

THE  
LAWS AND CUSTOMS  
OF THE  
TAMILS OF CEYLON

by

H. W. TAMBIAH, B.Sc., LL.B. (LOND).  
ADVOCATE OF THE SUPREME COURT  
OF THE ISLAND OF CEYLON

PUBLISHED BY THE

TAMIL CULTURAL SOCIETY OF CEYLON

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## FOREWORD

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I have pleasure in writing this brief foreword to Mr. Tambiah's work, "The Laws and Customs of the Tamils of Ceylon," which, in my opinion, must be regarded as a sequel to his well-known book on the "Laws and Customs of the Tamils of Jaffna."

Though there have been extant several monographs dealing with the customs and usages in particular of the various communities of Tamils inhabiting the different parts of the Island, no attempt has so far been made to present a comprehensive and complete picture of their laws and customs, enabling one to discern at a glance the interplay and inter-relationship and the origin of the various communities.

Now that Ceylon is a Dominion, a work such as this is of the utmost value not only to students of comparative history and law but also to politicians and statesmen alike. The volume has drawn upon both published treatises as well as upon unpublished and little known contributions made to the subject, and displays a range of research and industry as well as deep scholarship hitherto unknown in this field. Though apart from Thesawalamai none of the other special laws pertaining to inhabitants of other areas than the Northern Peninsula are of legal effect, yet they show the affinity of these other inhabitants with those in the Northern Peninsula and prominently focus attention on their common descent from territories in India, where the existence of laws similar to those governing all these inhabitants are yet to be found.

The reference to Kandyan Law and its intimate connection not only with parallel provisions in the Thesawalamai and the

laws that governed the other Tamil inhabitants of the Island but also with the laws and customs of the peoples of Southern India sheds a great deal of light on what has been regarded as obscure terms in the Kandyan Law and demonstrates the common springs from which they have all emanated.

I heartily commend the work to all students of comparative law and to all interested in the pursuit of accurate historical knowledge of the Tamils of Ceylon.

Sgd. C. NAGALINGAM,  
*Acting Chief Justice.*

25-3-54

## PREFACE

In this work an attempt is made to present the Laws and Customs of the Tamils of Ceylon as found in Johnstone's manuscripts and other sources.

Sir Alexander Johnstone collected the various customary laws of Ceylon and embodied them in his despatches to the Colonial office. By the courtesy of the Public Record Office photostat copies of some of the despatches which contain the collection of the Customary Laws of the Tamils of Ceylon were obtained by the University of Ceylon and the Government Archivist of Ceylon.

This work is chiefly based on the despatches of Sir Alexander Johnstone but valuable materials from other sources have been embodied.

The first chapter on the history of Ceylon is based on the materials which have not been subject to strict scrutiny by scholars. In the absence of a reliable work on the history of Ceylon it is not possible to write an accurate history of the Tamils of Ceylon. The emphasis on this chapter is to show that there were two main settlements of Tamils in Ceylon.

The leading concepts in Kandyan Law, Hindu Law, Marumakkattayam Law and Roman-Dutch Law have been discussed with reference to the Customary Laws of the Tamils.

The last chapter deals with the organisation of Tamil society. The appendices bring the law of Thesawalamai from 1950 up to date. It is hoped that this work will serve some useful purpose to the reader.

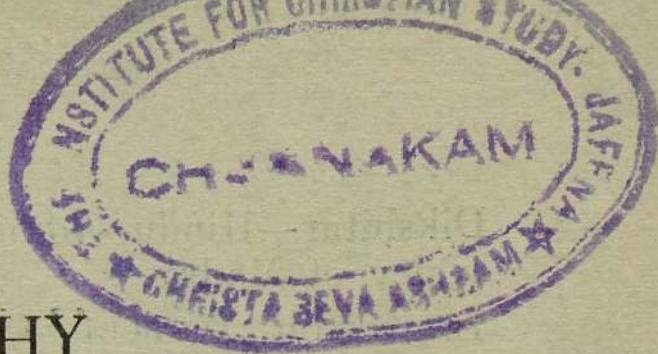
My thanks are due to Mr. John de Saram, LL.B., (Cey.) LL.M. (Yale) for typing the scripts and giving me useful hints; Mr. J. C. Thurairatnam, Advocate, for preparing the index and Mr. N. M. de Silva, Advocate, Mr. Naina Marikar, Advocate, and Mr. Canjemanathan, Advocate, who were kind enough to peruse the proofs. I also thank the Honourable Mr. Justice C. Nagalingam, q.c., Acting Chief Justice of Ceylon, for giving me a foreword.

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# CONTENTS

<i>Chapter</i>	<i>Page</i>
I HISTORY OF THE TAMILS OF CEYLON ...	1-16
II INTRODUCTION ... ..	17-21
III THE LAW OF THESAWALAMAI . ...	22-31
IV THE SEVENTY-SIX ORDERS . ...	32-35
V THE THESAWALAMAI CODE ... ..	36-55
VI THE CASTE SYSTEM AMONG THE TAMILS OF MANNAR AND JAFFNA ... ..	56-61
VII THE LAWS AND CUSTOMS OF THE VANNIARS	62-66
VIII THE LAWS AND CUSTOMS OF THE TAMILS OF TRINCOMALEE ... ..	67-69
IX THE LAWS AND CUSTOMS OF THE RESIDENTS OF COTTIAR PATTU, THANBALKAMAM AND CATTOOCULAM PATTU ... ..	70-74
X THE MUKKUWA LAW ... ..	75-78
XI MUKKUWA LAW BY BRITTO ... ..	79-88
XII THE LAWS AND CUSTOMS OF THE TAMILS OF BATTICALOA ... ..	89-92
XIII THE LAWS AND CUSTOMS OF THE TAMILS OF PUTTALAM ... ..	93-98
XIV THE CASTES AMONG THE TAMILS OF PUTTALAM ... ..	98-100
XV MARRIAGE CUSTOMS OF THE TAMILS OF PUTTALAM AND CALPENTYN ... ..	101-105

<i>Chapter</i>		<i>Page</i>
XVI	LAWS AND CUSTOMS OF THE TAMILS OF CALPTENTYN ... ..	106-108
XVII	THE CHETTIES OF COLOMBO AND PUTTALAM	109-111
XVIII	THE LAWS AND CUSTOMS OF THE CHETTIES OF COLOMBO ... ..	112-115
XIX	THE PARAWAS OF CEYLON ... ..	116-117
XX	THE LAWS AND CUSTOMS OF THE PARAWAS AND CHETTIES ... ..	118-120
XXI	HINDU LAW AND THE CUSTOMARY LAWS OF THE TAMILS OF CEYLON ... ..	121-128
XXII	THE MARUMAKATTAYAM LAW ... ..	129-135
XXIII	THE ROMAN-DUTCH LAW AND THE CUSTC- MARY LAWS OF CEYLON ... ..	136-140
XXIV	KANDYAN LAW AND THE LAWS AND CUS- TOMS OF THE TAMILS OF CEYLON ... ..	141-148
XXV	THE ORGANISATION OF THE TAMIL SOCIETY AND THE NATURE OF THE CUSTOMARY LAWS OF THE TAMILS OF CEYLON ... ..	149-157

## APPENDIX

I	THE CHANGING CONCEPT OF THEDDIA- TETTAM ... ..	158-170
II	NOTES ON SOME RECENT DECISIONS ON THESAWALAMAI ... ..	171-175

# CHAPTER I

## THE HISTORY OF THE TAMILS OF CEYLON

### Historical Introduction

In order to appreciate the full significance of the customary laws of the Tamils of Ceylon, it is necessary to state briefly the history of the Tamils who were in Ceylon in the early part of the 19th century.

Ceylon is, and has been, the home of various races who have come over for purpose of trade or conquest. The Sinhalese, the Tamils, the Muslims, and the Burghers have settled down in Ceylon at various periods of her history. Of a population of nearly 7 million, almost two-thirds are Sinhalese and the next minority group of importance are the Tamils consisting of 826,000 Ceylon Tamils and 682,000 Indian Tamils according to the last census report in 1946. According to the Colebrooke Commission report published in 1831, there were in the year 1824 three hundred and ninety-nine thousand, four hundred and eight low country Sinhalese; a hundred and ninety-five thousand and six hundred and ninety-seven Tamils in the Eastern and other Provinces; and two hundred and fifty-six thousand, eight hundred and thirty-five Kandyan Sinhalese making a total population of 851,940 in Ceylon.

The Tamils settled at various periods in the different parts of Ceylon. There are the Jaffna Tamils who inhabit the Province of Jaffna and have castes and class distinctions among them; the Wanniaris, who inhabited the Wannai District, have now mingled with the Jaffna Tamils but belonged to a warrior caste of the Tamils.<sup>1</sup> The Tamils of the Eastern Province consist of various castes; the two important castes among them are the Vellalas and the Mukkuwas, who in their origin and culture differ fundamentally from each other.

### Early History

The early history of the Tamils of Ceylon is buried in dim obscurity. The earliest Indian tradition about Ceylon is recorded

1. See article by Dr. Raghavan entitled "Origin of Wanniaris." Ceylon Sunday Times of 27th September, 1953.

in the "Skanda Purana" which depicts the story of the rise and fall of a mighty and wicked Titan for whose overthrow Skanda or Kartikeya, God of War and Wisdom, was incarnated. The scene of the contest where Skanda vanquished the Titan (Asura) is said to be at Kalutara.<sup>1</sup> Thereafter he settled down at Katara-gama in the South East of Ceylon where a shrine, which is sacred to Hindus and Buddhists, still exists.

The next Indian tradition, many centuries later, is that of the Ramayana, the celebrated epic of Valmiki which Kamban, the Tamil poet, set in verse. This describes how Ravanna the King of Ceylon carried the beautiful Sita, wife of Sri Rama, and kept her in slavery till Rama accompanied by the monkey, Hanuman, crossed the seas and vanquished Ravanna and took Sita back. According to tradition Sita was kept near Sita Eliya, a few miles from Nuwara Eliya during her captivity.

According to tradition, in ancient times, Ceylon was occupied by two tribes called the Nagas and the Yakkas. Various theories have been propounded regarding the origin of these two tribes. The Nagas became very powerful in Ceylon in the second century A.D. and brought the whole of Ceylon under their sway. According to some writers a Naga kingdom existed continuously in Jaffna from the sixth century B.C. to the middle of the third century A.D.

### The Advent of Vijaya

According to the Mahawansa, in the year 544 B.C. the Sinhalese came to the Island when Vijaya landed with seven hundred followers. Many scholars have rejected the fanciful story of Vijaya's landing in Ceylon. According to Codrington<sup>2</sup> the story related in the Mahawansa of Vijaya's advent has been copied from earlier legends found in Jataka stories.<sup>3</sup> It only contains an element of truth that some Aryans from the North of India did come and settle in Ceylon and mingled freely with the Dravidians of Ceylon and South India. Codrington remarks that the resulting position was that though the Sinhalese language was of North Indian origin the social system of the Sinhalese is that of the South.<sup>4</sup>

### Tamil Invasions

Ever since the Sinhalese kingdom was founded in Ceylon there had been incessant invasions by the Tamils of Chera, Chola, and Pandyan Kingdoms of Southern India. The earliest Tamil

- 
1. See Studies and Translations, Philosophical and Religious by Sir P. Arunachalam, p. 117.
  2. A short history of Ceylon by H. W. Codrington, pp. 9 and 10.
  3. Jataka stories are fables which centre round the personality of the Buddha.
  4. Codrington, p. 10.



invasion recorded in the Mahawansa<sup>1</sup> is that of Sena and Kuttika (177-155 B.C.). They were sons of a freighter who brought horses to Ceylon, and attracted by her prosperity they invaded Ceylon with a large army of Tamils, defeated King Sura Tissa and reigned for a period of twenty-two years till they were finally expelled by Asela (155-145 B.C.), one of the brothers of Devanampiya Tissa.

The next Tamil invader according to the Mahawansa was the great Elara (145-101 B.C.), the valiant King from the Chola country who seized the northern kingdom of Ceylon and ruled for a period of 42 years. This King was a just and virtuous ruler and lived on friendly terms with all classes of the people of Ceylon. He was killed by Dutugemunu in a single combat and was buried in the city of Anuradhapura with all the honour and pomp due to a regal personality.<sup>2</sup>

After the reign of King Dutugemunu, in the year 44 B.C., seven Tamils from the Pandyan Kingdom landed with troops and offered battle to King Wattagamini Abhaya. The King was defeated and he fled with his queen leaving the capital at the mercy of the invaders.<sup>3</sup> Five of them remained and maintained their hold for 14 years and each ruled in turn till the last of them was expelled by the exiled king, who then staged a come back.<sup>4</sup>

During the reign of Vankansika Tissa (170-173 A.D.), according to the Rajavaliya, the Chola King, Karikalan, invaded Ceylon and took away 1,200 prisoners.<sup>5</sup> The Rajavaliya records a counter invasion by the King Gaja Bahu, son of the former King who is said to have brought back not only the 1,200 prisoners but also double its number of Tamil prisoners.<sup>6</sup> The Tamil epic Silappadikaram<sup>7</sup> however states that when the Pattini worship was inaugurated at the Chera capital, Gaja Bahu of Ceylon was one of the kings present on the invitation of the Chera King

### Pandyan Influence

Mahasena was the last of the powerful Sinhalese Kings to rule over Ceylon (Mahavamsa). He ruled in the 4th century A.D. After him, his sons, Kirti Siri Meghavanna and Mahanama, (5th century A.D.) ruled over Ceylon.

With Mahasena, the Mahavansa or great dynasty became extinct. A Pandyan invasion established Tamil rule at Anuradha-

1. Mahawansa ch. 21, v. 11. Codrington, p. 14.

2. *Ibid.* Ch. 20, v. 10.

3. *Ibid.* Ch. 20, v. 21, 13-14. Codrington, p. 21.

