation to women that these changes were seen as most significant.

> Women no longer disapper into the kichen when approached by strangers. On the contrary, they are very cordial. This change towards Christian practices is most encouraging and gives us strength to go on.[41]

If the early ***Tiya*** reformers had targeted the home as the site where a caste-based community was to be 'retrieved', missionaries, at the turn of the century, looked to the home for evidence of 'real' infusion of Christianity. For the missionaries, as for the early ***Tiya*** reformers, women formed the terrain for the redefinition or 'conservation' of cultural identity.

6.3.3 A New Tiya Middle Class and Socio-Religious Reform

Conversion continued to be an unresolved issue and a section of ***Tiyas*** courted it, actively.[42] Significantly conversion was also perceived as an inadequate response to caste disability and it was urged that converts would only join the ranks of lower caste Christians.[43] In a bid for an alternative, reformers in north Malabar turned to Narayana Guru, who was at the forefront of efforts by ***Ezhavas*** in Travancore to organize themselves against caste-based discriminations.[44] The pivot of Narayana Guru's

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[41]Ibid.

[42]C. Krishnan, lawyer turned journalist from Kozhikode, who owned and edited ***Mitavadi*** was a keen advocate of Buddhism. While Krishnan did not actually convert until the 1930s, he nevertheless advocated it as a possible alternative even in the first decade of the twentieth century. At the SNDP yogam annual conference in 1923, Krishnan urged the ***Tiyas*** to convert en masse to Buddhism. George Jacob (1995).

[43]Kunhappa (1985: 105). Jacob (1995) points out that Kumaran Asan, poet and the first secretary of the SNDP had intervened against a proposal in 1923 for mass conversion to Buddhism.

[44]The Sri Narayana Dharma Paripalana Yogam (SNDP) formed in 1903 in Travancore gave institutional shape to the efforts of the ***Ezhavas***. Significantly, there were other strands of thinking among the Ezhavas, a prominent instances being that of Kumaran Asan and K. Aiyappan. The latter's interventions emphasized interdining among castes, working against wasteful rituals, dissemination of class consciousness among factory workers and legislative measures to usher in equal rights for men and women.

programme of social 'uplift' was the temple, as distinct, crucially, from local shrines.

Hitherto the ***Tiyas***, as also the ***Ezhavas*** with whom they were reckoned on par in the caste hierarchy, had shared in a community of worship defined around local shrines.[45] The distinction was between temples (***kshetrams***) and shrines (***kavus***). The ***avarna*** or 'polluting' castes were not allowed into the former. The shrines, on the other hand, supported a thinly veiled intermingling of castes, ***Nairs***, ***Tiyas*** and artisan castes and on ocassion the ***Nambudiris***.[46] The role of each was clearly defined and at some shrine festivals the caste hierarchy was discarded, though momentarily. Worship with meat and alcohol was emphasized.[47]

The Gyanodaya Yogam was formed in Tellicherry around 1906, as an expression of ***Tiya*** self interest.[48] Among the early initiatives of the Gyanodaya Yogam was the planning of the Jagganath temple, the foundation stone for which was laid by Narayana Guru in 1908. In later years temples as centers of reform were built in Kannur, Kozhikode and Palghat in Malabar and Mangalore in South Kanara. These temples inaugurated a new mode of worship, avoiding offerings of toddy and meat. Narayana Guru's idea of the temple as a nodal point of social reform, straddling the themes of religion, education and 'enterprize', reflected his conviction that only with such a combination could the ***Tiyas*** effectively break caste disability.[49] However at first the temples were not

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Rao (1981: 194). See also Velayudhan (1991: 61-64).

[45]Menon (1994) for analysis of caste intermingling and division of labour at select shrine festivals.

[46]Ibid.

[47]Menon (42) also deals with the secular aspects of these festivals -- as enabling the collection and redistribution of resources, partiucularly grain.

[48]Prior to this there had been efforts to establish formal links between the SNDP and the ***Tiyas*** of Malabar. In 1905 the SNDP Yogam was thrown open to the ***Tiyas*** and Ezhavas of Cochin and Malabar. An agricultural and industrial exhibition was planned in Kannur to coincide with the fourth anniversary meeting of the SNDP Yogam. Public department, G.O. no. 401, 20 Feb 1907, KRA.

[49]Rao (1987: 56), Rammohan (1996: 245)., In 1888, when he created a stir by installing a Sivalinga at the Aruvippuram temple in

open to castes below the ***Tiyas***. The proposal that the Jagganath temple should be was opposed strongly.[50] It was only in 1923 that it was thrown open to ***Pulayas*** and other lower castes.[51]

Table 6.1: Nair and Tiya female literacy in Malabar

Caste	No./1000 literate				No./10000 literate in English			
	1911		1901		1911		1901	
	Male	Female	Male	Female	Male	Female	M	Female
	1	2	3	4	5	6	7	8
Tiya	176	23	147	16	92	12	61	4
Nair	419	144	395	103	297	10	154	3

Source: Census of India, 1911, Madras Report I, 1912.

In the early decades of the twentieth century, ***Tiya*** women compared favourably with ***Nair*** women in literacy in English, though the latter were noticeably ahead in terms of 'conventional' literacy. ***Tiyas*** were among the first women to achieve a professional education.[52]

Reform temples were efforts to channalize funds and worshippers. Murkkoth Kumaran for instance points to the enormity of ***Tiya*** resources that went to shrines like Kottiyur in Kottayam taluk, which was highly regarded by ***Tiyas*** and ***Nairs*** alike but under ***Nair*** management. Customarily, the ***Tiyas*** were expected to take offerings of tender coconut and toddy to Kottiyur, while the ***Nairs*** made offerings of ghee. The Kottiyur festival included

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Travancore, Narayana Guru saw it as an intervention into the 'religious' monopoly of the upper castes. In later years, however, he was to de-emphasize aspects like the installation of idols and in the 1920s he underlined the role of temples as centers of education for the public.

At an encounter with Vagbhadananda, a staunch ***advaitin*** born into a ***Tiya*** family in Kottayam taluk and educated in sanskrit who went on to form the Atmavaidya sangaham, Narayana Guru suggests that measures such as installation of idols, deviations from ***advaita***, were necessitated to reach out to people. "I too called the people to the path of ***advaita***, but they did not respond". (1984).

[50]Murkkoth Kumaran was among those who advocated opening the temple to all castes but faced strong opposition. Kunhappa (1985).

[51]***Mathrubhumi***, March 27, 1923.

[52]Kunhappa (1985).

worship with toddy and meat. By 1920 the annual pilgrimage to Kottiyur came in for censure. ***Tiya*** devotees were exhorted to delink themselves from this circuit of worship which was now perceived as regenerating 'lowness' through their complicity in 'low' practices. The Gyanodaya Yogam presented the annual festival at the Jagganath temple as the alternative to Kottiyur.[53] As we have discussed in Chapter 4, this campaign, however, had different implications in the countryside, where ***Tiyas*** were tenants of ***Nair*** and ***Mappilla janmis.***

6.4 Recasting Women: Reform of Marriage and Family

The family was addressed through interventions that sought to eliminate certain rites of passage which were markers of 'respectability'. The ***taravad*** was also addressed directly through the campaign to legitimize patrilineal inheritance. We will examine three processes that powerfully signalled the reconstitution of relations among women, men and property during the process of reform i) elimination of 'meaningless' customs, importantly the ***tali-kettu kalyanam***, ii) shaping of a new marriage ritual, and iii) legal interventions to allow for patrilineal inheritance, a form of marriage and partition of the ***taravad.***

6.4.1 Elimination of 'meaningless' customs

Among the customs that ***Tiya*** reformers and the SNDP targetted for elimination were the life-cycle rituals of women, the ***tali-kettu kalyanam***, the ***tirandukuli*** (pubertal ceremony), ***sambandham***, and ***pulikudi*** (a pregnancy ritual). Observed by the patrilineal ***Tiyas*** of south Malabar and Cochin as well as their matrilineal counterparts in north Malabar, these rituals were symbolic of women's relation to men and property. Significantly, the ***Tiyas*** of Cochin and south Malabar retained strong matrilateral ties and

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[53]Murkkoth Kumaran notes in 1922, the relative success of the temple and the Gyanodaya Yogam to broad-base their activities, made explicit during the annual festival. What was earlier limited to a procession with a caparisoned elephant, now included a trade fair, music concerts and religious discourses.Murkkoth Kunhappa (1985: 109, 110).

among them while inheritance was patrilineal, descent was double unilineal ***i.e.,*** while they were organized in patrilineages, they also had matrilineal clans, which like the patrilineages were exogamous.[54]

Significantly, most accounts of the reform recount the "meaningless and wasteful" character of ***tali-kettu kalyanam*** and ***tirandukuli.*** Needless to say the rituals were a drain on the economic resources of ***taravads***. Like among the ***Nairs,*** the most expensive of these rituals was the ***tali-kettu kalyanam*** which was conducted over four days and involved much feasting and distribution of gifts.[55] The rituals targetted in the process of reform had served to define the material parameters and to articulate the sexual tensions of a matrilineal family and economy. Gough has suggested that the ***tali-kettu kalyanam*** constituted the 'renunciation' of sexual rights in a girl by her natal kinsmen, in an attempt to negotiate simultaneously the incest taboo (which forbade a woman's natal kinsmen from having sexual relations with her) in an otherwize 'complete' identification of women with their natal ***taravads.***[56]

On the other hand, the ***tali-kettu kalyanam*** emphasized the 'incompleteness' of 'marriage', and the fractured rights of the husband in the wife. During the process of reform, Narayana Guru speaks of the ritual as a mock wedding.[57] Further, once a new form of marriage had been drawn up, the appeal to abandon ***tali-kettu kalyanam*** was made on the ground that it was no longer necessary "since we have a 'regular' marriage".[58] This is important in as far as it is the ***tali-kettu kalyanam*** that is seen as marriage in

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[54]Gough (1955: 60, 79).

[55]For a description of ***tali-kettu kalyanam, tirundukuli and pulikudi*** at the turn of the century see Revathiamma, (1976: 80-91).

[56]Gough (1955: 69).

[57]Jacob (1995). At a meeting in Quilon in 1905, he suggested that these practices be stopped, advocating the simplification of marriages. He suggested that only ten people including the bride and bridegroom should be present at the marriage. Velayudhan (1991: 63).

[58]Jacob (1995).

need of reform. As we shall see in the following section the efforts to do away with these rituals and to achieve marriage in a single ritual that was unabashadly patrilineal in its idiom, rode over the particularities of ***marumakkatayam***.

As in the case of reform of an idiom of worship, with life-cycle rituals too the towns experienced the greatest changes. In some cases, Narayana Guru is credited with having convinced people to call off these celebrations at the very last moment after even the 'feast' was ready.[59] In the countryside, ***tali-kettu kalyanam*** and ***tirantukuli*** had a longer innings.[60]

6.4.2 Shaping a new marriage ritual

The efforts to abandon the ***tali-kettu kalyanam*** brought the community "face to face with the need to evolve a progressive form of marriage."[61] Among the modifications suggested by Narayana Guru and advocated by the ***Tiya*** and ***Ezhava*** organizations was a new marriage rite, anchored firmly in an emerging 'Hindu' idiom. Narayana Guru gave instructions that the marriage ceremony should be,

> "like the prajapatya form of marriage of the Hindus, wherein the father or guardian of the bride joins the hands of the bride and bridegroom by putting the right hand of the former on that of the latter and pouring water from his hand to the grooms. Then the bride garlands the groom and the latter ties a tali around the neck of the bride.[62]

i. A New Tali Rite: However, Narayana Guru was accommodative of local variations even while insisting upon the observance of garlanding and the tying of the tali.[63] The tali as an indication of a woman's married state was an innovation upon the ***tali-kettu kalyanam***. While earlier it could be discarded without any implications, now women were exhorted to wear the ***tali*** as symbolic

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[59]Puthenkulam (1977: 55).

[60]Ibid.

[61]***Mitavadi,*** March 1915.

[62]Jacob, (1995: 139).

[63]Ibid.

of marriage.[64]

In the first decade of the twentieth century even in the towns of north Malabar, tying the tali during the ***mangalam*** was not easily accepted. Insistence by a ***karanavan***, prone to ideas of reform, that the ***tali*** be tied by the bridegroom could create considerable tension and uncertainity. Interestingly, at this point we have a clash between reform ideas of two generations of ***Tiya*** professionals. An earlier group of reformers had attempted to reform the ***tali*** rite insisting that the ***tali*** should be tied by the person who would later marry the girl. This however did not do away with the ***rite*** altogether. A section of the ***Tiyas***, in fact resisted the elimination of customary rituals on the grounds that it they would wipe out an important source of income of caste groups whose occupations were bound to these rituals.[65] This shade of opinion came up against the growing and often aggresive stance of the new ***Tiya*** elite who sought to distance themselves from all manner of caste practices in an attempt to build a 'self-sufficient', if inward looking community.

For instance, Revathiamma, a witness to this period who went on to become a writer and the founder of a women's group, perhaps the first, in Mahe in the 1920s, attests to this. Her marriage which took place at Talayi in Tellicherry in April 1908 was marred by anxiety. Her bridegroom was from a well known ***Tiya taravad*** in the French territory of Mahe. His ***karanavan***, the Mayor of the town and an ardent supporter of Narayana Guru's ideas of reform, insisted that the bridegroom tie the ***tali*** on the bride. In Revathiamma's hometown of Talayi in Tellicherry and the surrounding areas, the innovation had yet to take root. When consulted, the ***nattukaranavanmar*** objected to the idea on the

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[64]Ibid. In the reform discourse, the terms ***mangalam*** and ***sambandam*** were dropped in favour of ***vivaham*** or just ***kalyanam.*** For instance it is significant that Revathiamma (1976) recounting the events of the early twentieth century consistently refers to her marriage as ***vivaham*** avoiding the terms ***mangalam*** or ***sambandham.***

[65]Ibid (103) points out that the elimination of these rituals would have rendered precarious the livelihoods of the ***Vannan***, ***Kavudiar*** and ***Mannan*** castes who, in keeping with custom, were not allowed to adopt any other occupation.

ground that as the ***tali*** had already been tied it would amount to disrespect towards social norms.[66] The marriage, which acquired a 'public' dimension, drawing the attention of the town, took place only because the bridegroom's brother resorted to a ruse to save the day. The ***tali*** had been entrusted to him and in order to defuse the situation he faked injury en route to the marriage venue and failed to arrive on time.[67]

ii. Kanyadanam: The lack of standardization of the marriage rite attracted criticism. For instance, in March 1915, it was pointed out in ***Mitavadi***, a ***Tiya*** reform newspaper published from Kozhikode, that if the observance of comprehensive vedic rituals had been 'postponed' due to the scarcity of trained ***Tiya*** priests, the 'summary-version' adopted in its place was not being uniformly observed. Worse, it was pointed out glaring errors were occasioned on account of the poor proficiency of the priests.[68] Pointing to the need for "improvement of the rite to a level that would reflect the progress of the caste", ***Mitavadi*** drew up the details of such a ritual, which all ***Ezhavas*** and ***Tiyas*** were exhorted to observe.[69] Individual observers as well as organizations like the Gyanodaya Yogam and SNDP were in favour of marriages being conducted in the ***Tiya*** temples.[70] While this was held up on the grounds of uniformity and because it would enhance the sacred aspect of marriage,[71] it was also suggested on economic

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[66]Ibid (101).

[67]The marriage took place without the ***tali*** but Revathiamma had to pay a price for the injured pride of the bridegroom's ***karanavan.*** At her husband's ***karanavan's*** house where she was escorted after the marriage she was not shown the usual hospitality.[67]

[68]***Mitavadi*** March 1915.

[69]Ibid.

[70]Jacob (1995: 140), mentions that Narayana Guru made provision for this at the Sarada temple in Varkala and adviced the SNDP Yogam to propogate the practice., See also Kunhappa, (1985: 122), and K.N. Gopalan, ***Mitavadi,*** May 1915.

[71]When a marriage was conducted at a temple, the ***swayamvaram*** (garlanding the bridegroom by the bride) and the tali-tying were performed before the deity in order to stress the religious aspect of marriage. Jacob, (1995: 139)

grounds. Significantly, the rituals suggested included the ***kanyadanam*** (the gift of the girl by her father) which was wholly alien to the pre-existing marriage ritual.[72] The marriage rite implied the transfer of the girl from her natal property group and her children were seen as tracing lineage from their fathers. This implied a transformation of her relations to matrikin, the replacement of ***karanavan*** with father and a comprehensive move upon marriage to the property group of the husband. There were voices of caution that changes could not be impozed but had to be introduced gradually.[73]

6.4.3 Legislating for the 'natural' family

Unlike in Travancore and Cochin, where separate Bills were paszed by the state assemblies for the ***Tiyas*** and ***Nairs***, in Malabar all matrilineal castes were brought under the purview of a single legislation, the Madras Marumakkatayam Act, 1933. While it was a section of the ***Nairs*** who pressed for, drafted and pushed the Bill through the house, ***Tiya*** reformers channeled their energies in other directions. It may be recalled, though, that it had been possible to mobilize ***Tiya*** opinion in north Malabar in favour of the Malabar Partition Bill, 1909. Further, among the ***Tiyas*** partition was not the contested issue that it was among the ***Nairs***. In Malabar, ***Nair*** social reformers called for legal intervention to legitimize ***marumakkatayam*** marriages. Among the ***Tiyas***, 'legitimacy' for marriages as well as changes involving a patrilineal coding of marriage were sought in ritual adaptations.

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[72]The following verse in Sanskrit was involved:
For dharmic wealth
for the gift of children
for the well being of 21 generations of paternal ancestors
and to redeem the debt of a father
I perform this ***kanyadanam.***
Mitavadi, March 15.

[73]Murkkoth Kumaran cited in Kunhappa (1985: 121). For instance Kumaran's daughter's marriage conducted in 1928 was among the first marriages to be held at the Jagganath temple in Tellicherry. While the new marriage rites were observed at the temple the marriage was also formalized at home in the traditional fashion. Interview with Murkkoth Ramunni in Dharmadam, May 12, 1996.

Increasing the religious aspects and sanctity of marriage through selective adaptation of vedic rites and the performance of marriages at temples gave them a new legitimacy which was in tune with the socio-religious framework of ***Tiya*** reform efforts.

The experience of Cochin is instructive. The Matriarchal Tiyar Bill, the Patriarchal Tiyar Bill and the Civil Marriage Bill were introduced into the Cochin State Assembley around 1948. Of the first two bills, which aimed at acheiving equal property rights for men and women among the ***Tiyas***, the Matriarchal Tiyar Bill was passed without opposition, but the Patriarchal Tiyar Bill was referred to a Select Committee which recommended less than equal rights for women.[74]

In Travancore the SNDP worked towards the development of a common view and to enforce rules regarding marriage, inheritance and partition of ***taravads*** on the basis of individuals, contained in the Ezhava Regulation of 1925. Narayana Guru had advocated individual partition as early as 1904 and in 1908 had pointed to the need to make legal provisions for inheritance rights of the wife and children to a man's self acquired property. The absence of such a legal provision was seen as rendering marriage meaningless.[75]

6.5 Conflict over Spaces of Worship: Shaping Religious Identities

Even before the attempts by ***Tiya*** reformers to knit the themes of education and industry with reform of caste and religion, individual ***Tiyas*** in the towns of north Malabar had carved niches for themselves in trade and government employment. By 1915 there was talk of ***Tiya*** traders poaching into the commercial preserves of the ***Mappillas***.[76] In his reply in January 1915 to a communique from the Additional District Magistrate on the "attitude Hindus should take towards members of other religions", Kottieth Ramunni, prominent lawyer and ***Tiya*** social reformer, discounts the suggestion that a conciliation board be formed. Pointing out that

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[74]Rao (1981: 201).

[75]Jacob (1995: 56, 138).

[76]Magisterial, Dis. no. D 928, M 15, dated June 13, 1915, KRA.

"a conciliatory board presupposes the existence of a factious spirit between the two communities", he suggested the extension of the scope of the Chamber of Commerce to all classes of merchants to take care of the "mere commercial jealousy" existing between some ***Mappilla*** merchants and a few Hindus. The district administration's attempt to initiate dialogue suggested their fears of the other than commercial turns the rivalry may take.

In 1912, C. A. Innes, the District Magistrate had observed a growing number of skirmishes between "***Mappillas*** and Hindus or Indian Christians" on the question of whether processions should stop playing music when going past mosques.[77] He gave instructions for intervention by the district administration if they apprehended trouble. Interventions were to include re-routing of processions, conditions regarding the playing of music and "in the more urgent cases" forbidding the procession altogether.