4. Codrington, p. 21.

5. Rajavaliya (edited by B. Gunasekera) p. 45.

6. Codrington says that 12,000 men were sent to work at the Irrigation Works at Kaviri Codrington p. 23.

7. Silappadikaram Canto 27 ; 11. 127 ff.

pura which is said to have lasted for 27 years, but according to Codrington this may have lasted longer.<sup>1</sup> The principal Sinhalese fled to Ruhuna where they ultimately found a leader in Dhatusena (Dasen Kali, late 5th century A.D.) of the royal Mauryar race who expelled the Tamils and re-united Ceylon in one sovereignty.

After 500 A.D. trade was in foreign hands. The chief port was Mantotta (near Mannar) and was in the hands of an independent Prince.<sup>2</sup>

During the reign of Sri Mara Sri Wallaba II (815-816 A.D.) Pandyan power was extended to Ceylon.<sup>3</sup> The counter-invasion said to have been staged by Sena<sup>4</sup> against the same king finds no confirmation in the Indian copper plates.<sup>5</sup> The Tamil influence remained supreme at Anuradhapura from the 7th century till this city was handed to the Tamils.<sup>6</sup>

After (860 A.D.) the Pandyan maintained friendly relations with the Sinhalese Kings in order to resist the rising power of the Chola Kings. The Cholas defeated both the Pandyan and their allies and turned their attention to Ceylon.<sup>7</sup> Parantaka, (903-907 A.D.) the Chola King, invaded Ceylon without success. Finally Sena<sup>8</sup> handed over the country to the Tamils and left and Polonnaruwa was then made the capital of Ceylon.

### The Chola Invasion

Rajaraja, the Chola King, (985-1012 A.D.) invaded Ceylon during the reign of Mahinda, sacked the capital and made Polonnaruwa the capital of Ceylon. His conquest was completed by Rajendra I in the year 1017 A.D. but from this time up to the middle of the 12th century Ceylon remained a province of the Chola empire and most of the magnificent buildings at Polonnaruwa were built during this period. King Vijaya Bahu I offered battle to the Cholas and gained a complete victory. It was the Sinhalese monarch, Parakrama the Great, who united the whole of Ceylon and expelled the Cholas and re-established the Sinhalese kingdom.

1. Codrington p. 29.
2. *Ibid.* p. 32.
3. Pandyan kingdom by Nila Kanda Sastri, p. 68-72.
4. Culavamsa Ch. 52, v. 70-78.
5. Article by N.D. Wijesekera entitled "The Historical background of Sinhalese foreign relations from the earliest time to 18 A.D." the Ceylon Historical Journal Vol. 1 No. 3 p. 178.
6. Sketches of Ceylon History by Sir Arunachalam "The Ceylon National Review No. 1 (1906) p. 59.
7. Nila Kanda Sastri on Cholas, p. 143.
8. Culavamsa Ch. 54, v. 12.

### Invasion by the Kalingas

It was not long before Polonnaruwa too had to be abandoned to the Tamils, who came not from the old seats of the Pandya and Chola dynasties, but from Kalinga (Northern Circars). Their domination was marked, if the chronicles are to be believed, by more than ordinary cruelty. The uneasy seat of Government in Ceylon had to be shifted from time to time to Dambadeniya, Yapahuwa, Kurunegala (all of which are in the Kurunegala District), Gampola, Kotte, Sitawaka and finally to Kandy.

Parakrama Bahu II of Dambadeniya ruled 35 years (1240-1275 A.D.) and with the end of his rule his son, Wijaya Bahu, whom he appointed Vice Regent, brought all Ceylon under his rule, repelled two successive Malay invasions, restored the ancient capitals of Anuradhapura and Polonnaruwa and was crowned king at the last city.

The power of the Tamil King Ariya Chakravarti of Jaffna was felt all over Ceylon, and the Sinhalese King at Gampola was ill-fitted to cope with him. The resistance of the Sinhalese people was headed by a man Alaka Konar, remarkable as a warrior and statesman, the foremost figure in the history of Ceylon for the next half century. Alakesvara, or Alaga Konar, was a Tamil Prince from Kanchi, the ancient capital of the Chola Kings, who had settled in Ceylon, and inter-married with the Royal Household. His seat was at Raigama in the Kalutara District. It took him 20 years to complete his preparation against the mighty King Arya Chakravarti. Having fortified and provisioned Raigama and the capital Kotte, then known as Jeyawardanapura, (city of victory) he raised an adequate army and hurled a challenge at Ariya Chakravarti by hanging the tax collectors whom he had stationed at different parts.

The King Ariya Chakravarti sent two great armies numbering over 100,000 who attacked Gampola and Kotte simultaneously. The force intended for the capture of Kotte was brought in ships and disembarked at Colombo and Panadura. Alakeswara himself took the field and broke the power of Ariya Chakrawarti and brought Jaffna for a short period under the sway of the Sinhalese King. According to the Buddhist chronicles, Alakeswara administered the country with wisdom and vigour, and purified the Buddhist Institutions in Ceylon.

About this time, in the year 1408 A.D., a Chinese Admiral arrived with a mandate from the Chinese Emperor demanding tribute from Alakeswara, who according to the Chinese chronicles

tyrannized the followers of Buddha. Alakeswara refused to pay this tribute and defeated the Chinese Admiral.

To avenge the defeat inflicted by Alakeswara the Chinese Emperor sent another expedition in 1410, which by attacking in the night, succeeded in taking the king as a captive to China. In the 5th month of 1411 the Chinese Emperor set him at liberty.<sup>1</sup> For fifty years thereafter the kings of Ceylon paid tribute to China. At the close of this century the Portuguese arrived. The Sinhalese retreated into the interior and soon learnt the art of using new weapons such as the gun and the cannon. It is during this period that the heroism of Rajasingha showed itself. The Sinhalese resisted the Portuguese and the Dutch, and maintained the sovereignty of the Kandyan Kingdom till it was ceded to Britain in 1815.<sup>2</sup>

## THE HISTORY OF THE KINGDOM OF JAFFNA

### Sources of the History of Jaffna

So far, the history of the Tamil invasions as recorded in such records as the Mahawansa, Culayamsa, the Dipavamsa and other historical works has already been stated. Many of these works were Buddhist chronicles and do not contain any reference to the history of the Tamil Kingdom of Jaffna.<sup>3</sup> For a history of this period one should therefore look to contemporary documents written during the period of the Tamil Kings.

According to Fr. Gnanaprakasara the Vaipava Malai<sup>4</sup> may be divided into three parts: the legendary part,<sup>5</sup> closing with the fanciful story of the advent of the lutist Yalpadi (pages 1-13); the colonisation of Jaffna under Koolankai Chakrawarti (pages 13-18);<sup>6</sup> and the list of kings upto Pararaja Sekram (pages 18-26).<sup>7</sup> Of these the last two parts contain historical matter of greater value.

There have been several other works on the history of Jaffna written in more modern times<sup>8</sup> which contain valuable materials.

1. Sketches of Ceylon History by P. Arunachalam. Ceylon Historical Review 1906, Vol. 1, pp. 67 and 68.
2. See Sketches of Ceylon History by P. Arunachalam. The Ceylon National Review (1906) No. 1.
3. *Ibid.*
4. The Vaipava Malai has been printed and translated into English by Britto. A Tamil version of Vaipavamalai is edited by Mudaliyar K. Sabanathan with notes and comments.
5. Preface to the Vaipava Malai.
6. The Vaiya padal has been recovered and printed by the late Mr. J. W. Aradprasam.
7. See article by Fr. Gnanaprakasara. Source of the Yalpana Vaipava Malai. The Ceylon Antiquary and Literary Register Vol. VI., p. 135.
8. Ancient Jaffna by Mudaliyar Rasanayagam (English). The Yalpana Vaipava Vimarsenam (Tamil) by Fr. Gnanaprakasara. Early Settlements in Jaffna (Tamil) by Sivanathan. Jaffna History—A. Muttutambay.

on the history of Jaffna. No co-ordinated effort has been made to utilize these valuable materials and the Indian and Ceylon inscriptions in order to write the history of the kingdom of Jaffna. It is hoped that in the future historians in Ceylon will complete this much-needed work. In the absence of such an authoritative work any attempt to write the history of the Jaffna Kingdom will be difficult.

However, in this work, a short history of the kingdom of Jaffna and the settlement of the Tamils is attempted so that the laws and customs of the Tamils of Ceylon could be appreciated in the proper historical setting.

### The First Colonisation of Jaffna

An interesting account of the first colonisation of Jaffna by the Tamils is contained in the Vaiya padal. According to this work, after Rama conquered Ravanna, the kingdom of Ceylon was handed over to the King Vibishanan, brother of Ravanna by Tasarata Raman. A lutist by the name of Yalpaddi, probably from the west coast of India, happened to come over to Ceylon and made his debut in the court of Vibishanan. The king was so pleased with his song and with his performance on the lute, he gave the sandy tract known as the Manaltidal<sup>1</sup> as a gift to him. Yalpaddi went back to India, brought a number of followers and settled them at Jaffna; and in consequence Jaffna acquired the name of "Yalpanam" or the land of Yalpaddi.

This work also gives a graphic account of the settlement of the Wanniaris in the Wannai district. It states that a Chola princess by the name of Maruthap-Piravik Valli came over to the holy waters of the springs of Keeri Malai at Kankasanturai to bathe in these waters in order to get cured of a certain deformity. It is said that she was afflicted with the face of a horse and on the advice of a sage she came over to do penance and to bathe in the holy waters of Keerimalai. After bathing in the holy waters at Keerimalai she is said to have completely changed into a beautiful princess and in gratitude she built the temple called Maviddapuram.<sup>2</sup>

After her cure, while camping out with her retinue, she is said to have met Ukkira Singam, the King of Ceylon, who visited North Ceylon during that period. The king set eyes on her, carried her away and married her. A son by the name of Vara

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1. According to learned opinion Manaltidal consisted only of Karaiyoor and Pasaiyur—see Ancient Jaffna, page 211.
  2. Maviddapuram means place where the face of a horse disappeared. According to Fr. Gnanaprakasara this was a Sinhalese town which was given a fanciful derivation in the Vaiya padal.

Raja Singam was born of the union, who had the unique distinction of having the tail of a lion. Sixty Wanniaris were invited for the wedding of this Prince, one of them stayed with him in Kandy, while the rest conquered the Wanniar district and settled down with their followers.

A different account of the settlement of the Wanniaris is given in the Konesar Kalwettu. According to this work, in the year Saka 358 or 436 A.D. a Chola Maha Raja, by the name of Kula Koddan came to worship in this temple shrine, and after effecting extensive repairs he endowed the Temple with large tracts of land. In order to cultivate these lands and to look after the temple he brought a number of Wanniaris from India and settled them on these lands and enjoined them to perform services to the temple.<sup>1</sup>

Another view, which is more plausible than that which has been stated is that the Wanniaris came with the Cholas when they invaded Ceylon and that some of them remained behind.<sup>2</sup>

Learned opinion has rightly condemned the story of the advent of the lutist as a myth. Fr. Gnanaprakasara is of the view that the name Yalpanam was first applied in the 15th century to Nalloor, a village adjoining the Jaffna town. He says that Yapanne means in Sinhalese "good village" and was a name given by the Sinhalese to Nalloor which in Tamil has the same meaning.<sup>3</sup> However, scholars are agreed that shortly before the Chola invasion of Ceylon there was a large settlement of Tamils from the Malabar District of India.<sup>4</sup>

The Mukkuwas who were the original inhabitants of the Malabar District, settled down along the north coast of Ceylon from where they were expelled by the Jaffna Kings for desecrating the coast of Keeri Malai by spreading their nets. After the expulsion from Jaffna they are said to have settled down at Batticaloa and Puttalam and Calpentyne. Mudaliyar Rajanayagam says that there were kings of the Kalinga dynasty in Jaffna before the Chola invasion. He refers to the Manimangalam inscription in which Manabharana is called the King of Ceylon. As there is no such Sinhalese King by that name he surmises that he must have been the King of Jaffna. The Manimangalam inscription further states that Raja Raja deprived four kings of Ceylon of their crowns, whose names are Vikrama Bahu, Vikrama Pandya, Vira

1 See Ancient Jaffna; Article by Fr. Gnanaprakasara. Tamil Culture. Sept. issue, 312.  
 2. Ancient Jaffna, chap. VII.  
 3. The same view is expressed by Mr. B. Horsborough Vol. II p. 54. The Ceylon Antiquary—Sinhalese place names in the Jaffna Peninsula.  
 4. Ancient Jaffna, pages 282—283.

Suli Mega and Sri Vallabha Madana Raja. After identifying the first two as the kings set out in No. 116 and 119 respectively of Wijesinghe's table, he says that the latter two were kings of Jaffna. The inscription further states that Vira Sala Megha, the King of Ceylon, came from his country, Kanna Kuchchi (Malabar Country). Mudaliyar Rajanayagam states that shortly before the Chola invasion the Malabar immigrants settled down in Jaffna under the kings of the Kalinga dynasty,<sup>1</sup> and that the Kalinga dynasty of Ugra Singhan reigned in Jaffna from the 9th century till the Chola invasion.

### The Second Colonisation of the Tamils in Jaffna

According to the Yalpana Vaipava Malai, the second colonisation of Jaffna took place under Koolankai Chakravarti. This account of the colonisation is taken from a work already referred to as the Kailasa Malai.<sup>2</sup> Fr. Gnanaprakasara states that the author of Yalpana Vaipava Malai closely followed the Kailasa Malai which merely recorded local traditions obtaining in each village with regard to early settlers.

According to the Yalpana Vaipava Malai, during a stormy and troublesome period when the Sinhalese Kings frequently invaded the northern part of Ceylon and there were counter-invasions by the Tamil Kings of India, a high caste Vellala called Malavan from a place called Ponpattiyor in India, who had settled down in Jaffna, is said to have gone to India and invited Singha Ketu, the son of a Tissai Ukkiram to come over to Jaffna and take the reins of government. After great persuasion by Malavan, the Prince is said to have acceded to his wish and to have come over to Jaffna with a number of Vellala families from various parts of South India and settled down in Jaffna. The names of the Vellalas and the places from where they came and the villages where they were settled are given in detail in the Yalpana Vaipava Malai from the materials taken from the Kailaya Malai.<sup>3</sup> As stated earlier, this account is taken from the Kailaya Malai which merely recorded the traditions and popular beliefs current

1. Ancient Jaffna pages 280—283.

2. Kailasa Malai was recovered and printed by Mr. T. Kailaspulle.

3. The settlements as stated in the Vaipava Malai are as follows :—

Tinnevely—Pandi Malavan, his brother, Sampaga Malavan (cousin of Pand Malavan) and his brother.