The anxieties of the ***Tiya*** reformers were brought to the fore during a tussle over the modalities of religious processions in the first half of 1915. In late February the Collector of Malabar had received a complaint from the Secretary of the Imdadul Association, Tellicherry, that a ***Tiya arat*** procession playing music had gone past a number of mosques. This provided the grounds for close monitoring of processions. In March that year the ***arat*** procession of the Jagganath temple was accompanied by elaborate security arrangements apparently in view of the earlier complaint.[78] The Gyanodaya Yogam was required to take a license for the procession. Out of turn music as the procession passed a mosque created a stir and on their return the procession was made to stop music over a wider area than had been defined in the license. In this connection, Kottieth Ramunni, President of the Gyanodaya Yogam wrote to the Collector "since the reports you had in the matter threw all the blame on the north Malabar ***Tiya*** community and the management of the Jagganath temple in particular". He made a distinction between the procession referred to in the complaint from the ***Mappilla*** association, and

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[77]Magisterial dept., Dis. no., M 12, Feb 3, 1912, KRA.

[78]Ibid.

that of the Gyanodaya Yogam and stated that ***arat*** processions taken every year since the opening of the Jagganath temple were careful not to anger the ***Mappillas***. Moreover he attributed "the sudden unfriendly feeling" between the two communities to "external influence" and attested to the need to regulate erring processions. His letter is instructive for the resentment of the ellision of temple and shrine processions and of the unhappiness regarding strained relations with the ***Mappillas***. This section of the ***Tiyas*** sought to potray the confrontation as a law and order problem. But they were unable to mask the frictions emerging between the communities.

On the other hand there were efforts among the ***Mappillas*** again in the towns of Tellicherry and Kannur to move towards a more 'Muslim' identity. Clashes which lent themselves to the sharpening of religious identities, were accompanied by demands by the ***Mappillas*** to alter their 'personal' law along the lines of the Shariat.

6.6 Mappillas of North Malabar: Family and Property Organisation

In the taluks of north Malabar the ***Mappillas*** were governed by ***marumakkatayam*** law. Both descent and inheritance were matrilineal, devolving from mother to children. The ***Mappilla taravads*** like that of the ***Nair***s ranged from the really large propertied groups (mostly the 'aristocratic' ***Mappilla*** lineages tracing lineage from ***savarna*** converts) to property-less lineages who depended on the combined earnings of all members of the ***taravad.***[79] The former had held trading rights under the local rulers and later the East India Company until it stopped trading in 1833. Many of these lineages had also received rights over land under the local rulers.[80] A new middle class of traders grew out of the trading opportunities under colonial rule. At the

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[79]In this section we have drawn upon Gough (1961d), Miller (1976).

[80]Gough (1961d: 417). The Arakkal family who ruled Kannur before the British dispossessed them and the Keyis of Tellicherry, a business family with considerable land holdings were the most prominent among the matrilineal ***Mappilla*** families. Kunhikannan (1992).

other end of the spectrum were the middlemen, small traders and small tenants and cultivators who owned little by way of property.[81]

In a significant difference from matrilineal organization of the ***Nairs*** and ***Tiyas***, residence after marriage was matrilocal among the ***Mappillas***. While the husband resided in the matrilineal home of his wife for the duration of the marriage, the ***karanavan*** resided 'usually' with his matrilineal kin or close to them for the convenience of management. In the case of ***taravads*** that did not own substantial property, the ***karanavan***'s role was reduced to a nominal one of attending life-cycle rituals. Husbands while residing matrilocally could continue to work for their natal property groups. However, they were required to pay a sum of money towards maintenance of their wife and children. They had no rights to the wife's ***taravad*** property and usually did not interfere.

The oldest woman of the ***taravad*** was in charge of domestic management and wives usually handed over to her some part of the money they received as maintenance. During the marriage payments of dowry and brideprice were made. However, while the dowry was to be returned in case of divorce, the brideprice was not. This was so among all classes though among the poorer sections these customs were observed only nominally. While the husband could resort to the ***talaq*** form of divorce, the wife had to negotiate divorce through the elders of her ***taravad***. A husband usually granted a divorce on request as his life could be made uncomfortable thenceforth.

6.7 Reform of Succession and Inheritance

In November 1914, the government wrote to the Collector of Malabar seeking information on the proposal that the self-acqired property of a person dying intestate should devolve according to Muhammedan law. A deputation of prominent ***Mappilla*** men from Tellicherry and Kannur had apprised the Governor of the "conflict" between ***marumakkatayam*** law followed by the ***Mappillas*** of north

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[81]Gough (1961d: 416-418).

Malabar and South Kanara and their religion, and the consequent "disability" suffered by them.[82] The rhetoric of change was pitched high. They stated that ***marumakkatayam*** law was "opposed to the spirit and teachings of Islam" and that the community looked upon the custom "as a great discredit to our community and our religion".[83]

There changes proposed were given more explicit religious overtones. In order to ascertain the local opinion meetings were organized at different places, in the taluks of north Malabar and many of these meetings were presided over by the Kazis of the localities.[84] At meetings in Chirakkal taluk, the Kazis even declared that disagreement with the Bill would turn one into a ***kafir*** (infidel).[85] While the memorialists had submitted that "in the present state of things" tarawad properties should continue to be governed by ***marumakkatayam*** law, in atleast one of the meetings it was suggested that ***taravad*** properties should by special enactment be brought under Muhammadan law as ***Wakf*** (trust) properties.

Alongside efforts towards the ***Mappilla*** Succession Act, 1918, there were proposals to amend the Malabar Wills Act, 1898 inorder to bring the testamentary law of the ***Mappillas*** in conformity with Mohammadan law.[86] The Mappilla Wills Act was passed in 1928. Significantly both these measures sought to introduce a form of bilateral inheritance by enabling the 'natural' family some inheritance rights to the husbands/fathers self-acquired property.

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[82]Public dept., Dis. no. 497, P 15, dated March 9, 1915, KRA., The deputation comprised the 'consort' of the senior beevi of Arakkal, the Kazis of Kannur and Tellicherry, prominent businessmen and landlords and a tahsildar.

[83]Ibid.

[84]See letters to the Sub Collector, Tellicherry, from K. A. Swaninath, Deputy Tahsildar, Taliparamba dated January 20, 1915, P.A. Ammoo Sahib, Tahsildar of Chirakkal dated 29 January 1915, Tahsidar, Kurumbranad dated February 13, 1915., Ibid.

[85]Letter from P.A. Ammoo Sabib, Tahsildar of Chirakkal and one of the memorialists, to the Sub Collector, Tellicherry, dated January 29, 1915, reporting on opinion in Chirakkal taluk., Ibid.

[86]Public dept., Dis. no. D.873, dated May 31, 1916, KRA.

CHAPTER 7

CONCLUSION

An analysis of the marriage and succession laws of all religions showed that they stemmed from a fundamental desire to secure and keep control over property in the hands of men and to assert the superiority of one gender over the other.

P. Chidambaram[1]

7.1 Decline of Marumakkatayam

We have attempted to trace a process of decline of women's property rights in late colonial Malabar (1880-1940) in the context of a transformation from a matrilineal to an increasingly patrilineal form of family and of devolution of property. The transformation of ***marumakkatayam*** was achieved through changes in property relations arising from the decline of the ***taravad*** as the primary property space on the one hand, and on the other from an increasing emphasis on property relations emerging from marriage and the conjugal family.

We have focused on the processes by which the ***taravad*** was increasing discredited in the late nineteenth and early twentieth century. These processes drew upon two related sources: i) the view that the ***taravad*** was a barrier to 'progress' and that ***marumakkatayam*** law left much to be desired in terms of sexual morality, shared in a greater or lesser degree by the colonial administrators and a small but influential section of indigenous society and ii) the turmoil within the ***taravad*** which was engendered in good measure by its association with the institutions of the colonial state, particularly the judicial, educational and political establishments. As Fuller points out

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[1]Speaking as Minister for Administrative and Personal Reforms, in ***The Statesman***, October 20, 1986, cited in B. Sivaramayya (1988).

Such statements, however, are well within a tradition of government functioning. For instance, a proposal by the Ministry of Agriculture in December 1988, to issue at least 40 % of the title deeds to land exclusively to women in the future allotments of ceiling -surplus land and homestead sites, and the remaining title deeds jointly in the name of the husband and the wife did not travel beyond the proposal stage. Kelkar and Gala (1990: 84). For government attitude to the issue of land rights to women see also Agarwal (1994: 220).

the crucial point here was that a section of the ***Nairs***, who achieved a certain dominance in public life believed in the theory, which owed considerably to colonial and missionary influence, that their family system was a deterrent to 'progress'.[2] The crisis in its turn was reflected in the conflicts that made Malabar the most litigious district in the Presidency.

We have to be guarded in our enthusiasm for separate rights enabled by legal sanction of ***taravad*** partition, which could be seen as an 'improvement' on the collective rights available under the colonial interpretation of the ***taravad***. As Agarwal has pointed out, class differentiation and poverty among the ***Nairs*** have increased with the break up of the ***taravads*** and many ***Nair*** women whose economic needs were previously covered by the ***taravads*** found themselves landless and in want.[3]

Women's property rights following partition of ***taravads*** on an individual basis was affected by their vulnerability arising from their pre-existing dependence on the ***taravad*** for maintenance, their circumstantial inability to self-manage and cultivate lands, the monumental lack of information about the far-reaching changes occurring around them,[4] as well as the uncertainties introduced by the often time-consuming legal procedures involved in achieving partition. Hence individual rights to property that women received with the amendment to the Madras Marumakkatayam Act in 1957, were often constrained by the conditions women found themselves in. On the other hand, their rights within the

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[2]The influence on ***Nair*** reformers of a model of 'progress' based on the commercial success of the patrilineal Syrian Christians was strongest in Travancore where the latter were numerically strong. Fuller (1976: 129-130). However, the supposed link between a patrilineal family and commercial success was cited often by reformers in Malabar as well.

[3]Agarwal (1994: 178). Ratnamayi Devi, a ***Nair*** woman, speaks of the difficulties experienced on account of partition, which resulted in a sudden decline of her immediate family's economic status. Kishwar (1988b: 4). In Travancore, prior to and after legal sanction of partition of ***taravads,*** a considerable amount of land was transferred from ***Nairs*** and purchased by Syrian Christians and to a lesser extent ***Ezhavas***. Varghese (1970: 100-101).

[4]Saradamoni (1983).

conjugal family--to maintenance from the husband and to succeed to the husband's self-acquired property--was within the framework of dependence on the husband arising from the legal definition of marriage. Such rights as were advocated, struggled for and achieved through legislation were shaped to meet the requirements of the matrilineal male individual. The latter believed himself trapped in a system of family and property that seemed increasingly at variance with an economy that emphasized individual enterprise and efficiency: traits seen in the colonial discourse as incompatible with the ***marumakkatayam.***

Two sets of processes / factors contributed to the reconstitution of women's rights to property: i) the colonial interpretation of ***marumakkatayam*** and ***janmi-kudiyan sampradayam*** ii) successive processes of reform of matrilineal practices and land rights which emerge in the closing decades of the nineteenth century. These processes served to redefine and set in motion a decline of women's property rights in the following ways:

1. The colonial interpretation of ***marumakkatayam*** facilitated male possession of and control over property. We have argued that the interpretation of customary practice in the colonial civil courts had little to do with matrilineal practice but was informed by a conception of custom and a theory of ***marumakkatayam*** law, built up analogously with western theories of the evolution of the family and society. ***Marumakkatayam*** then served as the ground upon which custom was reinvented, often in the image of more familiar customs of western societies. The interpretation that had perhaps the greatest weight in dispossessing women was the definition of the ***karanavan*** both as head of household and as male. This restricted, considerably women's ability to manage and cultivate ***taravad*** lands, as well as their ability to decide important aspects of their lives by placing them at the mercy of the ***karanavan***. The presumption that if a woman was found managing ***taravad*** lands it was with the consent of the ***karanavan*** and that it was in his power to revoke such devolution of responsibility left women with few positive rights arising from matrilineal descent and collective ownership of property.

In the scheme of colonial law, family or personal law, was

seen as deriving from religion It was hence regarded as inviolable but it was also gender-specific. Land laws were seen as falling within the public realm of law, and hence associated with a certain gender-neutrality. Interpretations of land relations and personal law however interlocked with important implications for women. Their overlap seriously undermined the gender-neutrality of land laws. This was particularly evident in the coincidence in one person of the ***janmi*** or ***kanakkaran*** (who could be male or female) and the ***karanavan*** (who was the oldest male member) under conditions where most landed property in Malabar was held under ***janmam*** and / or ***kanam*** rights by ***taravads.***

2. A section of the ***Nairs*** in the closing decades of the nineteenth century sought to resolve the lack of legal sanction of ***sambandham*** under colonial rule in a form of marriage that centered conjugality, allowed patrilineal inheritance and placed women as wives and daughters in dependent relationships to men as husbands and fathers respectively. Significantly, it was held in the colonial civil courts that ***sambandham*** did not conform to a proper marriage because it i) did not give rise to property relations, ii) did not place any restraint upon women from entering into and exiting a relationship at her pleasure, iii) did not permit of any social regulation. Here we have the influence of the western liberal conception of marriage. In the absence of patrilineal descent of property and the widespread acceptance of ***sambandham***, where women were not hemmed in by the indissolubility of the marital tie, the logic of monogamy did not seem to hold.

Crucially however, as the conception of legitimacy was tied to a specific form of marriage and to the centrality of paternity, a system of relationships that did not center both was seen as lacking in them. It was also seen as incapable, systemically, of sustaining either. Deriving legitimacy from the centering of paternity required the hemming in of women in dependent relationships. This could be achieved by the redefinition of women's property rights: i) by allowing property rights arising from marriage and ii) by allowing the partition of the ***taravad*** and hence facilitating the erosion of a separate system of matrilineal property.

3. Colonial land policy was geared towards the consolidation of the ***janmis*** as political allies of the government, giving them a more absolute right than was available perhaps anywhere else in colonial India. In the closing decades of the nineteenth century, a powerful class of intermediary ***kanakkar*** sought security of tenure through legislative intervention by the government. Significantly, ***sambandham*** was cited by the intermediary ***kanakkar*** as a critical factor in favour of change in tenancy laws. By facilitating for ***Nambudiri*** men (as ***janmis)*** easy sexual access to ***Nair*** women (as tenants), ***samabandham*** did represent the exploitative edge of hierarchical land relations. Yet its emergence as a 'problem' in the late nineteenth century and its resolution in the realm of the 'Paternal family' by a section of reformers suggest moves to discipline the sexuality of women. It is instructive that ***Nair*** and tenancy reformers see it is necessary but not sufficient to 'liberate' women from the oppressive 'land for sexual relations' network. Through legal measures that sought to redefine property relations and undermine the ***taravad*** by deploying conjugality centrally, ***Nair*** and tenant reformers sought also to establish a degree of control over women. In fact, the caste identity of the ***Nairs*** and ***Ezhavas*** and the class identity of the tenants were in important ways premised upon the redefinition of the position of women. Reformers sought to replace the patriarchy of the ***karanavan***, enabled by the legal interpretation of matriliny, by a new patriarchy which in turn was framed by the conjugal family.

However, this particular formulation of the problem of reform of ***janmi-kudiyan sampradayam*** and ***marumakkatayam*** arose from the specific conditions of south Malabar. Though they tended to be generalized in the legal discourse, these conditions were quite distinct from those prevalent in the northern taluks. In south Malabar, the interests of tenancy groups merged easily with that of ***Nair*** and ***Ezhava*** groups and these concerns were endorsed and taken up by nationalist forces struggling to find a wider political and social base.

4. In north Malabar, differences in ***janmi-kudiyan sampradayam,*** particularly the virtual absence of the intermediary ***kanakkar***

class, the dominance of ***Nairs*** as ***janmis*** and the relative unimportance of ***sambandham*** with ***Nambudiri*** men, gave rise to different configurations based on caste and class. Also, there were important fissures in the alignments of caste organizations of the ***Nairs*** and the ***Tiyas*** with the tenancy groups. The ***Nairs***, the bulk of whom combined small-owner cultivation with tenancy, tended to rally around the concerns of the ***janmi*** and were drawn into a circuit of hostility with the ***Tiyas*** who aligned themselves around tenancy concerns. Nair reformers in north Malabar in the first two decades of the twentieth century attempted to 'reclaim' their ***taravads***, which represented their feudal interests as ***janmis***. The aggressive mobilization of tenants and the campaign for security of tenure in the 1920s led to an increasing engagement by ***Nair*** reformers with the necessity of partition as a means of salvaging the economic interests and status of the ***Nairs***. The Madras Marumakkatayam Act, 1933 marked the coming together of, even if uneasily, the reform agenda of ***Nair*** groups in north and south Malabar on the crucial questions of marriage, inheritance and partition.

We have argued that the ***Nair*** reform agenda was in important ways premised upon a particular understanding of the position of women and was held together by efforts to reconstitute gender relations. This was evident in at least three ways: i) the position taken by ***Nair*** reformers in the north that ***sambandham*** was a legal form of marriage drew upon the assertion of the 'conformacy' of women on the one hand and upon efforts to standardize ***sambandham*** in a 'respectable' form on the other ii) the efforts of ***Nair*** reformers to center the conjugal family, were contingent upon a reconstitution of gender roles and of property relations between men and women. A striking instance being in the argument that before enabling partition of ***taravads***, it was necessary to establish the responsibility for women and their property within conjugal families iii) the Madras Marumakkatayam Act, 1933 facilitated the conjugal family and established women in dependent relationships with men, a position that could only have been exacerbated by the fact that the act opened the flood gates for partition. The possibility of legal partition ensured that almost every ***taravad*** was in the courts or under receivers, leaving

with little prospect of a reasonable income for members of ***taravads***.

The absence of women in the process of ***Nair*** social reform and their silence is in dramatic contrast to the urgency attached to the 'women's question' among the ***Nambudiris***. Among the latter, women had to contend with acutely oppressive, inhuman practices. During the process of reform the predominantly male reform group, representing radical views sought women's participation with a sense of desperation and voiced the need for separate women's organizations to deal with women's issues. We have argued that the contrast, stark considering the relative freedom of ***Nair*** women, drew upon the widely different conditions under which women from these two castes lived. The relative freedom of ***Nair*** women and more importantly their visibility in the discourse on ***marumakkatayam*** seem to have dictated their erasure from the social reform process as evidence of their social conformity.[5]

5. The decline of women's property rights was assisted by the use of a religious community framework during the process of reform. The growing use of the categories of 'Hindu' and 'Muslim' by the colonial administration and by reformers from among the different social groups was set in contrast to ***marumakkatayam*** as a 'deviant' system. Among the ***Mappillas***, the Mappilla Succession Act, 1918, which provided for the descent of intestate self-acquired property as prescribed by the shariat, and the Mappilla Wills Act, 1928, which brought the testamentary powers of the ***Mappillas*** in conformity with the shariat, were expressions of a move towards a more 'Muslim' identity. Both were measures that established legal rights to patrilineal inheritance of self-acquired property wherein a daughter would receive only half the share of a son and a wife would receive a smaller (half) share in the property of her husband than the husband would in the property of his wife. These expressions of identity also drew upon wider socio-economic

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[5]An editorial entitled "Stri dharma" in a nationalist daily urged women to assist their husbands and sons in all tasks, adding that there was not need to advice women from the land of Seeta and Chandramati about their dharma. ***Mathrubhumi***, April 7, 1923.

changes. The competition and conflict in business between ***Tiyas*** and ***Mappillas*** in the towns of north Malabar as well as a new prosperity in the early twentieth century in some ways informed their search for a new identity.

Among the ***Tiyas***, categorized during the British period as a lower caste, a monolithic 'Hindu' identity was as much attributed to them as endorsed and disputed by them. Importantly, a ***Tiya*** elite that had grown out of their early association with the colonial administration and the missionaries viewed matrilineal practice as suspect ***i.e.,*** as enmeshed in reproducing social inequality and 'lower' caste status through caste practices like the ***tali-kettu kalyanam***. This ***Tiya*** elite attempted to mobilize members of their caste particularly in the towns of north Malabar around a programme of reform that involved mainly the setting up of a separate religious establishment where they would not have to defer to customary norms dictated by the caste hierarchy. In doing so, they adopted an idiom of practice that was distinctly Brahminical. However, it was marked more by the rejection of 'reprehensible' practices rather than the adoption of entirely new ones. This particular Brahminical idiom, evident in the mode of worship advocated, was extended to social practices like marriage and inheritance endorsing patrilineally-informed marriage rituals and patrilineal inheritance. Significantly, legislative measures that sought to introduce patrilineal inheritance and to partition the ***taravad*** found early support among the ***Tiyas***.