Myleddy—Narasingha Thevan son of Purevalathy Thevar from Kaviri Ur.

Tellipallai—Senpega Mappanam and Sandrasegara Meypanan Vellar from Vavi Nagar and Kanagarayan Chetty.

Inuvil—Perayiramuddya Vellala from Kovalur.

Pachilapalli—Neela Kandan and his four brothers Vellalas from Kachchur.

Puloly—Kanaga Malavan and his four brothers from Sigara Ma Nagar.

Tholpuram—Kupalcar Yendrar and Punniya Poopalan Vellalas from Kupaga Nadar.

Koyila Kandy—Theragarayendran Vellala from Pullur.

Delft—Irumarapum, Thuyya Thni Nayakan from Seyoor.

Irupalai—Manadu Konda Mudaly of Thandaimandalam Kambar has composed a poem in his praise.

The colonisation of the North and East of the Island by Hindu Temples seems to have been due quite as much to peaceful penetration as to war (Codrington page 50).

at that period.<sup>1</sup> The Dutch Thombus and Records of the villages of Jaffna found in the Archives may give some insight into the origin of the families settled in each village up to the beginning of the Dutch period.

It is difficult to evaluate the merits of the various historical works mentioned earlier. The Konesar Kelvettu was printed with Dhakshina-Kayalyasa puranam in Madras in 1887. The 2nd edition was printed in Jaffna in 1924. Fr. Gnanaprakasar states that this work was written after 1620, (see Tamil Culture 1953, Sep. Issue, page 312 footnote). Many scholars do not accept the account of the second colonisation contained in the Yalpana Vaipava Malai. Mudaliyar Rajayanagam takes the view that the second band of colonists came and settled down in the 13th and 14th centuries A.D. when the Chola and Pandyan kingdom had suffered disintegration and the Tamils of South India were hard pressed by the invasions of Vijayanuggar Kings.<sup>2</sup>

### History of the Kings of Jaffna

The third part of the Vaipava Malai (pages 18-27) gives a brief account of the reign of the kings of Jaffna known as Ariya Chakravatis.<sup>3</sup> Referring to this part Fr. Gnanaprakasar states<sup>4</sup> that this part is more trustworthy. The author of Vaipava Malai has in all probability bodily lifted Irasa Murai<sup>5</sup> into this work, slightly abridging it. But from Pararasa Sekeram onwards he seems to be entirely dependent on oral traditions for information.

### Reign of Singhai Aryan (1210-1246 A.D.)

Reference has already been made to Singhai Aryan who came at the invitation of Malavan. The Vaipava Malai states that he founded the capital of the Jaffna kingdom with the usual pomp and ceremony,<sup>6</sup> and built the Kandasamy Temple at Nallur.<sup>7</sup> He also founded the Kailava Vinayar and Kailya Nayaki Ammal Temples.<sup>8</sup> According to learned opinion the capital of the Ariya Chakravatis was Singhai Nagar which was

1. Article by Fr. Gnanaprakasar 1953 issue, September, page 310. Tamil Culture.
2. Ancient Jaffna, page 335.
3. Regarding origin of Chakravatis see Ancient Jaffna, Chap. VII.
4. See article by Fr. Gnanaprakasar "Tamil Culture" 1953, September Issue.
5. The work Irasa Murai has been lost. However, see Kings of Jaffna by Fr. Gnanaprakasar.
6. According to Vaipava Malai the Nallur Kandasamy Temple was built by Singhai Aryan in 1248 A.D. and his minister Buvaneka Bahu. Singhai Aryan was said to have founded the city of Nallur according to the Vaipava Malai. But scholars like Mudaliyar Rajayanagam and Fr. Gnanaprakasar state that the city of Nallur was founded much later. They place Singhai Nagar at Vallipuram near Pt. Pedro.
7. According to another view (Sapumal Kumaraya) (whose Tamil name is Senpaka Perumal, after he vanquished the Ariya Chakravatis founded the city of Nallur and built the Nallur Kandasamy Temple and ruled North Ceylon under the assumed name of Buvaneka Bahu—*Yalpana Sarittiram*, page 75.
8. The history of the temple is found in the Kailasa Malai. In the Kotagama inscription the town of Singhai Nagar is described as one of resounding waters.



probably situated three miles on the east of Point Pedro at Valipuram.<sup>1</sup>

### **Kulasekere Singhai Aryan (1246-1256)**

After the death of Singhai Aryan, his son, Kulsekera Singhai Aryan, succeeded him. Nothing eventful is recorded about this king's reign. After reigning for a period of 16 years he died leaving a son Kulatunga Singhai Aryan who succeeded him.

### **Kulatunge Segaraja Sekeran (1256-1279)**

This King engaged himself in large agricultural pursuits and increased the revenue of the States. As a result of a dispute over the right to fish for pearl oysters in the waters of the Mannar coast, a war broke out between this King and Bhuvanika Bahu. The latter was vanquished and was made to pay a tribute to the King of Jaffna.

### **Wikrama Pararaja Sekeran (1279-1302)**

After the death of Kulatunge, his son, Wikrema Singhai Aryan succeeded him. During his reign there was a commotion between his Sinhalese and Tamil subjects as a result of a religious controversy. Punchi Banda and 18 other Sinhalese leaders of the revolt were tried and were executed after they were found guilty. As this King was partial to his Tamil subjects the Sinhalese left his kingdom and migrated southwards.

### **Varotha Pararaja Sekeram (1302-1325 A.D.)**

Wikrema Singhai Aryan was succeeded by his son Varotheya Singhai Aryan. This King issued various orders pertaining to religion and after a peaceful and prosperous reign died leaving a son Marthanda Singhai Aryan.

### **Marthanda Pararaja Sekeran (1325-1348)**

This king encouraged learning and agriculture, quelled many rebellions sponsored by the Wanniaris, and ruled his subjects with justice and kindness. His death was bemoaned by all his subjects and he was succeeded by his son Kunabhoosana Singhai Aryan. It was during the reign of Marthanda Singhai Aryan that the Muslim traveller, Batuta visited his capital. Ibn Batuta has given a glowing account of the prosperity of this kingdom in his account of his travels. Ibn Batuta states<sup>2</sup>

1. Ancient Jaffna, page 54.

2. Travels of Ibn Batuta. Translation by Rev. Samuel Lee, p. 183 et seq.

that he visited the Court of the Ariya Chakrawartie who had considerable forces by sea. The King received him with great hospitality and showed him pearls of priceless value and asked Batuta what he would like to receive as a present. Batuta said that he would like to see the foot print of his forefather Adam at Adam's Peak. The King sent him to Adam's Peak with an escort of four guides and 10 of his courtiers. The account given by Ibn Batuta shows that Marthanda Singhai Aryan wielded his power up to Adam's Peak.

### **Kunabhoosana Pararajasekeran (1348-1371)**

This King succeeded his father and ruled the country even with greater justice and acceptance to the people. He encouraged learning and increased the wealth of the state and died leaving a son Virothaya Singhai Aryan who succeeded to the throne.

### **Virothaya Pararajasekeran (1371-1380)**

Although the rule of Virothaya Singhai Aryan was short, it was a very eventful one. During his reign he quelled many disturbances among the Sinhalese which were sponsored by the Wanniaris. When he returned victorious, the leaders of the insurrection asked for his forgiveness which was readily granted. During his period, the Pandyan King Sandrasegara<sup>1</sup> was attacked by his enemies who seized his kingdom. The king fled from his kingdom and took asylum at the court of the Jaffna King. Virothaya Singhai Aryan organized an expeditionary force under the leadership of the Pandyan General Setupathi, waged war at Madura and restored the kingdom to the Pandyan King. On his return, the Wanniaris thought that they would be attacked and sought the help from the King of Kandy to wage war with him. When the King of Kandy refused to declare war, the seven Wanniaris brought tributes to the King of Jaffna and acknowledged his authority. The King died under mysterious circumstances when he retired to bed and he was said to have been poisoned.

### **Jayaweera Segarajasekeran (1380-1410)**

After the death of Virothaya Singhai Aryan he was succeeded by his infant son Jayaweera. This King daily grew in strength and power and is said to have ruled his subjects with great acceptance. Over a dispute to a pearl fishery, a war broke out between the Kandyan King and the King of Jaffna. After a victorious campaign in the year 1380 Jayaweera Singhai Aryan brought the whole of Ceylon under his sway.

1. Mr. Rajanayagam thinks that this was Sundar Pandyan. Ancient Jaffna p. 355.

**Gunaweera Singhai Aryan (1410-1440)**

After the death of his father, Gunaweera Singhai Aryan became the King of Jaffna. As the king of Kandy refused to pay tribute to him he waged war, captured certain places, and settled Tamil families in those places. He also lent his help to the Nayakas of Madura and after a successful reign died leaving a son, Kanagasuriya Singhai Aryan.

**Kanagasuriya Singhai Aryan (1440-1450 and 1467 A.D.)**

Kanagasuriya Singhai Aryan came to the throne in the year 1440. Under his rule, the Sinhalese subjects, assisted by the Wanniaris, rose in revolt. The king left the kingdom, and ran and hid himself and Bhuvaneka Bahu alias Sapumal Kumaraya whose Tamil name was Senpaka Perumal became the king of Jaffna. He continued his sway over Jaffna for a period of 17 years. King Kanagasuriya gave over his two sons, Para Raja Sekeram and Segera Raja Sekeram to the care and custody of a royal family in Tirukovil in India, and went on pilgrimage to the various holy places in India such as Benares, etc. and ultimately came to the Konesar Temple at Trincomalee. At this temple he performed various penances with his wife when one day in his dream he received a message asking him to proceed to Madura where he would get the necessary help. He went over to India and found that his two sons had not only blossomed into handsome Princes but also were educated in the arts and crafts necessary to benefit them for a royal career. After thanking the members of the royal family, Kanagasuriya Singhai Aryan went with his family to the Pandyan capital, Madura, where he got the help and assistance of the various princes of the Pandyan Kingdom. Led by his two sons, with the help of an army from India he descended on King Vijaya Bahu and conquered his forces. The kingdom was restored to Kanagasuriya Singhai Aryan by his son Para Raja Sekeram. A number of Sinhalese families were killed and others in fear of their lives ran southwards and settled down.

Prince Para Raja Sekeram married a Princess who belonged to the Chola Dynasty, by the name of Ledchumi Ammal. Kanagasuriya Aryan thereafter handed his kingdom to Para Raja Sekeran and died some time afterwards.

**Para Raja Sekeran (1478-1519)**

Para Raja Sekeran ascended the throne in the year 1478. He took for his second wife a lady by the name of Valiamma who was descended from a Vellala by the name of Malavan from the Pandyan Kingdom. He also took as a concubine one Mangamma from

a place called Manavakudi. By his wife Ledchumi Ammal he had two sons called Singha Bahu and Bandara. By second wife, Valiamma he had a son called Para Nirupa Singham and three other children, and by his concubine he had a son called Sangili. While Para Raja Sekeram was ruling his subjects well, Sega Raja Sekeram, his brother, engaged himself in spreading learning and culture in Jaffna. He went to North and South India, collected various books and manuscripts, brought many learned men from India and formed various learned assemblies. According to one view it was during this period astrological work called Segaraja Sekera Malar was written. A nephew of King Para Raja Sekeram by the name of Arasakesari translated a Sanskrit work "Raghu Vamsam" into Tamil and presented the same to the audiences at Tiruvaroor in India. During his reign, the blind Vellala Poet Kavi Vira Raghava Mudaliyar, the author of the Tamil Kandapuram, came to his court and composed a work called Ayur Ula. The king not only gave him gold, but composed a poem in his praise. (See Tamil Navalar Saridae v. 256).

#### **Segarajasekaram Alias Sanghili (1519-1561 A.D.)**

Segarajasingham was a patron of art and learning. During his period, poets and learned men flocked to his court. He established a Tamil Sangam. The Segarajasekeram, a work on Medicine, the Dakshina Kayilasa Puranam and several other works received the imprimatur of his Court.

A passage in Segaraja Malai Satpa Sastram No. 8 states that the king of Ceylon paid tribute to Segarajasekeram, the King of Aryas, residing at Singhai. This is supported by a stone inscription, found in Kegalle (See Vol. 28, C.R.A.S.).

#### **Kings of Jaffna (1467-1620 A.D.)**

The period extending from 1467 to 1620 A.D. has been exhaustively treated by Rev. S. Gnanaprakasara, O.M.I., in a work entitled "The Kings of Jaffna during the Portuguese Period" published in 1920. According to him the following Kings reigned at Nallur from 1467 A.D.

1. Kanagusuriya Segarajasekeran 1467 A.D.
2. Pararajasekeran 1478 A.D.
3. Sankili Segarajasekeran 1519 A.D.
4. Puvi Raja Panduram Pararajasekeran 1561.
5. Kachi Nayinar, Pararajasekeran C. 1565 (usurper).
6. Periya Pulle Segarajasekeran C. 1570.

7. Puviraja Pondorom Pararajasekeran C. 1582.
8. Hendarmona Cinga Pararaja Sekeran 1591.
9. A minor Son under the regency of :
  - (1) Arusathsari 1615.
  - (2) Sangili Kumaran 1617.

This is supported by the further researches of Mudaliyar Rasanayagam (Ancient Jaffna p. 374) and Mudaliyar Sabanathan. The progress of Tamil during the Kings of Jaffna (unpublished work).

### Sangili Kumaran 1617-1620

Sangili Kumaran's rule is marked by cruel deeds and atrocities. He deprived Para Nirupa Singham of the seven villages presented to him by his father. Para Nirupa Singham got in league with Kakkai Vaniya and plotted with the Portuguese to overthrow Sangili. The Portuguese seized the opportunity to conquer Jaffna.

By bringing many attractive gifts they persuaded Sangili to give permission to trade in Jaffna. Sangili gave them permission to trade on the understanding that they should go back to their ships during nightfall. After some time the Portuguese got permission to put up a building near the seashore so that they may stock their goods. Under the cover of thick foliage the Portuguese erected a fortress and started arming themselves. When King Sangili was on his hunting expeditions he accidentally saw the fortress and questioned the Portuguese, who offered battle. Severe battles were waged between Sangili's forces and the Portuguese for a number of days. As a result of an intrigue by Kakai Vanniya and Para Nirupa Singham the Tamil forces were conquered and Sangili was handed over to the Portuguese.

The Portuguese indicted Sangili on various charges, tried him, found him guilty and executed him at a temple courtyard. They gifted seven villages to Para Nirupa Singham for his assistance and put him in power. They destroyed all the Hindu Temples except those at Nallur and Keera Malai out of respect for Para Nirupa Singham. Para Nirupa Singham distributed his villages to his sons and died and after his death the Portuguese destroyed the few Hindu Temples they had spared during his lifetime. Thus, the Tamil rule in Jaffna came to an end.

A history of the Tamils of Jaffna, Trincomalee, Batticaloa and of the Wanniaris of the Wanny District, as found in the Tamil works has been dealt with. The history of the Tamils of Putta-

lam, and Calpentyn and the Colombo Chetties will be dealt with later. After the Chola invasion Tamils from various parts of India came and settled down in Puttalam and the adjoining areas. There must have been constant intercourse between the Tamils of Puttalam and other parts of Ceylon. The Mukkuwas had settled down in large numbers in Calpentyn and Puttalam after they had been driven away from the north. They retained their peculiar customary laws based on matrilineal descent.

According to tradition the Tamils were in possession of North West part of Ceylon at a date which is fixed by scholars at 1300 B.C. Alli Arasany who married Arjuna, one of the Pandava princesses is said to have held her court at Koodremalle in the North Western Province of Ceylon.<sup>1</sup> Alexander Johnstone<sup>2</sup> mentions in one of his communications to the Royal Society that he possessed the history of a Queen who reigned over the North Western Province of Ceylon about eighteen hundred to two thousand years ago. There is no proof however that she ruled in Ceylon. In a granite pillar, which supports the roof of the Choultry built by Trimala Nayakar at Madura is sculptured in full relief the marriage of Arujuna with Alli Arasany. This suggests that she ruled in India and not in Ceylon.

The Colombo Chetties immigrated to Ceylon for purposes of trade during the time of the Sinhalese Kings and the Portuguese, Dutch and early British period. They belonged to the Vaisiya community and their laws and customs indicate that they were Hindus during the early part of the nineteenth century.

1. Castes customs and manners and literature of the Tamils by Simon Casie Chetty. See also Tamil poem written by Kavi Raja Varotheyen, of which an abridged account is given in the supplement to the Ceylon Gazetteer of 26th November, 1821.
2. Transactions of the Royal Society, Vol. I, page 545.

## CHAPTER II

# INTRODUCTION

The customary laws of the Tamils of Ceylon were in existence for a long time. There is no evidence that the Portuguese collected these customary laws. The Dutch, however, made an attempt to collect them. The Thesawalamai or the customs and laws of the Tamils of Jaffna were collected by Claas Isaacs in 1707. The laws and customs of the Mohammedans were also collected by Governor Falck during the Dutch period. The customary laws of the district of Batticaloa were collected by Mr. Burnand, a French officer employed under the Dutch Government, at the time when Ceylon was ceded by Holland to England. The laws and customs of the Wanniaris were collected by the land agent Nagel during the Dutch regime.

A comprehensive account of the laws and customs of the Tamils of Ceylon is, however, found in the despatches of Sir Alexander Johnstone.<sup>1</sup> Sir Alexander Johnstone was the second Chief Justice of Ceylon during the British regime, and during his tenure of office his contributions to Literature, History, and Laws of Ceylon were immense. Under his guidance various reforms were brought about to improve the legal systems in Ceylon. Even at such an early period it was his ambition to prepare a complete code of the laws of Ceylon in order that he may bring the administration of Justice in Ceylon in line with the progressive countries of the world. With this end in view he collected the customary laws of the various racial groups occupying Ceylon. The customs and laws of the Sinhalese who occupied the lower country were not observed during this time, and therefore could not be collected. However he succeeded in collecting the customs and laws of the Kandyan, Mohammedans, and Tamils of Ceylon. It is best to state in his words the scope and extent of the customs and laws of the Tamils of Ceylon which he collected and we shall reproduce *verbatim*, the contents of a letter<sup>2</sup> addressed by Sir Alexander Johnstone to his Excellency the Governor. In this letter he says :<sup>3</sup>

“Your Excellency, soon after your arrival on this island, adopted the very wise and conciliatory measure, of ordering all

1. Co. 53/123.

2. Ceylon Archives Lot 5/79 page 43, 251.

3. Ibid

the Provincial Courts under your Government, to adhere strictly, in framing their decisions, to the local and customary laws which prevail within their respective jurisdictions : and, with the view of enabling them, to carry Your Excellency's wishes upon the subject into full effect, you requested me while I was on my circuit round the island, to make a collection of all such laws.

In compliance with Your Excellency's request, I now have the Honour of submitting for your consideration, the three following statements :

First. A Statement of the Placaats which the late Dutch Government made for the regulation of the settlements.

Second. A Statement of the Proclamations and Government advertisements which the British Government has made for the regulation of these settlements.

Third. A Statement of all such customary laws, as are in use amongst the respective classes of natives who inhabited the several parts of the settlement.

With respect to the first and second statements I have to observe that the different Placaats to which the former refers are to be found amongst the Dutch Records, and that the English Proclamations mentioned in the latter are almost all of them in my possession.

I acquired the greatest part of the information which is contained in the third statement, from the most intelligent and respectable headmen of the Provinces, through which I passed in the course of the circuit.

The multiplicity of business which was brought before me in court, and the shortness of my stay in each of the Provinces, prevented me from inquiring on the spot, with so much minuteness as I otherwise should have done, into the accuracy of the information which I received. But, I have no doubt, that it may be perfectly relied on, as I find, upon investigating the Dutch records, that it is entirely confirmed, by the reports, which were drawn up on the same subject, by some of the ablest men in the Dutch Civil Service.

Few or no customary laws peculiar to the Cyngaleese, can at present be discovered, because the policy observed by the Dutch has, in general, established amongst that class of people, the law of Holland.



It is much to be desired, that all the passages of that law, which are applicable to their circumstances, should be digested into one proclamation, and published in Cyngaleese:<sup>1</sup> it would prevent constant mistakes, and diminish the number of law suits. I have, therefore, made a draft of a Proclamation of that nature, with the purpose of being laid before your Excellency.

Some of the customary laws, which I have collected, relate to the four Provinces of Puttalam, Jaffna, Trincomalee and Batticaloa, others, to the numerous Mahometans<sup>2</sup> who are to be met with all over the island and some, to those Chittys<sup>3</sup> who live in or about the Pettah of Colombo. I shall take the liberty of making a few observations explanatory of each.

### Customary laws of the District of Puttalam

In the year 1766, when Puttalam was ceded to the Dutch by the King of Candy, Governor Falck established a Landraad, for the administration of justice in that District, and ordered it to proceed, in all civil cases, according to the customs of the country : the collection of laws, of which No. 1, a translation, was made at that time by the Chief of Puttalam, for the guidance of the landraad : it is allowed, by the principal native headmen of the district, to contain, a true account of the customary laws, which are in use amongst the inhabitants of the whole of that District which extends from the village of Aedepankarre South to that of Marchicotach North.

### Customary laws of the Province of Jaffna

The inhabitants of the Province of Jaffna ; about the beginning of last century complained to the then Governor, Mr. Simons ; that the different Magistrates and courts established in that Province, did not adhere in deciding the cases which were tried before them, either to the ancient usages of the Malabar, or to the regulations of the Dutch : upon inquiry, it was found to be extremely difficult to ascertain what usages and what regulations were in force. The Governor, therefore, in order to simplify the law, according to which the Magistrates and courts were bound to decide, and to prevent for the future, the sort of confusion and discontent, which had arisen amongst the people from not knowing the duties that they were expected to perform, caused the code No. 2 : to be translated into Malabar, and copies of it to be given to all the school masters in the Province, with orders to read it

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1. Sinhalese.  
2. Mohammedans.  
3. Chetties.

publicly twice a year in the hearing of all the inhabitants of their respective districts.

It is divided into two parts :—The first contains in 78 articles, the substance of all the proclamations relative to Jaffna, which had been made by the Dutch Government previous to the year 1707. The second, all the customary laws, which according to the report of the most intelligent headmen, had been in use amongst the Malabar inhabitants ever since the time of the Malabar Government. Much of the first part is at present inapplicable in consequence of the change of system introduced by the English Government : it would however be extremely advisable to adopt the plan upon which it was framed, and publish not in separate articles, but in one Proclamation, all the Regulations, which His Majesty's Government deem necessary to be observed in the Province of Jaffna.

The second part of it is just as applicable now as it was in the year 1707, to the inhabitants of that Province. Their customary laws remain precisely the same. Upon my submitting Simons collection of them to the headmen, they unanimously agreed that they were accurately stated, and said, that the British Government could not do the inhabitants a greater favour than to order all the Magistrates and Courts in their province to adhere strictly to their customary laws.

### Customary laws of the Province of Trincomalee

The customary laws of Jaffna are also in use amongst the Malabar inhabitants of this province, but I suspect, from what I was told by the headmen of Trincomalee, that the magistrates who have acted there since the arrival of the English, have either been unacquainted with their nature, or else have considered them as obsolete.

It is extremely necessary that all the orders of Government which apply to this Province should be consolidated into one proclamation, similar in its object to the 78 articles of Governor Simons ; that the customary laws of Jaffna should be declared to be in full force as far as the Malabar inhabitants are concerned.

Temblegam is much more capable than any other district in the province of being brought into high state of cultivation.

The size of the Tank at Kandelai<sup>1</sup> and the Tamul accounts of the fruitfulness of this district at the time that Trincomalee, in consequence of the sanctity of its Pagoda,<sup>2</sup> was the general resort

1. The Kantalai Tank.

The reference is to the Konesar Temple at Trincomalee.

of pilgrims from every part of India, leave, no doubt, that it formerly produced a great quantity of grain.

Governor Van Der Graff, about 10 or 20 years ago, ordered Major Farnbaner, who exercised both civil and military authority in the province of Trincomalee, to report to him upon the situation of the District of Tamblegam and upon the best means of restoring it to the ancient state of cultivation. Major Farnbaner, in his report, dwells at length, upon the defects which prevailed in the management of that district and points out, with considerable ability such local laws as are best calculated to remove the evils ; the whole of the report contains so much information upon the subject that I have caused the translation No. 3 to be made.

### Customary laws of the Province of Batticaloa

The translation of Monsieur Burnand's memoire which I presented to Your Excellency some time ago, gives a very detailed account of the history and of the customs of the people of Batticaloa : The two proclamations Nos. 4 and 5, which I have now the honour of offering for your consideration contain the substance of all the orders which were made by Monsieur Burnand while he presided over that Province ; they were published by him in this shape for the convenience of the inhabitants, after he had had many years experience of the salutary effect which his system of Government had produced.

No. 6 is an extract from Monsieur Burnand's memoire about the law of inheritance which prevails in that province, and the policy which shall be adopted with respect to it.

No. 7 is a list of some of the customs, which the natives, told me of, when I was at Batticaloa, and which I found afterwards confirmed by a letter that I received from the Mr. Smitz, the agent of Revenue.

## CHAPTER III

# THE LAW OF THESAWALAMAI

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Among the customary laws of the Tamils of Ceylon, the Thesawalamai takes pride of place as it is the most comprehensive. In view of its importance it has survived, up to modern times, as a living system of law.

It is not within the purview of this work to go into the rules of Thesawalamai with the help of enactment and precedent.<sup>1</sup> An attempt is made to place before the reader the valuable materials found in the Johnstone Manuscripts pertaining to this subject.

### Thesawalamai during the times of the Tamil Kings of Jaffna

The history of Thesawalamai during the period of the Tamil Kings is obscure. During the early years of Tamil occupation there was no stable government. Frequent invasions from India and internal civil commotion tended to weaken authority and during this period the civil laws of the country would have not taken any shape.

From the 12th century A.D. onwards till the subjugation of the north of Ceylon by the Portuguese a more stable form of government was established by the dynasty of the Tamil Kings, known by the name of Ariya Chakrawathies.<sup>2</sup>

No co-ordinated effort has been made by historians in Ceylon to probe into the history of Ceylon during this important

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1. For a fuller treatment see "The Laws and Customs of the Tamils of Jaffna" by H. W. Tambiah—1950—Times of Ceylon.

2. See article on "The Overlordship of Ceylon during the medieval period" by Dr. S. C. Paul; and 18 No. 27 Vol. XXVIII. Royal Asiatic Journal Ceylon Branch page 115, Ancient Jaffna page 326 *et seq* by Mudaliyar Rasanayagam. *The only authentic historical sources during this period are*—The Viyapadal (a poetical work by Vijapuri Iyer who lived during the period of the Ariya Chakrawathies); The Kailaya Malai, a work written during the period giving the history of the Kailaya Temple; and The Segarajasekaran Ula (an astrological work by King Segarajasekaran, one of the Ariya Chakrawathies); Other works on the history of Jaffna; Narrated events that happened several years ago and are not documented to have any authenticity. (See the Yalpana Vaipava Malai, a Tamil work by Mylvaganapulavar, written during the late Dutch period, and translated by Britto. *Also the more recent works*:—History of Jaffna, by Father Gnanapragasar published, in Tamil called Yalpanavimarsanam; and an unpublished copy by the same author; The Yalpana Kamoorthy, by Velupullai; The Early Settlement in Jaffna, by Sivanathan; Ancient Jaffna by Mudaliyar Rasanayagam).

and eventful epoch. Hence the administration and history of Thesawalamai during this period can only be a matter of conjecture and surmise. The recent work done on the subject reveals two waves of immigration of Tamils to the northern part of Ceylon. There was an earlier settlement of Tamils from the Malabar District, bringing with them a system akin to the Marumakattayam and the Alyasantana Laws of Malabar; and a later settlement, bringing with them a system of law, where the influence of Hindu law and Aryan culture could be felt.