The Madras Marumakkatayam Act, 1933 allowed for partition on the basis of ***tavazhis*** (branches) and set off a process of disintegration of the ***taravad***.[6] Some wealthy ***taravads***, which continued unpartitioned until the 1950s, split up aided by post-independence legislations on agrarian relations and matriliny and by 1960 all large ***taravads*** were split or in the courts.[7]

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[6]Provision for individual partition was made in the Madras Nambudiri Act, 1932, the Mappilla Marumakkatayam Act, 1939, and the Madras Aliyasantana Act, 1949. Travancore and Cochin led the way in introducing these changes in the 1920s. (Jeffery 1976).

[7]Fuller (1976: 135), Gough (1961: 646), Mencher (1962: 237).

Within a context of a phenomenal growth in the number of agricultural labourers between 1951 and 1971, Raj and Tharakan observe that while the number of male agricultural labourers increased at only about the same rate as the total number of rural households, the number of female labourers grew at twice the rate.[8] It is significant that while at the turn of the twentieth century agricultural labourers were drawn chiefly from the lowest castes, by the middle of the 1970s, while two thirds of the 2.75 million rural wage earners were agricultural labourers only one third of them were drawn from scheduled caste and scheduled tribe households. The increase in proportion of agricultural labourers, particularly women, from other castes is instructive of their growing landlessness or near landless status. Between 1926 and 1930 nearly two fifths of about 0.4 million acres of land that was partitioned (as a result of ***taravad*** partition) in Travancore went into individual shares of less than one acre.[9]

In the period following partition, large tracts of land in Malabar were alienated either by sale or on long-term lease to "planter capitalists" and peasant migrants from Travancore.[10]

Shea (1959: 130) writes that at the time of his field work in Malabar in the 1950s all the "great ***taravad*** estates" were either divided or in the process of being divided. In Travancore and Cochin the process of partition was quicker. A total of 32,903 ***taravads*** were partitioned within five years of the Nayar Regulation, 1925 in Travancore and the situation was not very different in Cochin. Census of Travancore cited in Fuller (1976: 135)., See also Varghese (1970: 100-103).

[8]Raj and Tharakan (1983: 73).

[9]Ibid (42).

[10]For instance, 30,000 acres of land was sold by the Maniyur ***illam***, in Chirakkal and Kottayam taluks to the Alakkot Raja, a large landholder from Travancore, and more than 7000 acres in Cheemeni village of Kasargod taluk was given on long lease by the Tazhakat ***mana*** and the Kuttamath Kunniyur ***taravad*** to George Thomas. Kurup (1988: 153). There was a dramatic decline in the area of private forests, which comprised large parts of the holdings of formerly wealthy ***taravads,*** between 1930 and 1950, the period of peak migration to Malabar. Tharakan (1978: 296-297). For a fictional account of the difficulties faced by the early migrants to the forested wastelands of Wynad taluk, see S.M. Pottekat (1980).

By 1954, there were 20,000 settlers in Chirakkal taluk alone. In 1960, 15,000 migrant families were reported in Hosdurg taluk, formerly a sub-taluk of Kasargod taluk, and 12000 families in

Fuller points out that a crucial aspect of the process was that it was the poorest ***taravads*** that split up first considerably worsening the economic condition of its members. He concludes that partition did not turn out to be the panacea that the ***Nairs*** sought, instead it only worsened their condition.[11]

7.2 Towards Engendering 'Progressive' Legislation in Kerala

7.2.1 Personal law

The initial exemption of ***marumakkatayam*** and ***aliyasantana*** laws from the purview of the Hindu code Bills which became law in 1956, was removed by the select committee which saw the exemption as a barrier to a uniform code.[12] Instead, as a concession, the Hindu Succession Act, 1956 decreed an order of heirs, that was slightly different from the list of heirs provided in the Madras Marumakkatayam Act, 1933. As class I and II of heirs of a male from the matrilineal castes dying intestate were held to be the same as for other Hindus, heirs in the patrilineal tradition were better represented. Specifically, the children and widow of a predeceased son of a predeceased son figure among Class I heirs to the exclusion of the children of a predeceased daughter of a predeceased daughter. This was contrary to the custom that even property received by the wife or children from the father or husband used to devolve in the matrilineal line. Further in the absence of Class I and II heirs, property was to devolve to agnates (relatives of the male) and cognates (those related through females) without distinction or preference which amounted to removing the existing preference for cognates over agnates among the matrilineal castes. The right by survivorship, or birth right of members to ***taravads*** estate was replaced by right by succession in the only systems where women had a right by birth to

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Taliparamaba. Kurup (1988: 143).

[11]The Cochin Census report stated that the Cochin Nayar Regulation, 1920, left "many who were theoretically in affluent circumstances as members of well-to-do families, and who would never have become destitute but for the partition of their family properties", on the verge of poverty and destitution. Fuller (1976: 137).

[12]Lok Sabha Debates, Vol. IV, part II, no. 53, 30 April 1956.

the coparcenary.[13]

The Kerala legislature carried forward the process of eliminating matriliny in two steps. In 1957, it amended the Madras Marumakkatayam Act, 1933 to give every member the right to seek partition of the joint family -- a right hitherto limited to ***tavazhis*** in Malabar, though available already to matrilineal castes in Travancore and Cochin. In 1975 it passed the Kerala Joint Family System (Abolition) Act, (Act 30 of 1976) which did away with the joint estate, replacing joint tenancies by "tenancies in common" as if partition had taken place among all members on a per capita basis. It was applicable to the ***Nambudiris*** and the ***marumakkatayam*** castes and among the latter it did away with the edge that women had over men in relation to inheritance of ***taravad*** property.[14] Before Act 30 of 1976 repealed them, there were 10 State Acts governing various ***marumakkatayam***

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[13]Kishwar (1994) raises the issue of the lack of protest from women of Malabar to these changes. Representative from Malabar or familiar with Malabar in fact expressed themselves in favour of the Bill, with some qualifications. See for instance Report of the Hindu Law Committee Vol II (1956: 360). In this context it may be useful to recall the continuing legacy of reform movements in Malabar that sought to eliminate the ***taravad***, and the association by left intellectuals and in the communist movement of ***marumakkatayam*** with the ***janmi*** system. In the decades immediately preceding and succeeding independence, ***marumakkatayam,*** did not necessarily carry a progressive ring. For analysis of ***marumakkatayam*** as complicit in feudal property relations Namboodiripad (1952, 1968). Such work drew upon the theory of Kerala's first 'modern' historian Elamkulam Kunjan Pillai (1970) that ***marumakkatayam*** was introduced among the lower castes by in-migrating ***Nambudiris*** in the pursuit of social and economic supremacy.

Saradamoni (1996) and Velayudhan (1994) show that women did take part in the debate on ***marumakkatayam*** and change. Their writing in ***Sarada, Lakshmi Bai and Mahila,*** women's journals published from Travancore in the early twentieth century, reflect some radical questioning of prevalent 'Hindu' ideals of womanhood, it was a growing influence, alongside the growing influence of these ideals.

[14]For a brief discussion of how the Act was not progressive in relation to women see Saradamoni (1983: 74). Among the ***Nambudiris*** an amendment of the Madras ***Nambudiri*** Act, 1932 in 1957 had given women equal rights with their husbands to the property of their marital ***illams***, and a restricted share comprising ***stridhan*** from their natal ***illam***.

castes in different regions.[15] Citing the Constitutional aim for a uniform civil code, the Kerala Law Commission in its first report in 1966 recommended speedy attention to the need for a uniform law for all persons following ***marumakkatayam*** in Kerala regarding i) the right to obtain dissolution of marriages, and ii) ***taravad*** and its management; these being the only provisions of state enactments that had not been superseded by the Central enactment of 1956.[16]

The Kerala law commission observed that the provision in most legislations within the State for divorce on unilateral grounds was "seen as opposed to public policy and does not appear to be in consonance with ordinary notions of decency and morals".[17] As in the debate in the Assembly on the Hindu Marriage Kerala (Amendment) Bill, 1973 it was assumed that the absence of constraint on divorce endangered marriage, and reflected the 'backward' state of marriage law in the state.[18] This, despite arguments by those in favour of free divorce that the provision had not been misused by the community.[19]

Matrilineal devolution of ***taravad*** property, retained in the

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[15]The Kerala Joint Family System (Abolition) Act, 1975, repealed 12 enactments including the Kerala Nambudiri Act and the Cochin Makkatayam Thiyya Act, XVII of 1115. Government of Kerala (1977: 203).

[16]Government of Kerala (1972: 1-3).

[17]Ibid (11). The commission felt that it was obviously unreasonable that one party to a marriage could decide to break the tie and further that it was inconsistent with the right of restitution of conjugal rights granted to all Hindus under the Hindu Marriage Act, 1956. The latter provision was used to force women to remain in an unwelcome marriage. Sarkar (1994), Uberoi (1996b: 188).

[18]Proceedings of the Kerala Legislative Assembly, Vol 39, 13th session, July 30 - August 1, 1975.

[19]Government of Kerala (1972: 10)., The 1976 amendment of the Hindu Marriage Act to include provision for divorce on the basis of irretrievable breakdown of marriage and mutual consent did away with the need for the Kerala amendment. Derrett (1978), a harsh critic of modern Hindu law from the stand point its classical version (what he refers to as the law of the ***rishis***) maintains that with the amendments of 1964 and 1976 of the Hindu Marriage Act there was nothing specifically 'Hindu' left in the Hindu marriage law.

Mappilla Marumakkatayam Act, 1937, was replaced with the provisions of the ***shariat*** under the Mappilla Marumakkatayam (Amendment) Act, 1963 which also substituted the word 'Muslim' for ***Mappilla***. This brought to an end the privileges enjoyed by ***Mappilla*** women regarding inheritance under ***marumakkatayam.***[20]

7.2.2 Land Legislations

Successive amendments to the Malabar Tenancy Act, 1930 in 1951 and 1954 which were based upon the demands of peasant organizations shaped in association with the Communist party had strengthened the position of the small tenant and cultivator, endowing her / him with fixity of tenure.[21] The land reforms enactment of the Government of Kerala, after a decade of disruption and successive alterations, took shape, eventually, in the Kerala Land Reforms Amendment Act, 1969.[22] It effectively abolished tenancy ***i.e.,*** tenants were given the right to purchase ownership rights over leased-out land, which was vested in the government from the beginning of 1970; cultivators were given the ownership rights over their homestead sites; and a ceiling of 10 standard acres, ***i.e.,*** 10 acres of double crop paddy land (12 -15 acres) was fixed for a family of five which included a cultivator, his or her spouse, and unmarried minor children. In addition to this every adult member, male or female, was allowed to hold seven acres of land.[23] Resumption of land by small owners was made very difficult and the tenants interests were favoured. Significantly, unmarried adult daughters were recognized as separate units.