In such a situation a compromise was inevitable and hence we find in Thesawalamai a curious blend of rules peculiar to a matrilineal society and patrilineal society existing side by side.<sup>1</sup> The Hindu Law as expounded in the Smritis and Commentaries could have had little influence on Thesawalamai!<sup>2</sup>

The influence of Hindu Law has been very little on the Thesawalamai and Sir Alexander mentions the Hindu treatises which were used to supplement the Thesawalamai during his visit to Jaffna in 1807. He perhaps refers to the works used by the Brahman advisers to the British Government.

### The Thesawalamai During The Portuguese Era

The Portuguese applied the Law of Thesawalamai as they found it, and during their regime brought about slight alterations to suit the needs of a changing society. A short account of the Law of Thesawalamai as administered during the Portuguese period is contained De Queroz's work, entitled:—'Conquista De Ceylao' (The Conquest of Ceylon). He says: "It is the custom in that kingdom that the ascendants cannot inherit, and of the descendants only the male children, and if they are emancipated, they are admitted to the partition of the household goods during the father's lifetime, and on the mother's death to the part of her heritage, but not to the *castrense* property acquired or *quasi castrense*. If there are no sons, the heritage devolves on the brothers, for they cannot adopt a stranger, unless it be a nephew, son of a brother, and if of a sister it will be with the consent of one to whom the heritage is due, or if he is Vellala or Paradesi, to obtain the heritage.

The preamble to the Thesawalamai Code states that the property of the father was only inherited by the sons, and the daughters were given dowries out of the mother's dowry. This rule was evolved as a result of a compromise between the two competing

1. See The Laws and Customs of the Tamils of Jaffna by H. W. Tambiah for a fuller discussion.  
2. Mayne on Hindu Law, 7th Edition, page 48.

rules of inheritance, between the matrilineal system, in which only the women inherited their mother's property and the patrilineal system, in which only the males inherited the ancestral property. Due to the advent of the Kings of Jaffna and their retinue who were governed by the patrilineal system, many rules peculiar to this system were introduced and existed side by side with the customs of the early settlers whose family organisation was matrilineal.<sup>1</sup> The Thesawalamai Code says:—'But in the process of time, and in consequence of several changes of Government particularly, those in the times of the Portuguese when the Government was placed by the order of the King in the hands of Don Philip Mascarenha, several alterations were made in those customs and usages, according to the testimony of the oldest Mudaliyars, so that at present, wherever a husband and wife give a daughter or daughters in marriage, the dowry is given indiscriminately either from the husband's property or wife's property or from acquisition.'<sup>2</sup> In the absence of a record of the testimony of the Mudaliyars referred to, it is not possible to surmise what exactly were the changes made by the Portuguese.

From the short account of the Thesawalamai given by De Queroz certain rules of this system of law as it existed during the Portuguese period may be gleaned. These rules may be stated as follows:—

1. The sons inherited the properties of the father.
2. The daughters were given a dowry out of their mother's dowry property only.
3. The sons only inherited, if their mother died and anything was left over of the mother's property after dowsing all the sisters.
4. If the sons were emancipated, they were admitted to the partition of the household goods during the father's lifetime.
5. The acquired property (*castrense property*) acquired by service and *quasi castrense* property, were not the subject matter of partition.
6. Sons failing, the property of the father went to his brother to the exclusion of the father's father, as ascendants did not inherit.
7. Adoption was only confined to brother's and sister's children.
8. Adoption could only take place with the consent of those who would be heirs.

1. See the Laws and Customs of the Tamils of Jaffna by H. W. Tambiah, page 19 et seq.  
2. Thesawalamai Code 1, 2

2969

### Changes During The Dutch Regime

By a perusal of the Code prepared by Claas Izaacs the chief changes brought about in Thesawalamai up to 1706 can be observed. Under the Code dowry was given out of any property and was not confined to the dowry property of the mother. As under the old law, dowered daughters could claim no inheritance on receipt of the dowry. The sons could not partition the property during the lifetime of the father and whatever they acquired (except wrought ornaments for their personal use) belonged to the father's estate. On the father's death, the sons inherited his estate. The mother's property was inherited not only by the undowered daughters but also by the sons. On failure of children the father's property descended to his brothers, and the mother's property to her sisters.

The father's hereditary property belonged to his estate, and the mother's dowry belonged to her estate, and the acquired property of both was divided into two halves, and each spouse inherited a half.

Even strangers could be adopted with the consent of nephews and nieces and heirs. If those entitled to consent did not give their consent they did not lose their right of inheritance.

### The Dutch Period.

During the early Dutch period it is evident that the Dutch Government pursued the policy of administering the customary laws of the people. Anthony Pavilojen in his memoirs to his successor dated 19th September, 1665, says: "Justice is administered to the Dutch according to the Laws in force in the fatherland and the Statutes of Batavia. The natives are governed according to the customs of the country and if these are clear and reasonable, otherwise according to our laws."<sup>1</sup>

There is no doubt that the Dutch applied the Thesawalamai which at that time was not written law but consisted of the customs of the people, preserved in the memories of the leaders of the community; and only when these were not clear or reasonable they applied the Roman-Dutch Law. It is needless to state that when Thesawalamai was silent they applied the Roman-Dutch Law.

### Customary Laws of the Province of Jaffna

The Dutch in their attempt to codify the Customary Laws of Ceylon partially succeeded. They codified the Mohammedan

1. Instructions from the Governor-General, Council of India to the Governor of Ceylon. (1656-1665) to which is appended 'Memoirs' by Anthony Pavilojen, page 117.

Law and the Law of Thesawalamai. The necessity to codify Thesawalamai was keenly felt by the Dutch Governor, Zwaardcroon, and in his Memoirs<sup>1</sup> he stressed the necessity of codifying the Thesawalamai. The task of codification was entrusted to the Dissawe Claas Izaacs on the orders of the Governor Joan Simons, Doctor of Laws. Claas Izaacs undertook this important task and within a short time produced a Code in the Dutch language, a copy of which is still preserved in the Ceylon Archives. The Code was translated into the Tamil language and copies of the Tamil translation were given to the "twelve sensible Mudaliyars" who were the leaders of the people for their approval. The Mudaliyars approved the same and copies of it were sent to the Courts of Justice and the Landraads.<sup>2</sup>

When Sir Alexander Johnstone assumed office as the Chief Justice of this Island he prepared a fresh translation correcting the "rude English of the Ceylonese (Dutch) translator, and caused copies of the translation to be sent to the Courts of Justice." In his report to His Majesty's Government he says: "No people can be more attached to their ancient institutions than the inhabitants of Jaffna, and nothing is more calculated to secure their respect for the administration of justice than the strict adherence on the part of the courts (whenever circumstances permit) to those customs, which the experience of ages has shown to be applicable to their station, and which have therefore obtained, among them, all the force and authority of Law."<sup>3</sup>

The inhabitants of that Province consisted of two descriptions. The one, the Tamil or Malabar inhabitants whose names, features, manners, and language as well as the historical fragments and popular traditions met with at Jaffna and at Madura distinctly prove them to be descended from that ancient people who inhabited Tellinga Empire of Vijayanuggar.

Sir Alexander in his report further stated that these Tamils "some of whom are Christians but most of them are worshippers of Vishnu or Siva (independently of Dharma Sastra, the source of all Hindu Law, the Viguan Ishuar, a law Commentary of great authority in the South of India, and Vidayavanga's commentary on the text of a work of equal authority in the Mysore country) have a customary code of their own called the Thesawalamai, which though it provides for many cases leaves others to be decided according to the general principles of Hindu Law as evidenced in the three works to which I have earlier alluded."

1. Memoirs of Henry Zwaardcroon, translation by Sophie Pieters, pages 49, 50, Ceylon Government Press.
2. For a fuller history of the origin and history of the codification of the Thesawalamai, see: 'The Laws and Customs of the Tamils of Jaffna,' by H. W. Tambiah—1950 Times of Ceylon.
3. Van Leeuwan Commentaries (1820) Ceylon Edition, Appendix.



After giving an account of the efforts made by the Dutch to codify the Thesawalamai Sir Alexander in referring to the Thesawalamai Code prepared by the Dutch says: "This collection supplied the rules according to which several Dutch courts framed their decisions from the year 1707 to the period when Jaffna was surrendered to the British arms. From the latter period to the year 1806, although it was sometimes referred to, yet from its being Dutch in its contents were by no means so well known, as they ought to have been, and in 1806 while I was on my circuit through the province of Jaffna, aware of the great veneration in which the people entertained this collection, I, with the approbation of the Government, caused the whole of it to be translated into English and printed. As, however, I had not the opportunity at that time of comparing that translation with the original and as I have since thought that it may be much improved in point of arrangement, I took the opportunity of my late circuit to consult in the province as to the alterations which it would be advisable to adopt and shall at an early period take the liberty of submitting to the Government what I have to suggest on the occasion."

"Subsequently to the above report Sir Alexander Johnstone having obtained the opinions of the best informed Tamil and Mohammedan natives (this reference is regarding the Mohammedan Code which was translated from Dutch by Sir Alexander and published as the Mohammedan Code of 1806) concerning their respective Codes, caused copies of each, drawn up according to their unanimous opinion, to be printed on paper in Tamil and English and sent to all the courts and magistrates of the Island, in order to make the people themselves thoroughly acquainted with their own laws and usages, he further caused numerous copies of them, in the Tamil language, to be made on palmyrah leaves, and circulated among the native heads of villages, with a direction to them to explain them to the people of their respective villages

How far each of these Codes is applicable to the Malabars and the Mohammedans, who inhabited different provinces in Ceylon, may be seen at full length in the Report, made by Sir Alexander to His Majesty's Government, in November 1807, where he submitted, for their consideration a general statement of the Dutch and native Laws, whether general or local, which prevailed in Ceylon, and a plan for framing from them a short and simple Code in English, Tamil and Sinhalese, applicable to the state of the country.

### **The Applicability of the Thesawalamai Code in the Jaffna Peninsula**

The applicability of Thesawalamai to the various castes of Tamils living in the Jaffna Peninsula is dealt with in the des-

patches which state: "The Thesawalamai is in general binding upon all the natives of Jaffna, either Vellalas, Chetties, Brahmins and all other castes without any distinction."<sup>1</sup>

The despatches also contain the remarks and suggestions of eight Mudaliyars on the various provisions of the Thesawalamai Code. A letter from Mr. Richardson addressed to Sir Alexander is appended to the Report of the Mudaliyars, where he says, "I have the pleasure to return the enclosed Malabar Code, for the District of Jaffna with a few remarks of my own thereon, which has been submitted to some of the most respectable and intelligent natives for their perusal and opinion."<sup>2</sup>

Another interesting document found in the despatches is a printed copy of the Thesawalamai, with marginal pencil marks in certain places, to indicate that they were obsolete with the following observations: "Remarks made by Mootamby Mudaliyar, Head of the Heathens of the place, upon the Gentoo Laws observed at Jaffna." "Having read carefully the said Laws I am of opinion that the same rules may be observed at this place with the exceptions of those parts which I have marked with pencils, as they do not apply to this place."<sup>3</sup>

### The Laws of the Thesawalamai Outside the Jaffna Peninsula

Sir Alexander also caused the translation of the Dutch Code to be sent to various officers serving in Jaffna and in certain parts of Ceylon, where there was a Tamil concentration in the population. These officers having obtained the opinions of the leaders of the Tamils, sent their reports to Sir Alexander. These reports are interesting to a student of comparative Customary Laws. They state in what respects the Law of Thesawalamai differed from the customs of the Tamils outside the Jaffna Peninsula.

A letter from Trincomalee sent to the Registrar of the Supreme Court dated the 13th of April, 1813,<sup>4</sup> by an officer states, that in response to the letter sent by the Registrar of the Supreme Court he obtained the opinion of the Mudaliyars of the town at an assembly, and that he was sending the translation of opinions of the Mudaliyar. He also states: "I also directed reports from the three Pattoos of this District on the same subject, translations of which

1. Co. 54/123, page 49.  
2. Co. 53/123, page 68.  
3. Ibid. page 109.  
4. Co. 54/123, page 134.

are also enclosed and His Lordship will observe therein the variations from the Thesawalamai, which I returned but would be obliged to you to send me another copy of it."

"It will also be observed that the Mudaliyars wish a system introduced since 1803 of granting administrations of intestate estate whereby the debts are settled for and paid *pro rata*, the children exonerated, to be abolished as quoted in the Tese Walamae. I own, I am not inclined to countenance this application as I consider the present system as most equitable to as parties."<sup>1</sup>

The Report of the twelve Mudaliyars reads as follows:<sup>2</sup> "That in reading the country law sent as by His Excellency the Governor, we the undersigned do hereby declare that several of the Laws contained thereto are still in use, besides the use of administration it is the only point more, which we beg to be rejected." This letter is accompanied by a Report of the Headman on Customs existing at "Cottiar Pattus"<sup>3</sup> and Thambulgam,<sup>4</sup> and Cattocolam.<sup>5</sup>

A letter from Batticaloa, dated 6th October, 1815, sent to the acting Registrar of the Supreme Court states:<sup>6</sup> "Sir, I have the honour to forward for the information of Honourable the Chief Justice, remarks upon the difference of the Malabar Code enclosed in your letter of the 9th February last, and beg to add that upon a strict scrutiny, I have ascertained the established usages and customs to be in any other respect same."

This letter further states<sup>7</sup> that at Batticaloa Island and the villages adjacent, the Laws in every respect agree exactly with the Code, "It agrees in every respect in the country of Batticaloa District except in cases of inheriting property."