Despite the progressive thrust of these provisions, the

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[20]For a discussion on women's rights to inheritance under Islamic law see Chapter 1 (22).

[21]Shea (1959), Varghese (1970), Radhakrishnan (1989).

[22]An amendment of the Kerala Land Reforms Act, 1964, it was however a comprehensive legislation that restored many of the provisions of the Kerala Agrarian Relations Bill, 1957 of the first Communist government. Radhakrishnan (1989: 149)., Raj and Tharakan (1983: 43-53).

[23]Radhakrishnan (1989: 153)., Raj and Tharakan (50-53) show that the enactment bore the marks of resistence by the powerful commercial lobby in Travancore, which ensured the exemption of rubber, coffee and tea from the ceiling limit.

legislation which was shaped to address class concerns displays no awareness of the need to mediate gender-specific constraints. These constraints were evident in representations made to the government by women land owners who attempted to argue the case of small land-holding women, particularly widows with dependent children, who were entirely dependent for survival on the rent they received from tenants. One woman wrote to say that she had five and a half acres of paddy land and six acres of garden and a family of 11 members, who were dependent upon the rent received from tenants.[24] She described the difficulties faced in getting rent from tenants, who were powerful vis-a-vis small and vulnerable land owners. She emphasized that if the land reform proposals were implemented, small land owners like herself would be doomed. The representation brought to the fore the vulnerability of women in the context of land reforms; especially the difficulties faced in self-cultivating and the absence of other livelihood options.[25] In three Brahmin villages in Palghat district studied by Saradamoni more than one fourth of those who lost land in the reforms were widows.[26]

The household, delineated as the nuclear family, formed the unit of reforms. The assumption was that the household was a gender-neutral space. This was belied in a representation from a woman who underlined the possibility of conflict in a family and sought guidelines on how ceiling-surplus land was to be surrendered when both husband and wife had land. She suggested that the spouse who was without other means of livelihood, such as from employment, should be permitted to retain land.[27] These issues, however, were not addressed by the government.

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[24]Representation no. 25, K. Bhargavi Amma. Government of Kerala (1960: 10).

[25]For similar representations that bring out the particular vulnerability of women land owners, often widows with dependent children see representations no. 53, P. Narayani Kutti Amma, no. 341, K.M. Kalyani Kutti Ammal, no. 504, C.M. Madhavi Amma. Ibid (27, 33,).

[26](1983: 94).

[27]In representation no. 558, P. Kamala Bai., Government of Kerala (19 :92-93).

Saradamoni, in her study of Palghat district, points out that much of the land that was lost due to absentee landlordism and as ceiling surplus was that of women.[28]

An interesting factor that emerges however is the considerable involvement of women in agricultural activities including supervison, employment and payment of labour and in field work, though the degree of involvement varied according to caste, former status as well as extent of land owned and cultivated.[29]

A word about matriliny and women in Kerala in the post-independence, post-reform period seems mandatory even if it would only add to the contradictions apparent about women in Kerala society. Kerala's female-favourable sex ration at 104 females for every 100 males and its high female literacy rate have been associated with ***marumakkatayam.*** Its record on the education front has also been seen as an enduring legacy of the social reform movements during the early twentieth century. Yet, the twentieth century has witnessed a thorough transformation of ***marumakkatayam*** and the eventual abolition of the ***taravad*** as family. Anthropological work in the post-independence period suggestsevolving trends among castes that followed ***marumakkatayam***. On inheritance no general picture can be charted though in south Malabar where Gough did her field work in the early 1950s she found that ***taravad*** houses were inherited matrilineally but other property was inherited by daughters and sons.[30] In Fuller's study village in central Travancore, a distinction continued to be made between i) ***taravad*** land inherited matrilineally alienation of which required the consent of all adult matrilineal descendents of the person holding it and ii) separate land which was freely

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[28](1983: 118).

[29]Saradamoni (1983: 90-113) shows that in her sample of 40 former tenant households and 34 old land owning households from accross Palghat district, 80 per cent of women from former tenant households engaged labourers and 77.5 per cent supervized cultivation as against 17 per cent and 11.7 per cent of land owning women., See also Mencher and D'Amico (1986: 260).

[30](1952).

alienable.[31] Agarwal writes that recent research in central Travancore has shown that women continue to inherit a house but are less likely to receive agricultural land.[32] Other factors such as the growing adoption of dowry could suggest a decline of women's inheritance rights.[33] Puthenkulam's study suggests that cross-cousin marriages are held in comparitive disfavour -- 71 per cent of 403 samples, and that there is a preference for marriages at greater distances.[34]

Though residence patterns given by Puthenkulam suggest a substantial shift towards virilocality (70% of his sample of 403 households), when a husband died, 94 per cent of wives in north Malabar and 90 per cent in central Malabar returned home while 52 per cent in south Malabar stayed on in the husband's house.[35] Mencher indicates the tendency displayed after partition by segments of ***taravads*** to maintain close matrilineal ties by opting to live in proximity with each other.[36]

7.3 Legislative Intervention, Property Rights and Gender Justice

The elimination of discrimination on the basis of gender particularly in relation to inheritance was high on the agenda of the Hindu code bills which in 1956 took the shape of four enactments addressing marriage, guardianship, maintenance and succession. In the teeth of blatant patriarchal opposition these

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[31] (1976)., ***Tarawad*** is used here not in the sense of the old impartible family, but in a usage that it retains -- a matrilineage of a mother, her children and grandchildren for instance where the mother retains possession over property inherited matrilineally -- such as from her mother.

[32] (1994: 177)

[33] Ibid. Puthenkulam (1977: 104) writes that dowry has become common in Trivandrum and Palghat districts where it was a custom among the considerable Christian and Tamil Brahmin groups. His sample survey shows a fairly even presence of dowry for north (32.7%), central (29.8%) and south (24%).

[34] (1977: 94). Mencher (1962: 241) found that cross-cousin marriages were preferred as they could be used to reunify property and 34 per cent of marriages in villages studied by Kala (1982: 311) were between cross cousins.

[35] (1977: 107-109).

[36] (1962: 243).

enactments achieved far less than were set out in them initially, even suggesting deleterious implications for women. The provisions conferring rights to property upon women were attenuated by two povisions --i) the retention of the mitakshara coparcenary and ii) testamentary power over ancestral property.[37] Under the Act, in the case of a Hindu male dying intestate, his self-acquired property descended in equal shares to his sons, daughters, mother and widow. In case there were predeceased sons or daughters, the widow and children of predeceased sons and children of predeceased daughters were to share the rights of such sons or daughters. Further the wife and children of a predeceased son of a predeceased son was entitled to inherit the share of the deceased in question. In the absence of class I heirs (the above) his property would devolve upon class II heirs prescribed in the Act.

Self-acquired and ancestral property were to devolve similarly for those who followed the dayabhaga and the matrilineal systems. For people following the mitakshara, however, only male members had rights by birth in the mitakshara coparcenary. Hence though sons and daughters had equal rights to succeed to the share of their father in the coparcenary, arrived at by notional partition on the day a member died, the son's share was in addition to his survivorship right.[38] A daughter, on the other hand, got only an equal share with her mother, brothers, sisters and other recognized heirs of her father's share.

In the case of a Hindu woman dying intestate, all her property in the first instance would devolve equally upon her sons, daughters, children of predeceased children and husband. In the absence of children or grandchildren, her husband's heirs took

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[37]Significantly the initial proposal was for the retention of the dayabhaga pattern which provided succession and not survivorship rights to men. This met with virulent opposition and was replaced during the debate with the mitakshara coparcenary and with it the birth right of males to ancestral property. For a detailed discussion of male opposition to gender-egalitarian measures in the Hindu code bills see Kishwar (1994).

[38]In recent years Karnataka, Andhra Pradesh and Maharashtra have remedied this by legislations that recognise women as coparceners.

precedence over her parents in inheriting her property.[39] However if property was inherited from her parents, in the absence of children and grandchildren it was to go to her father's heirs.

A limiting clause regarding agricultural land is a crucial barrier to women's inheritance rights to land. The Government of India Act, 1935 had vested all legislative powers related to agricultural land in the provincial legislatures. Hence women's rights to inheritance of agricultural land depended upon the land laws of the province in which the land was located. Tenancy rights in agricultural land were exempted from the purview of the Hindu Succession Act, 1956, and States wishing to alter provisions regarding owned agricultural land needed to get the President's consent. As Agarwal points out, this meant that women's legal rights to agricultural land still showed a wide disparity by region with regard to devolution of land deemed to be under tenancy and regarding the fixation of ceilings and the forfeiture of surplus land above the ceiling limit.[40]

Further, except among those governed by *aliyasantana* or *marumakkatayam* law, female heirs could not demand partition of a house belonging to a Hindu man or woman dying intestate. They could only claim a share when male heirs decided to divide it. Also married daughers did not have a right to live in the house unless separated, deserted or widowed.[41] If after this maze of attenuating clauses and social barriers against women inheriting property women did receive a share then under the Act they were to have an absolute right to such property and full testamentary powers over it. The provision of full testamentary powers, however, had the potential to deprive women of even the limited rights they had enjoyed under earlier systems for fathers and husbands could use their new right to will away ancestral property

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[39]A daughter-in-law or widow of predeceased son does not figure among the heirs. In a recent reversal on appeal of a Madras High Court decision a Supreme Court Bench upheld the right of a widow of a predeceased son to inherit her mother-in-laws property in the absence of class I heirs. Mitra (1998).

[40](1994: 216).

[41]Kishwar (1990: 8), Agarwal (1988: 539).

to sons or agnates.[42]

7.3.1 Gap between law and practice

Significantly, Agarwal notes that women in traditionally patrilineal communities in south Asia rarely realise the rights provided under contemporary laws and differences persist along the lines of inheritance as daughters, widows and in other capacities.[43] Reviewing micro-studies on northern south Asia she gives evidence that only a small proportion of daughters eligible to inherit land actually do so and most relate to sonless families. The suggestion that dowry constitutes pre-mortem inheritance is justifiably discounted on the grounds that the distinction between dowry in movables and inheritance rights to immovable property was well recognized.[44] Land and other immovable were included in dowry usually only in the southern Indian states. Chen's survey on widows in seven states makes apparent a wide north-south contrast with only 6 per cent of women in the northern states as against 14 per cent in the southern states inheriting land.[45] Out of 3630 written lease agreements studied by Atchi Reddy in Andhra Pradesh in 1985, 12. 5 % of the lessors were women, though there was considerable regional variation.[46] Only in 10 per cent of Marty Chen's survey of 545 Hindu households with widows in seven states, did widows inherit as daughters. Patrilineal inheritance meant that after losing their husband's,

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[42]Kishwar (1994) points out that testamentary power was introduced at the very last stages of debate in Parliament on the Bill and was clearly a measure to assuage patriarchal fears of daughters inheriting. For discussion of the loopholes in the enactment and ways in which women could be excluded from the rights to property accruing to them from the enactment see also Agarwal (1988, 1994).