The differences stated are: that on the death of a married man the *mudusum* (hereditary property) brought by him is inherited by his sister's children. This is a rule of inheritance in Mukkuwa Law derived from the ancient Marumakattayam Law. If the wife died her *mudusum* was inherited by her father's children and the property acquired by both the spouses was inherited by their children.<sup>8</sup>

1. Co. 53/123, Alexander Johnstone MSS, page 135.

2. Ibid page 136.

3. Co. ibid, page 137.

4. Ibid page 101.

5. Ibid page 103.

6. Ibid page 143.

7. Ibid 145

8. Ibid 147.

### Mullaitivu

The Thesawalamai was introduced into the Wannai District by Nagel during the Dutch period and was in force during the early British regime. Referring to the applicability of Thesawalamai a letter from Mr. B. C. Arndt (the Acting Magistrate of Mullaitivu) dated 24th August, 1815, states : "That the whole of the Code is in use amongst the native inhabitants of my District."<sup>1</sup>

### Puttalam

Reports were also received from Puttalam and Calpentyn in which were stated the Customary Laws of the inhabitants of these places.<sup>2</sup> A perusal of these despatches throw a flood of light on the Customary Laws of the various castes among the Tamils who occupied these parts of Ceylon in the early part of the 19th century.

### Subsequent History of Thesawalamai

By Regulation 6 of 1806 The Thesawalamai, as collected by Claas Izaacs, was declared to be in full force among the Malabar inhabitants of the Province of Jaffna which has been interpreted to mean—Tamils who have a Ceylon domicile and who are inhabitants of the Northern Province of Ceylon.<sup>3</sup>

The crude translation of the Dutch translators was rendered into good English by Sir Alexander, and in the Legislative Enactments of Ceylon published in the year 1907, the full text of the Thesawalamai with the marginal notes, is found. There are footnotes indicating the provisions of the Thesawalamai which were similar to those found in the Hindu Law and the Roman-Dutch Law respectively. The treatise on Hindu Law by Colebrooke, and Van Leeuwan's Commentaries on the Roman-Dutch Law are the two texts referred to in the footnotes. The subsequent editions of the Ceylon Legislative Enactments omit those parts of the Code that have been abrogated by statute, such as the law of slavery and caste. It is due to the untiring efforts of Sir Alexander Johnstone that slavery and compulsory customary services to be performed by the low castes to the higher castes were ultimately abolished. With this end in view Sir Alexander collected all the Dutch Placaats pertaining to slavery and customary services among the Tamils of Jaffna and translated the same, and sent them in his despatches to the British Government.<sup>4</sup>

1. Ibid 178.

2. Ibid 149, Ibid 113 et seq.

3. See The Laws and Customs of the Tamils of Jaffna by H. W. Tambiah, page 57.

4. Co. 53/124.

The Thesawalamai Code has been very greatly modified by statute law. The Matrimonial Rights and Inheritance Ordinance (Jaffna) Ord. 1 of 1911, brought far-reaching changes in the Law of Thesawalamai with respect to marital rights and inheritance. Many provisions of the Thesawalamai Code are obsolete, and efforts to prune the Code of these obsolete provisions were not successful.<sup>1</sup> Two later statutes affect the Law of Thesawalamai fundamentally and they are the Jaffna Matrimonial Rights and Inheritance Amendment Act of 1947, and the Pre-emption Ordinance of 1947.

The Supreme Court of Ceylon has interpreted the Thesawalamai Code and the Statute Law on this subject in a number of cases and has built a body of Case Law in which is enshrined many principles and concepts of the Law of Thesawalamai. The Law of Thesawalamai is still a living system of Law in Ceylon applicable to a large section of the Tamils of Ceylon.

1. Extract from Report of the Legal Draftsman dated 25th October, 1930. Sessional Paper I of 1933. Supplementary Report of the Thesawalamai Commission.

## CHAPTER IV

# THE SEVENTY-SIX ORDERS

During the Dutch regime, apart from general legislation affecting the whole of Ceylon, the Dutch also passed special legislation affecting the Province of Jaffna. Cornelius Joan Simons, Governor and Director of Ceylon found that justice was administered in "a careless manner till the end of 1705, and as a result of several complaints a register of Orders was applied for and on its receipt the consecutive Orders issued both from Batavia and the Netherlands with reference to the administration of justice were inserted therein.

In his memoirs<sup>1</sup> he states that he caused "various Orders issued by Placaat, which formed two heavy volumes to be summarised under separate headings in a more convenient volume which must every year be read in public to the people in the presence of the Fiscal Independent." The two heavy volumes referred to by Dr. Simons were collected by Dr. Simons,<sup>2</sup> and one of them is still extant.<sup>3</sup>

He also collected a comprehensive digest of the rules and orders for the Jaffna Peninsula<sup>4</sup> and by doing this Miss Juriansz says "that he did for Jaffna what Antonis Van Diemen did for the Dutch East Indies in general." Although popularly known as the "72 Orders," this collection consisted of 76 Orders, and at the end of this collection is found a note that these were written in the year 1707 on the 25th of April, at Jaffna, city of the Master of the Government Garden at Naloor. There is also a notification by Governor Simons that there were published as a result of various complaints and by his command he enacts them as laws and these must be made known to the subjects in Tamil and in Dutch.<sup>5</sup> After this collection the Dutch enacted the laws by Notifica-

1. Memoirs of Joan Simons to Hendrick Becker; 1707, Translation by Sophia Anthonis at page 4.
2. Catalogue of the Archives of the Dutch Central Government of Coastal Ceylon, 1640-1796, by Miss M. W. Juriansz. page 122.
3. Ceylon Archives, Number 2438.
4. Ceylon Archives, Number 2393.
5. Muttukrishna on Thesawalamai, page 706.

tion and Placaats on various matters affecting the Jaffna Peninsula.<sup>1</sup>

Sir Alexander Johnstone in one of his letters to His Excellency the Governor<sup>2</sup> said : “ The inhabitants of the Province of Jaffna about the beginning of the last century complained to their Governor Mr. Simons that the different Magistrates and Courts established in that Province did not attend in deciding cases which were tried before them, either to the ancient usages of the Malabars or to the Regulations of the Dutch. Upon inquiry it was found to be extremely difficult to ascertain what usages and what Regulations were in force—the Governor, therefore, in order to simplify the Law according to which the Magistrates and Courts were bound to decide, and to prevent for the future, the sort of confusion and discontent which had arisen among the people from not knowing the duties that they were expected to perform, caused the Codex Number Two to be translated into Malabar and copies of it to be given to all the schoolmasters in the Provinces, with orders to read it publicly twice a year, in the hearing of all the inhabitants of their respective districts.”

It is divided into two parts, the first contains 78 articles, the substance of all the Proclamations relative to Jaffna which had been made by the Dutch Governor previous to the year 1707. The second, all the customary laws, which according to the report of the most intelligent Headmen had been in use amongst the Malabar inhabitants ever since the time of the Malabar Government.

Much of the first part is at present inapplicable in consequence of the change of system introduced by the English Government ; it would be, however, extremely advisable to adopt the plan upon which it was framed and published in separate articles but in one proclamation all the regulations which His Majesty's Government deemed necessary to be observed in the Province of Jaffna. The second part of it is just applicable now as it was in the year 1707, to the inhabitants of that Province ; their customary laws remain precisely the same, upon my submitting Simon's collection of them to the Headmen, they unanimously agreed that they were correctly stated and said that the British Government could not do them a greater favour than order all the Magistrates and Courts in their Province to adhere strictly to their customary laws.

Sir Alexander also sent with his letters the translation of his 72 Orders both in English and in Tamil and the letters of Corne-

1. Muttukrishna on Thesawalamai, pages 706-722.

2. Lot 5/79, pages 46-48, Ceylon Archives.

lius Joan Simons.<sup>1</sup> He also sent out printed translations of the Thesawalamai.<sup>2</sup>

### The Contents of the Seventy Two Orders

The Seventy Two Orders although obsolete now contain valuable intrinsic evidence of the customs of the peoples of Jaffna at the period of their promulgation. The preamble says<sup>3</sup> that in settling the disputes between parties to a litigation "those whose duty it is to arbitrate in the affairs of the people according to their ancient customs have met with great difficulty, and annoyance in settling litigated points, originating generally in buying and selling movable and immovable property, cattle and other effects in *otteying*, in lending money, in the registration of marriages, dowries, donations, the adoption of children, and in framing wills. In order to check such fraudulent practices in the framing of wills, marriage, contracts, bonds, etc., we have from time to time learnt.....among our subjects."

The preamble suggests that the Seventy Two Orders were enacted in accordance with the customs prevailing among the Tamils from time to time, but a perusal of these Orders would show that there were many orders which were newly enacted to protect the Protestant faith<sup>4</sup> or to preserve law and order<sup>5</sup> or to protect possession of lands<sup>6</sup> and for various other purposes.<sup>7</sup> These Orders give an insight into the structure of society and caste system<sup>8</sup> and slavery.<sup>9</sup>

The sentences passed by the Dutch courts were severe and even brutal judged by modern standards.<sup>10</sup> The Dutch punished adultery and improper conduct.<sup>11</sup> These Orders also provided for sanitary measures ensuring the purity of food<sup>12</sup> and the safety

1. See Ibid pages 126-188.
2. See Ibid pages 189-208.
3. See Muttukrishna on Thesawalamai page 686.
4. See Order 2, where it enacted that if anyone scoffs at the worship of God, he will be punished according to the statute law; See Order 3 which penalises anyone who performs the ceremonies of the Roman Catholic Church.
5. See Order 4—penalising assaults, See Order 5 which penalises pointing of a weapon, in accordance with the rule in the Statute of Batavia.
6. See Order 25.
7. See Order 27, which prescribes the formalities to be gone through in the case of sale and *otti* mortgages.
8. Order 45 states what service the various castes such as Vellalas, Parathasis, Madapulies, Mallealevs, Agampadys, Taungkarars and Shanars were required to perform. See Order 54 which punishes washermen if they detain clothes beyond 8 or 10 days. See Order 17 which prohibits giving of loans to Dyers. See Order 21 which states that the caste Cadene in Mannar were dye root diggers. See Order 42 that speaks of Cadears Fishers, Coconut Fibre Rope makers.
9. Order 22 states that the Nallawar or Palla slaves must be sold for a sum exceeding 15 rix dollars. Order 23 prohibits a master from dismissing a disabled or sick slave.
10. Order 24 prescribes the cutting of a hand for executing a faked deed. Order 58 prescribes flogging and 1 year imprisonment for stealing crops.
11. Order 52 states that persons who abandon their spouses and commit adultery will be punished according to the Batavian Law.
12. Order 58 penalises those who make and sell hoppers not in accordance with statute law.



of highways<sup>1</sup> and punished excise offences.<sup>2</sup> These Orders also protected the rights of the Dutch East Indies Company's<sup>3</sup> and contain law affecting coinage,<sup>4</sup> stamps,<sup>5</sup> weights and measures,<sup>6</sup> immigration.<sup>7</sup>

The Orders also give an insight into the administrative system and the class of officials employed by the Dutch and their respective duties.<sup>8</sup>

1. Order 61 penalised the owners of cattle that stray on the highway, Order 60 penalises the owners of cattle that destroy the crops.
2. For giving toddy a person lost his ear and was put in fetters for one year.
3. Order 59 prohibits selling of margosa trees without authority of the rulers.  
Order 14 penalises anyone who digs or dives for chanks.  
Order 18 penalises dye root diggers who appropriate them.
4. Order 7 and Order 8.
5. Order 9.
6. See Order 10.
7. See Order 11, 12, 13, and 14. Commandeur (see rule 70).
8. There was the Dissawe (See Order 29) Rosera (See Order 64). Odears (Order 64), Chattambers (School teachers) Order 64, Arachiar Ayuthonde, Government Pandura pulles (Order 64).

## CHAPTER V

# THE THESAWALAMAI CODE

### Division of Property

Different systems of law divide property in various ways. In Civil Law property is divided into movables and immovables, *res corporales* and *res incorporales*, *res fungibiles* and *res non-fungibiles*, etc. The Hindu Law and the Marumakattayam Laws divided property into hereditary and acquired property. The Law of Thesawalamai divided property into hereditary (*mudusum*), dowry (*chedanam*), and acquired property (*tediyatetam*).<sup>1</sup> The hereditary property is that acquired by a spouse from his ancestors. The dowry property is that which is given by the parents, brothers or relations to the wife at the time of marriage and the acquired property was property acquired by the spouses during coverture for valuable consideration and such consideration not forming any part of the separate property of either spouse or income derived from the separate property of either spouse. The dowries to the daughters were given out of the mother's dowry. The sons inherited the hereditary property of their father and the acquired property of both spouses were inherited by the sons and the undowered daughters, but according to established custom, the dowry was taken indiscriminately from the *mudusum*, *chedanam* or *tediyatetam*.

Referring to the different kinds of property in Thesawalamai Ganapathy Iyer says<sup>2</sup> that this division corresponds closely to the division of property in Hindu Law into hereditary property, *stridhana* and self-acquired property. It is submitted that Ganapathy Iyer's observations are not strictly accurate. The *stridhana* of the Hindu Law was recognised later in order to create the separate property of the woman. *Chedanam* known to the Thesawalamai was an institution that was developed among the first settlers in Jaffna. If a parallel is to be drawn from Marumakattayam Law the *chedanam* or dowry originated

1. T 1.1.

2. Ganapathy Iyer on Hindu Law, Vol. 1, p. 36.

when a new household branched off from the *thavazhi illam* known to the Marumakattayam Law. It became the practice among the wealthier classes for a husband or the father to provide a separate home out of his self-acquired property for his wife and children. When the daughter got married he provided her with a dowry in order that she may start a separate household. This is the origin of the dowry in the Law of Thesawalamai and it would be a mistaken idea to think that the Thesawalamai followed the Hindu Law of *stridhana* in developing the incidents of *chedanam* or dowry.<sup>1</sup> As Mayne has observed<sup>2</sup> in his monumental work of Hindu Law, many principles of Hindu Law were based on the customary laws that prevailed in South India and it is not far fetched to state that the basic idea of the law of *stridhana* was developed from the customary laws of the Tamils of South India.

### Dowry or Chedanam

Under the Thesawalamai Code the dowry property was particularly described in the instrument of dowry known as the *doty* which was usually a deed written on the palmyrah leaf on the occasion of the marriage. In order to prevent fraud a suggestion is made in the summary of the Code appearing in Johnstone manuscripts that the dowry should be in writing witnessed by five or more credible witnesses on the occasion of the marriage and the deed must set out by metes and bounds the immovable property given as dowry.<sup>3</sup> This suggestion, however, was not implemented by special Statute Law in view of the Frauds and Perjuries Ordinance 7 of 1840 which provided that all transfer or agreement to transfer lands must be notarially executed in the presence of two witnesses.

The Thesawalamai Code states<sup>4</sup> that immediate possession of dowry property should be taken in accordance with the Tamil proverb *ottium, chidenamum pattyal*. The suggestion in the Johnstone manuscripts<sup>5</sup> that such possession should be taken within three months was not implemented by statute. In modern law if there is a properly notarially executed deed granting dowry of immovable property immediate possession need not be taken. It is only by adverse possession for a period of 10 years the grantees under such deed will lose title to such property.

1. See Laws and Customs of the Tamils of Jaffna by H. W. Tambiah, p. 37. Among the Vellalas of Tinnevley a similar custom is prevalent. A dowered daughter lived in the homes provided by the father and such dowry devolved on her sisters if she died without issue and failing sister's on the mother. See Gazetteer of the Tinnevley District by H. A. Pale 1967, p. 141.
2. Mayne on Hindu Law, 7 Edition, p. 11.
3. Co. 53/123, p. 19.
4. T. 1. 3.
5. Co. 53/123 p. 19.

The granting of a dowry is considered as an imperative duty binding not only on the parents but also on the brothers.<sup>1</sup> The primary duty was on the father and if the father died the duty was cast on the mother who should first dowry the daughters out of the family property<sup>2</sup> and if the parents were not alive such a duty was cast on the son and falling them on the nearest relatives. The dowry property should be given unencumbered and if it was lost as a result of some adverse claim which accrued prior to the granting of the dowry the person who engaged to give the dowry, or on his death, the male descendants were under a duty to make good the dowry. Once a dowry had been given to a daughter she could claim no more from the parental estate if there were other children who were entitled to succeed.<sup>3</sup> But parents in affluent circumstances could give additional grant by way of dowry.<sup>4</sup>

### Devolution of Dowry Property

Under the Thesawalamai if the married daughter died without issue, the dowry property given to the deceased devolved equally on the married sisters.<sup>5</sup> This rule could be traced to the rule of succession known to the Marumukattayam Law by which when a *thavazhi illam* became extinct the property belonging to it devolved on the other *thavazhi illams* which separated off from the common *tarwad*. If no married sisters were alive then such property devolved on the brothers.<sup>6</sup> Often it happens, that sisters and failing them their brothers<sup>7</sup> who are entitled to their deceased sister's dowry allow their mother to take possession and retain the property during her lifetime.<sup>8</sup> A salutary suggestion was made that the mother should register such property in a Notary's office to entitle the daughters to reclaim the same after the mother's death,<sup>9</sup> but unfortunately no legislation was passed on these lines.

### Joint Family Property and Partition

The sons could not claim any thing from the parental estate so long as the parents were alive. Their acquisitions, so long as they remained unmarried, belonged to the parental estate, except ornaments which they were allowed to wear. Such ornaments had to be made out of monies acquired by the son or must have been given to them by the parents. This appears to have been

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1. T. 1.10, 1.11  
 2. T. 1.9.  
 3. T. 1.3.  
 4. T. 1.5.  
 5. T. 1.5.  
 6. T. 1.5.  
 7. T. 1.3.  
 8. T. 1.3.  
 9. Co 58/123 p. 21.

the law even if the acquisitions took place after the sons were married and quitted the paternal roof.<sup>1</sup>

This rule states the joint family system known to the Law of Thesawalamai. The sons were also under obligation to pay the debts contracted by the parents and this obligation was imposed on them even though they had not the means of paying such debts and even when they inherited no property from the parents.<sup>2</sup> If the parents were unable to administer their property the sons partitioned the same but they had to maintain the parents with it. If the sons failed to maintain the parents the latter were at liberty to resume possession of the property.<sup>3</sup> But the Code states that experience had shown that such parents often join hands with the married daughters and mortgage or sell such property with a view to harm their sons and therefore it was provided by the Dutch *Commandeur* that the parents may not dispose of such property either by way of sale or mortgage without the consent of the *Commandeur*.<sup>4</sup> On the death of a son his property devolved on his brothers and on failure of the brothers on his sisters.<sup>5</sup>

#### A succession to property when children and mother are left

After the death of the father the mother remained in full possession of all the property till she remarried.<sup>6</sup> She had the power of administering such property and to give as dowry any portion of such property to the daughters at her discretion. If she contemplated of a second marriage, and the son got married or wished to quit her she was obliged to give them the hereditary property brought in marriage by their father and half the acquired property obtained during the first marriage after deducting therefrom the dowries given to the daughters.<sup>7</sup> If she had daughters by both marriages, then, she had to provide such daughters dowry out of her own property and the *tediyatetam* acquired during the lifetime of the father of such daughters. If the mother died, leaving sons by both marriages, the sons of the first bed were entitled to the remaining of the *tediyatetam* acquired during the lifetime of their father and the sons of the second marriage were entitled in like manner to the remaining half of the *tediyatetam* acquired during their father's lifetime, after deducting from the respective shares of the *tediyatetam*, debts contracted by their respective fathers.<sup>8</sup> If the mother

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1. T 1.7.
  2. T 1.7.
  3. T 1.8.
  4. T 1.8.
  5. T 1.5.
  6. T 1.8.
  7. T 1.9.
  8. T 1.10

left any *chedanam* property, after she dowered the daughters, the sons of the first and second marriages were equally entitled to such property. The sons of the first marriage were entitled to his father's *mudusum* and half of the *tediyatetam* acquired during his father's coverture and the sons of the second marriage were entitled to their father's *mudusum* and the *tediyatetam* acquired during their coverture.<sup>1</sup>

### Devolution when mother dies

When the father survived the mother, he was given the right to be in full possession of the estate till he married a second time.<sup>2</sup> He was given the right to dowry any properties of the estate to his daughters. If the father married a second time he had to hand over the custody of the children to the nearest relations of the deceased mother, in which event he also had to hand over to them the produce of half of the *chedanam* and half of the *tediyatetam*.<sup>3</sup> The sons were not entitled to any property of the father's estate till his death. If a father died leaving male descendants by two different marriages the *mudusum* devolved amongst the children of each bed.

The sons of each bed were exclusively entitled to the *tediyatetam* acquired during their mother's marriage.<sup>4</sup> But if *tediyatetam* was wasted during the second marriage the sons of the second marriage were liable to make it good. The sons of each bed were also exclusively entitled to the respective dowries brought by their mothers which remained with their father after dowering the daughters. The male descendants of each bed had to pay the respective debts contracted during the marriage of their mothers.<sup>5</sup> But debts contracted during the intervals of such marriage had to be paid by all the male descendants.<sup>6</sup>

### Succession to half Brothers

The male descendants of a woman by different marriages succeeded to their half brother's property who died issueless in preference to the full sister of their deceased's half brother.<sup>7</sup> This is in accordance with the principles of Thesawalamai that males succeed males. If a man left a daughter and a son by the first marriage and a daughter by the second marriage, the daughter by the second marriage is entitled to inherit the father's property equally with her half brother although she might have received the dowry.<sup>8</sup>

1. T 1.10. T 1.11.

2. T 1.11

3. T 1.11.

4. T 1.11.

5. T 1.11.

6. Co 53/123 p. 24.

7. T 1.13.

8. T 1.13.

## A Succession to Ascendants

When a dowered daughter died and there were no sisters, their daughters and grand daughters, nor brothers, their sons or grandsons, her property reverted to the parents, if they were alive. But if the parents were not alive, the father's *mudusum* and half of *tediatetam* (less half of the debts) devolved on his brothers, then on their sons and grandsons; the mother's *chedanam* and half of the *tediatetam* (less half of the debts) devolved to her sister or sisters, their daughters or grand-daughters *ad infinitum*.<sup>1</sup> On the death of a son (or daughter), who is a sole child of his (or her) parents and who had inherited property from his (or her) father or mother, the property which he got from the father returned to the father's nearest relations, the property inherited from the mother's nearest relations devolved on them. The son's (or her, the daughter's) portion of the acquired property was divided between the relations on the father's and mother's side.<sup>2</sup> If the husband died childless, his property which he had inherited reverted to his nearest relatives, and his wife, or her relatives had no claim or interest therein; and when a wife died childless, all her dowry property or whatever she obtained from her family reverted to her own relatives and her husband had no claim to it.<sup>3</sup> To give either survivor a life interest in the property of the deceased, was a mere act of grace on their part and cannot be deemed as a right; but with regard to property acquired after marriage the case was different.<sup>4</sup> If a dowered daughter died issueless, the father and mother having predeceased her, and if there remained the child of the father's brother and the one of the mother's sister, the paternal and maternal cousins inherited equally.<sup>5</sup>

The principles of the Roman-Dutch Law are followed when the Thesawalamai is silent on any question of inheritance. On a question raised as to whether the line of inheritance, in a case where the line ascended from the intestate to her grandfather, who predeceased her and who had full brothers and half brothers, should be confined to the branch of the full blood to which the grandfather belonged or whether it should include the branch of the half blood, it was held that the heirs of the half blood were entitled to the estate, with the heirs of the full blood. Here, the Roman-Dutch Law was followed, the Thesawalamai being silent.<sup>6</sup> Where an intestate died without heirs in the descending or ascending line and where there were children of his uncle and

1. T 1.15.

2. T 1.5.

3. T 1.15.

4. Perianatchy v. Vedanayagam (1855) M. 82.

5. Wyramuttu v. Tangam (1826) M. 108.

6. Teyar v. Sivagamapillai 1 Bal. Rep. 201 : 4 Tam. 116.

aunts, the succession should be governed, the Thesawalamai being silent, by the Roman-Dutch Law which admitted such children to the inheritance *per stripes*.<sup>1</sup> Although an illegitimate child under the Thesawalamai did not inherit his father's property, there is no provision in the Thesawalamai which legally incapacitated him from taking property given to him by will by his parent.<sup>2</sup>

### Succession to remoter Collaterals

If a person died without issue and without brothers and sisters or parents, the father's hereditary property and half of the acquired property after deducting half the debts devolved on the father's brother or brothers. Similarly, the mother's dowry with the other half of the *tediatetam* after deducting from this half the debts devolved on the mother's sister or sisters.<sup>3</sup>

### Succession to property donated

Property donated to nephews devolved on their issues, if any, failing such issues, it devolved on their brothers and their children. Similarly, property donated to nieces devolved on their issues, and failing issues, it devolved on the sisters of such nieces and failing them on the sister's children and grandchildren. If all the above failed the property donated reverted to the donor or his heirs.<sup>4</sup>

Gifts made by the relatives of the mother devolved only on the heirs of the mother's side, and gifts made by the father's side relatives devolved only on the heirs of the father's side. But gifts obtained from strangers were divided among the relations of the father's side and mother's side equally.<sup>5</sup>

Gifts or presents made to a son, while he was unmarried, by relations or others were considered as a separate property of the donee and did not fall into the common pool of the ancestral property.<sup>6</sup>

If a husband gave half of the *tediyatetam* or acquired property to his relations without the knowledge of his wife and heirs, a similar share had to be allotted to the wife's relatives at the time<sup>7</sup> the estate was divided.

### Inheritance of Pagans

The Dutch Government considered the Hindus as benighted pagans and imposed various disabilities. The Thesawalamai

1. Poothatamby v. Mylvaganam 3. N.I.R. 42.  
 2. Visvanathan, v. Theagarajah, 4 Tam. 21.  
 3. T 1 15.  
 4. T IV. 2.  
 5. Ibid.  
 6. Ibid.  
 7. Ibid.



Code provided that if a "pagan" came from the coast (India) and became a Christian and married a Christian woman, then on his death, his heirs were not entitled to any of his or his wife's property, but if the wife died first without issue, the husband became entitled to half of the acquired property. If the "pagan" came from India and married a "pagan" woman then, on his death, his relatives inherited half of the acquired property. If a "pagan" had been converted to the Christian Faith, his relations were not entitled to succeed to his estate as heirs.<sup>1</sup>

Polygamy was allowed among the "pagans" and the Thesawalamai Code provided that all children born in lawful wedlock, although they may be children of the various wives, inherited the property of their father in equal shares.<sup>2</sup> The tying of a necklace called "The *thali*" was regarded as an essential ceremony to constitute marriage. Women who lived as concubines were not regarded as lawful wives and their children were not entitled to inherit the property of their father.<sup>3</sup>

### Guardianship

The customs recorded in the Johnstone's manuscripts<sup>4</sup> give a short account of the Law of Guardianship that prevailed among those governed by Thesawalamai in the early part of the 19th century. If both parents died, leaving minor children, the Court appointed one or two persons from the next of kin to function as the guardian of such children and also to manage their estate. The guardian had to give security for the performance of his duty and within three months of his appointment had to deliver a special account to the Court setting out the properties that came under the category of *mudusum*, *chedanam* and *tediatetam*. After the child attained the age of twenty-five the guardian had to account for the income and disbursements. A similar accounting had to be given in the case of a female child who got married. The guardian did not have the same discretion as the parents in allotting the dowry to the female children but they were obliged to appropriate the whole of the mother's dowry and half of the *tediatetam* in equal shares between the daughters, unless the parents by will had specifically bequeathed certain properties to the daughters.

In modern law, specific provision is made by the Civil Procedure Code for the appointment of guardians and curators over minor children and a special machinery has been devised to compel the curator to account to Court.<sup>5</sup>

1. T 1.18.

2. T 1.18.

3. T 1.18.

4. Co 54/123. p. 27.

5. See Chapter XL of Civil Procedure Code Cap., 86.

### Adoption

The Thesawalamai Code gives an account of the ceremonies that were observed in adoption.<sup>1</sup> Mayne remarks that the adoption known to the Thesawalamai was secular in nature and had no religious significance.<sup>2</sup>

The ceremony was simple and colourful. The adopting parents drank saffron water after the nearest relatives had dipped their fingers as a mark of consent and from that moment the adoption was complete.