[43]Agarwal (1994: 247).

[44]Ibid (250-252). In this section except where otherwise mentioned, we have drawn upon Agarwal's review.

Jayoti Gupta (1993) shows that after Operation Barga land has come to form an important constituent of dowry given by small and marginal land-holding families in Midnapur in West Bengal though this has had no positive impact on women.

[45]Agarwal 252).

[46](1995: 3).

women had little freedom to return to their natal homes and 85 % of a sample of 262 widows in eight north Indian villages remained in their husband's village, whether or not he possessed land.[47] Only six per cent of the widows in the sample had received some inheritance rights in their parental village and of the 15 widows who comprised the six per cent, 11 were in West Bengal.[48] Aside of direct inheritance rights, unmarried daughters among tribal groups like the Ho or Santal had usufruct to parental land, which they lost upon marriage.[49]

Based on available information, Agarwal suggests that though widows' claims to the property of their husbands seem to enjoy greater social sanction, even they continue to face barriers against inheriting property. When they do inherit land it is in a severly restricted form -- far from the absolute estate they are entitled to under contemporary law. However, important regional variations have been noted. Jean Dreze indicated as much from a study of a village each in three states. In a village in West Bengal he found that in 37 per cent of households with widows land was owned or seen as belonging to the widow.[50] In contrast, in the villages in Gujarat and Uttar Pradesh, there were virtually no cases of land in widows' names when adult sons too were part of the household.

7.3.2 Barriers against women claiming and cultivating land

The organization of marriage (including post-marital residence and choice of marriage partners, and related to it sexual control over women) in many ways explains the gap between women's legal rights to property and their disinheritace in practice in conventionally patrilineal communities. It also provides indicators of the erosion of women's rights in

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[47]Chen and Dreze (1995: 258).

[48]Ibid, (260).

[49]For a discussion of the increasingly constrained land rights of women among the Ho tribe in Singhbhum, Bihar, see Kishwar (1987).

[50]Out of 19 households with widows, in five land was in the widow's name and in two it continued to be in the deceased husband's name but was seen as belonging to the widow. Dreze (1990).

conventionally matrilineal communities. In north India strict village exogamy and proscription of cross-cousin marriages prevail. In the north west, moreover, the preference is for distant marriage alliances leaving in-marrying women vulnerable. In sharp contrast, in the south and the north east, marriages alliances close to the natal home are preferred. Here women not only have kin support but also some claim to the natal family's immovable property. However, among Muslim groups in the north village endogamy, cross-cousin and even parallel-cousin marriages are practiced. How these factors figure as mechanisms for the sexual control of women is significant in the light of our discussion of the transformation of practices among the matrilineal castes of Malabar. Agarwal shows that particular forms of organization of marriage (patrilocality, village exogamy and long distance marriage) lend themselves to greater sexual control over women. Further these patterns are more widely prevalent among upper and more propertied castes / classes, and are seen as modes of upward mobility.

As Kishwar points out, the reasons given for disinheriting women now are the same as they were more than 50 years ago when the Hindu Succession Bill was first mooted: that giving women land would lead to excessive fragmentation, destroy good relations between brothers and sisters, cause inconvenience in the light of patrilocal post-marital residence, and that dowry comprises a woman's inheritance.[51] However, the indications are that women do forgo their rights in favour of male kin. As Agarwal points out, where women do not surrender their rights 'voluntarily', they could be forced to do so.[52] 'Voluntary' surrender by women is commonly seen as a way of maintaining natal kin affection hence ensuring one form of security.[53] Such relinquishment is often the result of pressures brought upon the women, who are made to fear the loss of natal ties. When despite pressure women file claims for their share of property, various measures including forging of

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[51]Kishwar (1990: 3).

[52](1988: 559).

[53]Sharma (1980: 57).

wills or appeals to revenue authorities that women are absentee landlords as they live outside the village etc. are resorted to in order to disentitle women. Official attitudes often assist male kin in disentitling women by advicing women against staking their claims.[54]

The need for male mediation, in the context of a gender ideology that privileges female seclusion, works as a barrier against women claiming and cultivating land. Taboos against women ploughing are part of a gender ideology that restricts women's access to agricultural techniques. Moreover, credit and technology packages often go with title to or control over landland. As Sharma has pointed out the very clear division of territory or space into male and female and women's visibile discomfort in certain 'public' spaces such as the market, calls for male mediation of such territory.[55]

7.4 Property Rights, Self-Interest and Gender Justice: A Critical Response

A fundamental issue that arises in the context of both academic debates and activist struggles to achieve egalitarian systems of property is the conceptualization of women's claims. For instance, in her recent contributions in favour of land rights for women, Agarwal presents empirical accounts of the conditions of land ownership and control. These also provide useful insights into the legal dimension of land rights for women. Apart from which she provides a useful account of the legal position of men and women ***viv-a-vis*** property. Her emphasis on the barriers women face in realising ownership is instructive.[56] The severity of the constraints women face in controlling and managing land she writes, correctly, cannot justify depriving them of their claims.[57] But how are we to envisage women's claims? Significantly, Agarwal's awareness of the complexity of the question of

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[54]Agarwal (1988: 559-560).

[55](1980).

[56](1994, 1997, 1998).

[57]Ibid (1994: 314).

conceptualization does not disturb her formulation, overarchingly deployed, of independent land rights for women.[58] She conceives of independent land rights as that which is formally untied to male ownership or control. This excludes joint titles with men and by ***effective*** rights she means, rights not just in law but in practice. Her engagement with women's claims is disturbing as it is centered on a notion of self-interest even while leaving the notion unexamined. In its deployment, however, her notion of self-interest is remarkably akin to the autonomous construction of the 'individual' in liberal political and economic theory.

Agarwal examines two kinds of analysis which deal with women's consciousness of their rights and resistance against oppression. One, James Scott's evidence that even under very harsh conditions the oppressed resist.[59] Two, Amartya Sen's contention that women lack a clear perception of their self-interest, which leads him to formulate the notion of perceived self-interest.[60] Agarwal on the other hand, suggests that women are aware of their self-interest, but they do not find themselves in circumstances where they can actualize them.

Scott shows that resistance among relatively powerless groups usually take on forms that stop short of confrontation but are capable of penetrating, manipulating and subverting elements of the dominant ideology.[61] It has been pointed out, however, that despite the rich ethnography that reveals differences between men and women in the organization of labour and in the resistance offered by them, Scott does not 'gender' his analysis, focussing, entirely on class oppression.[62]

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[58]Ibid (19-24). In a recent article, she explores new institutional arrangements for control and management of land by women unmediated by but also exclusive of men. (1998).

[59]Scott (1985).

[60]A. Sen (1987).

[61](1985: 25).

[62]Hart (1991: 94, 104) pursues the greater defiance displayed by women towards employers and their greater capacity for collective mobilization, revealed by Scott to suggest a link with their exclusion from economic and political power at the local level, unlike their men. Being so they had fewer stakes than their men.

Sen argues that the role of perceptions in distorting peoples assessment of personal welfare, does not negate the viability of the idea of personal welfare. On the other hand, perceptions are not immutable nor very resistant to social development. Politicization and economic change, particularly women's involvement in 'gainful employment', are seen as important agents in fuelling change.[63] However, the lack of perception of personal interest, which has objective aspects, combined with a great concern for family welfare helps sustain traditional inequalities.[64] Hence while a notion wider than self-interest is seen as susceptible to 'traditional inequalities', there is no effort to examine the complicity of self-interest in sustaining specifically 'modern inequalities', arising precisely from the partisan nature of self-interest. Folbre points to a paradoxical aspect of modernization, in that the same aspects of development that increase women's economic independence as individuals, increase their economic vulnerability as mothers, leading women's groups to assess, correctly, that they have more to lose from male-dominated modernization than from male-dominated tradition.[65]

While in Sen's analysis women have to be made aware of their self-interest, Agarwal's woman is already self-interested.

> The appearance of compliance need not mean that women lack a correct perception of their best interests; rather it can reflect a survival strategy stemming from the constraints on their ability to act overtly in pursuit of those interests.[66]

This suggests that women are 'subject to' and aware of a set of objective and autonomously given best interests, the pursuit of which, rather than any wider notion of interest, is crucial to empowerment. This argument is akin to the current focus in WID on women as efficient actors, which underscores women's greater

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[63]Sen (1987: 7).

[64]Ibid

[65](1995: 139). She discerns from the experience of industrial countries that the weakening of patriarchal relations within the family is often accompanied by a weakening of intra-family income flows and growth in poverty among mothers and children living on their own. (1994, 1995: 131).

[66]Agarwal (1994: 430).

exploitation in the process of development, without consonant attention to the redistribution of responsibility in the family.

Failure to interrogate comprehensively the transition from customary practices to contemporary laws as involving a move from one conception of property to another (***i.e.***, from a form of property embedded in 'community' to a notion of individual rights) allows one to overlook the complicity of a particular kind of claim to property in generating or reproducing forms of subjection. Significantly, Agarwal points out that the influence of a development model centered around productivity and individual private property on state policies have led to the erosion of those communal and social institutions that they should have strengthened.[67] Among the Garos, a matrilineal tribe in the north-east, she finds that the erosion of communal structures have had negative implications for women. Agarwal's insight that the future face of the peasant is female[68] should then serve both as a warning against a development policy that feminises poverty and as a call for policy attention. As Indu Agnihotri writes, it is not enough to point to the residue of development (such as the high incidence of female headed households) to argue that women should be given land. "The question is what goes into the making of macro-policies, which lay the ground for trends reflected in these statistics."[69]

The notion of individual rights informed by self-interest needs a far more critical engagement for at least two sets of reasons: i) in the light of its easy complicity in serving the interests of men as a gender, and ii) in the context of the simultaneity of multiple identities. While we have attempted to illustrate the first point in our engagement with the social reform discourse in Malabar among the matrilineal castes, it is also evident in our discussion of the process of enactment of the Hindu code bills.

Women's alignment along group interests based on class, caste

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[67]Ibid (168).

[68](1998).

[69](1996: 527-528).

or religion may well constitute a legitimate expression of their interests. For instance ***Tiya*** women or ***Nair*** women identifying with ***Tiya*** or ***Nair*** men during the struggle to reform matriliny, rather than organizing as women for the preservation of its beneficial aspects could constitute legitimate expressions of their caste interests. Also, important here would have been the intersection of the class identity of the ***Nairs*** as ***janmis*** and ***Tiyas*** as tenants. In this context a possible alignment of ***Nair*** and ***Tiya*** women to preserve their privileges arising from matriliny could have meant endorsing the superior rights of ***Nair*** women as ***janmis***. This could also have detracted from the strength of tenancy groups to attain a more egalitarian distribution of land among different castes and classes of landed interests. While this is not to deny the legitimacy of and the urgent need for gender-based organization within or outside these social groups, it could help to recognize in analysis the greater complexity of collective struggles.

The question posed by the rights of dalit and landless women to the dominant framework which identifies, ***primarily***, the patriarchal underpinnings of control of land and property remain.[70] However, Agarwal moves swiftly to "areas of mutual benefit which could yet motivate action by women across class / caste lines". She cites legal reform as one such area, where women stand to gain from "more gender-egalitarian personal laws" governing the inheritance of landed property. However, she assumes that owing to its agitational character directed against the government, class / caste differences of women are less likely to be ***barriers.***[71] The reference to class / caste identities as barriers rather than interactive dimensions of identity reflect an easy disengagement with them, while undermining the severality of women's gender identity.[72]

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[70]Agnihotri (1996: 527).

[71]Ibid (1994)., Elsewhere, she sees them as divisive of gender mobilization though easier to overcome than class differences between men. (1998: A2).

[72]Ibid (491, 492)., Significant, in the context of the contentious focus on religious communities in the debate on the need for a uniform civil code, is the ommission of women's religious idenitity. Agarwal's position ties up with Sangari's argument in

The Bodhgaya land struggle, the first of its kind, where women raised the demand for separate titles is instructive precisely because of the cracks on the surface of unity in mobilization on the basis of gender on the question of who (men, women or both) should be given land and also who among women should be given land (daughter or daughters-in-law).[73] The caste composition of agricultural labourers and small peasants involved in the struggle was a significant factor. Crucially, it is an instance in which women's land rights were part of the struggle and despite opposition some women did receive land in their names. It also led to vital debate on women's issues.

Women's responses during discussions with activists on the question of inheritance rights is instructive. Women who received land said they would give it to their daughters-in-law and not to their daughters.[74] They argued that their daughters would marry and move out into other villages and the family of the husband would control the land. However, many women came out in favour of

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favour of a uniform civil code in their efforts to move away from multiple identities. Sangari maintains that as patriarchies cannot be fought from within communities by an identitarian politics, women's rights cannot be actualized within religious communities, but needs to be worked out within the framework of the state. Sangari (1995). For a critical response to Sangari's position on the grounds that her analysis of religious communities and gender justice is shaped by her denial of the force critical questioning of the state and the legal system, see Pappu (1997). It has been argued against the recent tendency to make haste with the process of enacting a uniform civil code that lack of serious engagement with issues of caste and religious community that are so current, could lapse into an endorsement of existing class / caste hierarchies and communal targeting of the Muslims. It would be meaningless even retrogressive in this context to simply reiterate "the demand for 'gender justice', as though the stakes for all Indian women were the same". Anveshi Law Committee (1997)., See also Agnes (1995) and Kishwar (1986).

[73]The land struggle was launched in 1978 by agricultural labourers and small peasants with the help of the Chhatra Yuva Sangarsh Vahini (Vahini) against the oppressive practices of the Bodhgaya Math, which controlled large tracts of agricultural land in Gaya district. See Kelkar and Gala (1990), Manimala (1984), Alaka and Chetna (1987), Agarwal (1994).

[74]Manimala (1984: 175).

matrilocal marriages.[75] In the face of conflicting claims and resistance to women's land rights during the Bodhgaya struggle on the grounds of existing social practices such as marriage, Manimala suggests that

> Perhaps the only way to resolve the dilemma is that land should not belong to individuals but should be the collective property of all the villagers who toil on it. In practice however no systematic attempt was made to collectivise the land.[76]

While this is not to make a case against separate rights, it is necessary to lay bare the costs (in terms of gender / class / caste interests) of the processes that engender them. There is also the need to explore alternative claims, whose viability is not premised entirely upon the self-interested agent of the rational actor model. As Cecile Jackson points out the application of gender analysis involves seeing women in relation to men, the disaggregation of the category of women, and an understanding of gender roles (and we may add conceptions of interests) as socially and historically determined.[77]

Our analysis of the role of class and caste struggles in late colonial Malabar in the production of specific imperatives (rights of intermediary ***kanakkar*** / nuclear family, patrilineal inheritance) and in the redefinition of family and property structures reveal the mediation of gender by caste and class. Indeed caste identity, and to an extent class identity (in the ***kanakkar*** anxiety regarding ***sambandham***), were premised upon a particular construction of women. The reform of the family and property structures of the matrilineal social groups in Malabar were undertaken in the twin interests of 'enterprise' and 'morality'. Women were critical bearers of a caste/class/ religious identity, which in the absence of their participation in struggles had serious implications for them. Similarly, the growing tendency to mark women as ***efficient*** producers in a global capitalist economy could refract dangerously for them.

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[75]Kelkar and Gala (1990: 107).

[76]Manimala (1984: 174).

[77](1993).

Definitions of Ethnographic Terms

Brideprice: Payment (or property) made by the bridegroom's family to the bride's at the time of marriage.

Cross cousin: Children of a brother and a sister, respectively.

Parallel cousin: Children of two sister or two brothers respectively.

Double unilineal: Where descent is traced through both the mother and the father, though inheritance may be from only one.

Dowry : Payment (or property) made by the bride's family to the girl, her bridegroom or her bridegroom's family at the time of marriage.

Hypergamy: In accordance with which a girl may marry a man of her own or higher caste but not a man of a lower caste

Matrikin: Kin on the matrilineal side.

Post-marital Residence:

Duolocal : Where the wife resides with her kin and the husband with his. The husband usually visits the wife.

Matrilocal Where the husband lives in the wife's matrilineal home.

Neolocal : Where husband and wife reside together but apart from their respective kin.

Uxorilocal: Usually used to describe matrilocal marriages. However, we have used it to describe a situation where a wife resides in her matrilineal home and the husband visits her there.

Virilocal: Usually patrilocal. We have used it to describe a situation where the wife shifts to the matrilineal home of her husband for the period of marriage.

GLOSSARY

achanmar: elders

acharam: custom, formalities

adalat: judicial court

adhikari: village head and revenue officer

aliyasantana: matriliny in South Canara

ammayiamma, ammayiammamar (pl): wife of the karanavan

amsam: smallest revenue division, customary village

anandiravan: junior members of the taravad

anacharam: 'irregular' customs

annuperumartham: at current value

Antarjanam: women of the Nambudiri caste

arat: 'Hindu' religious procession

attiper: sale of janmam right over land

avarna: outside the varna (the four-fold caste system)

avakasam: customary concept of right / obligation

Brahmini pattu: songs rendered by a woman of the Nambisan caste (a lower Nambudiri caste) at the tali-kettu kalyanam of the Nairs.

cherikallu: land cultivated directly by janmi taravads

desam: customary territory wider than amsam but smaller than nadu

duracharam: reprehensible customs

fanam: coin used as money in pre-colonial Malabar

gurudakshina: payment to a teacher in the conventional tradition

illam: Nambudiri joint family, residence

janmam (jenm): hereditary superior interest in land

janmi: One who holds a janmam right in land

janmi-kudiyan sampradayam: customary land relations

kaliattam: teyyam festival

kanam: intermediary or cultivating, usually long-term land tenure (south Malabar), mortgage with possession (north Malabar)

kanakkar (pl), kanakkaran (sl), kanomdar: holder of kanam tenure

kanapanam: brideprice paid among the Tiyas

kanista: younger brothers among Nambudiris

kanyadanam: gift of a girl at her marriage to her husband's family

karanavan, karanavanmar (pl): maternal uncle, head of a

matrilineal family

kattu stanam: women's claim to property from their deceased husbands' taravads

kovilagam: royal family/residence

kavu: shrines controlled by Nairs and lower castes

kshetram: temples controlled by Nambudiris

kudiyan: tenant

kudiyayma: tenancy

kumris: waste land used for shifting cultivation

makkatayam: patriliny

kuzhikanam: an improvement tenure usually on garden land

kuzhikanakkaran, kuzhikanakkar (pl): kuzhikanam tenant

mangalam: customary marriage among Tiyas

marumakkatayam: matriliny

melcharth/melkanam: overlease

mudal sambandham: community of property

Mukkuvan: caste of fishermen

munsif: subordinate judge

nadu: a customary territorial unit

naduvazhi: chieftain of a nadu

nathunmar: brother's wife

nattukaranavanmar: caste elders

panayam: loan

paramba: garden land

pattadar: holder of land deed

pattam: rent

pula sambandham: community of pollution

puli kudi: pregnancy ritual

punam: shifting cultivation

punja: double crop rice land

sabha: assembly

sambandham, podamuri: customary marriage among Nairs

sampradayam (maryadai, acharam): custom

savarna: castes within the four-fold varna category comprising Brahmins, Ksatriyas, Vaisyas and Sudras

smarthavicharam: trial of antarjanams charged with adultery

stani: holder of a stanum

stanum: a special status, including title and / or property
striswothu: women's property
tali: leaf shaped pendant
tali-kettu kalyanam: customary rite of passage for Nair and Tiya girls
taluk: sub division of a district
tavazhi: branch of a taravad
taravad: matrilineal joint family / residence / kin group
tehsildar: revenue official in charge of a taluk
teyyam (daivam): a ritual dance "of the gods"
tirandukuli: ritual marking the onset of puberty
tottam (sthotram): teyyam literature
utsavam: festival
vanian: oil monger
vannati: women of the vannan caste who washed clothes
vannatimattu: fresh clothes supplied by the vannati
veli: marriage among the Nambudiris
verumpattam, verumkozhu: tenant at will
verumpattakkaran, verumpattakar (pl): verumpattam tenant
yejamanan (ejaman): karanavan under aliyasantana, also land lord in north Malabar

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