The customs according to the Johnstone's manuscripts<sup>3</sup> make it clear that the ceremony of drinking saffron water had become obsolete, but still the presence of the relations and the barbers and washermen was regarded as essential. A suggestion is made in the Johnstone's manuscripts<sup>4</sup> that adoption should be made by an act executed before a Notary Public or a Magistrate and the nearest heir of the adoptor should signify his consent by subscribing his signature, but this was not implemented by statute.

Adoption could not take place without the consent of those who would be entitled to the estate on intestacy of the adopting parents.<sup>5</sup> But an exception was made in the case of children who had been brought up from infancy. Such children could be adopted without the consent of the relations of the adopting parents.<sup>6</sup> Where parents adopted the child without the consent of their heirs, where such consent was necessary, a child could not inherit more than 1/10th of the adopting father's hereditary property and of the adopting mother's *chedanam* property.<sup>7</sup> But the adopting parents were free to give the whole of their acquired property, provided they have no debts.<sup>8</sup>

A child regularly adopted after the prescribed ceremonies and the consent of the relations inherited precisely in the same way as any lawful child.<sup>9</sup> Even if there were no children at the time of adoption but several children were born thereafter still the adopted child ranked equally with the other children in inheriting the parent's property.<sup>10</sup>

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1. T 11.1.
  2. Mayne on Hindu Law, 9th edition, p. 134.
  3. Cs. 54/123, p 29.
  4. Ibid.
  5. T 11.1.
  6. Co. 54//123. p 29.
  7. T 11.1.
  8. Ibid.
  9. T 11.2.
  10. Co. 54/123, p 29

The adopted child lost all inheritance of his own parents as he ceased to be a member of that family.<sup>1</sup> Sometimes only one spouse adopted a child. In such a case the adopted child only succeeded to the inheritance of the adopting parent and not to the inheritance of the spouse of that adopting parent.<sup>2</sup> The adopted children were allowed to marry not only the children of the adopting parents but were even allowed to marry among themselves, provided they were not related in blood nearer than the brother's and sister's children. There was a positive prohibition by which two brother's children or two sister's children were prevented from marrying each other. This is a rule of exogamy that is observed among Tamils governed by Thesawalamai even in modern times. Adopted children succeeded to each other in the same way as brothers and sisters succeeded to each other's property.<sup>3</sup>

If part of the heirs of the adopting parents consented and others did not consent, then adoption was allowed, but such a child was excluded from the share of the property that would go on intestacy to those heirs who did not consent.<sup>4</sup> But if the adopted person took possession of the property and remained in undisturbed possession for a period of ten years, by adverse possession, then even the descending heirs who did not signify their consent were not entitled to claim such property.<sup>5</sup>

By adoption a man took the same caste as the adopting father but where a woman adopted a child such child retained his or her own caste in spite of the adoption. If a girl was adopted by a man, she belonged to the same caste as her father but when she married and had children such children took the same caste as their father. But in the case of slaves children took the status of the mother and belonged to her caste.<sup>6</sup>

The adopted child had to be under fifteen years and no child could be adopted whose property was greater in value than what he was expected to receive from the adopting parents.<sup>7</sup>

If there were three brothers and one of them had two children and the other two none, and one of them wished to adopt the child of his brother but the other resented, the adoption was allowed. In such a case, if the adopting father died, the adopted child and the brother who dissented shared the inheritance equally. Such an adopting father could also give a part of his property to the remaining children of his brother since the right of descent on his

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1. T 11.2.  
 2. Ibid.  
 3. T 11.4.  
 4. T 11.5.  
 5. Ibid.  
 6. T 11.7.  
 7. Co. 54/123, p. 32.

part as nephew to his adopted father had been taken away by the act of adoption.<sup>1</sup>

### Planters' Rights

During the early British regime planting was encouraged. A person was allowed to plant another's land and acquire certain rights in the plantations, but he was prevented from taking forcible possession of another's land with a view to plant the same.<sup>2</sup>

If a person cultivated another's land he was entitled to the crops of such cultivation. If he planted another's land with trees (except plantain trees) without entering into any contract he was allowed to possess that land, provided he paid a reasonable rent. This custom was observed even among relatives. An exception was made in the case of minor's property.<sup>3</sup> The minor was allowed to claim such property at any time within five years of his attaining majority. When he exercised his option the planter lost all rights to such property and plantation.<sup>4</sup>

Often, by agreement, one planted another's land. In such a case, according to custom, if the plants were supplied by the owner he got two-thirds of the produce of such plantation. If the planter supplied the plants then he got two-thirds of the yield. But if both have been put to the expense equally of supplying plants then they shared half the produce. An exception was made in the case of palmyrah trees which grow at random. Such trees belonged to the proprietors of the land.<sup>5</sup>

A person also acquired ownership over a tree which was planted on another's land, but if any trees sprouted up spontaneously from the fruits of the trees belonging to a person, they did not belong to the owner of the trees but to the owner of the land. This custom prevailed in the village of Araly but was obsolete during Johnstone's time. If the land was not owned by any body then the plants that sprouted from the fruits that fell from the parent tree belonged to the owner of the parent tree.<sup>6</sup>

### Rights over overhanging branches

Where a tree standing on a person's land spread out branches, which overhung the neighbour's land, the question of ownership of the overhanging branch and the right to take fruits from such

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1. T 11.6.  
 2. Co. 54/123 p 33.  
 3. Ibid.  
 4. Ibid.  
 5. T iii. 2.  
 6. T iii. 4.

a tree depended on whether the tree was of such a nature that it grew spontaneously without any labour, such as *tamarind*, *illupai* and the *margosa* tree, or trees which had to be cultivated with a great deal of trouble and expense.<sup>1</sup> In the first case, the neighbour was entitled not only to the fruits of the overhanging tree but also to the overhanging branch so that when the tree was cut the overhanging branch had to be given over to the neighbour. But in the second case, the owner of the land did not lose his rights to the fruits of the overhanging tree: the neighbour was not allowed to cut down such overhanging branch unless it proved a hindrance to him. Even so he had to get the permission of the Magistrate to cut such a branch.<sup>2</sup>

### Law of Mortgages

The Thesawalamai recognized a form of usufructuary mortgage known as the *otli*. The *otli* mortgage was brought by the early settlers, and it is remarkable that the Marumakattayam Law too, recognized a mortgage with similar incidents by the same name.<sup>3</sup>

Under the *otli* mortgage the mortgagor was given the possession of the property which was the subject matter of the mortgage. He cultivated it and took the produce in lieu of interest. If he has expended money or trouble for cultivating such lands it was nothing but equitable that he should be allowed to reap the produce before the mortgagor was given the right of redemption. Hence, the Thesawalamai contained many customary rules prescribing the time when certain types of land could be redeemed and also provided rules for compensating the party.

### Redemption

In the case of garden lands (*varagu* culture) the mortgagor was allowed to redeem the land only in the months of July and August and in the case of paddy lands he was allowed to redeem it in the months of August and September.<sup>4</sup> According to the seasons prevailing in Jaffna these are the months when these lands are lying fallow.

Gardens cultivated with palmyrah, betel and tobacco could only be redeemed in November. Gardens cultivated with such trees as coconut, mango and jak could only be redeemed in December or January.<sup>5</sup>

1. T iii. 3.

2. Ibid.

3. See Laws and Customs of the Tamils of Jaffna by H. W. Tambiah p. 7.

4. T V.I.

5. Ibid

If the mortgagee did not cultivate the land for a space of one year with a view of cultivating it the next year in order to get a better yield, the mortgagor was allowed to redeem such land in November of the same year.<sup>1</sup>

If the mortgagor gave notice of redemption after the land had been ploughed or prepared for purpose of cultivation the mortgagor had to compensate the mortgagee and pay the expenses incurred if he wished to redeem the land. In the alternative he had to allow the mortgagee to take a share of the produce according to the customs that prevailed in the various villages.<sup>2</sup> If the share to be given cannot be agreed upon, the mortgagor must permit the mortgagee to sow and cultivate the land and reap the harvest or the produce, as the case may be, on his paying a rent to the mortgagor known as *tarraivarayam*.<sup>3</sup>

### Time of Redemption

Subject to what has been said earlier, the mortgagor was allowed to redeem the property at any time, although by agreement a period of time had been fixed for the redemption. This rule is in accordance with the principle of Roman-Dutch Law, that despite any agreement to the contrary, the mortgagee was allowed to pay off his mortgage and redeem the property at any time.<sup>4</sup>

### Rights of the Mortgagee

The mortgagee who wished to recover his money had to hand over the property mortgaged to the mortgagor and wait for a period of a year and then demand his money. If the mortgagor was unable to pay the sum and the mortgaged property was not sufficient to satisfy the debt he should be satisfied by obtaining a transfer of the land that was mortgaged from the mortgagor in full satisfaction of his debt.<sup>5</sup> If the mortgagee wished to sell the property he had to offer it to the co-owners who had the right of redemption. Only in the event of their failing to exercise such rights he was entitled to sell same to strangers.

### Payment of Taxes

As the *otli* mortgagee was in possession of the property the taxes had to be paid by him. But in the District of Vaddemarrattchy the owner got 1/10th of the share of the produce and therefore according to custom he had to pay the taxes.<sup>6</sup>

1. Ibid.

2. Ibid.

3. T V. 3

4. See Wille on Mortgage, and Pledge in South Africa, 1920 edit. p. 194

5. T V. 1.

6. T V. 2.

## Mortgages of Slaves

A slave, being regarded as chattel, could be the subject of *otti* mortgage. Where a slave who was mortgaged fell ill, the mortgagee had to give immediate notice to the proprietor in order that the proprietor might take steps to cure the slave.<sup>1</sup> If without such notice the mortgagee incurred expenses in treating the slave, he could not recover the sum so expended from the proprietor. Many a serious illness requiring prompt attention, must have taken heavy toll over the lives of these unfortunate slaves as a result of this custom. If the slave died the proprietor had to return the sum which he had borrowed.<sup>2</sup>

## Mortgage of Cattle

Often cattle was given by way of *otti* mortgage for the purpose of ploughing another's field. If such cattle died they had to be replaced and after the ploughing season was over such cattle could be redeemed.<sup>3</sup>

## LAW OF CONTRACTS

### Pawn of Jewellery

Jewellery could be pawned as security for a loan. If the pawnee wished to recover interest he was not allowed to use them. If he used them or lent them he forfeited his rights to recover any interest.<sup>4</sup>

### Hire of Cattle

Where a person hired his cattle to another for ploughing purposes and some of the cattle died the owner need not replace such animals. If by any act of theirs the animals broke their legs or injured themselves the person who hired them need not indemnify the proprietor.<sup>5</sup>

### The Law of Sale

Thesawalamai had certain peculiar rules governing the law of sale. Land, animals, slaves and other movables could be sold. But in the case of immovables and slaves, the freedom of contract to sell was restrained and controlled by the right of pre-emption given to certain class of people. The right of pre-emption was given to heirs, co-owners and to adjacent landowners and to persons who held a *otti* mortgage.<sup>6</sup>

1. T V. 6.

2. Ibid.

3. T V. 7.

4. T V. 8.

5. T. VI.

6. T VII. 1.

### Notice of Sale

In ancient times the person who wished to sell a land or a slave had to give notice of a certain duration to persons entitled to pre-emption. If such persons were from the same village one month's notice had to be given. If they did not live in the same village but in the same province three months' notice had to be given. If they happened to live outside the province a year's notice had to be given.<sup>1</sup>

But during the time of the "Dutch Commandeur Bloom of Blessed memory," the law in this matter appears to have been changed. If the person intending to sell gave notice on three successive Sundays in Church it was sufficient.<sup>2</sup> Apparently, during the Dutch period, various inducements were held out to convert the so-called pagans to Christianity. One of them being to include a number of secular matters in the proceedings of the Church such as publication of notices before sale of a land or a slave.

Where a land which was the subject matter of an *otti* was sold the deed of sale had to specially mention the existence of the mortgage, or the mortgagee should be paid and settled before the deed was executed.<sup>3</sup> This salutary position was insisted upon to prevent fraudulent dealings. The law of registration as it stood at that time was inadequate and could not prevent the perpetration of frauds.

### Sale of Animals

The law of pre-emption did not apply to the sale of animals such as bullocks, cows, sheep, etc. Previous notice of such sale need not be given. The sale was confirmed when the dry dung of the animals was delivered by the seller to the purchaser. This procedure reveals a very primitive method of witnessing a sale. Considerable difficulty must have been experienced in proving such sales.<sup>4</sup> No writing was insisted upon and this must have caused uncertainty in executing contracts. The purchaser became not only the owner of the animal, but by the law of accretion, even the owner of the young ones of such animals.

### The Law of Slavery

According to the compiler of Thesawalamai Code, the Pallas, the Nalawas, the Chandas and the Koviyaars were slaves at one time. But during the Dutch period the Chandas had ceased to be slaves and few of them who were considered as slaves in ancient

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1. Ibid,  
2. Ibid.  
3. Ibid.  
4. T. VII.2.



times were registered as Koviyaars. Various theories have been propounded regarding the origin of the Koviyaars. Such a caste is not found in India and according to learned opinion<sup>1</sup> they were the remnants of the Sinhalese Goiyas who were enslaved by the Tamils when the Peninsula was overrun by the Tamils. But Claas Isaac who codified the Thesawalamai gives another theory regarding their origin. He says that they were children sold as slaves by their parents in ancient times.<sup>2</sup>

The Pallas were the original slaves who came along with the Vellala settlers and looked after the lands of their masters. The Nalawas, according to learned opinion, were remnants of a lower caste of the Sinhalese who were left over at the time of the Tamil invasion and who took up to climbing trees as a vocation. They are said to have been called Nalawas because they climb trees (*nallurwa* means to climb in Tamil).<sup>3</sup> The Chandas were originally the Shanars from India who during the Dutch period provided food for the Government elephants and carried palanquins and baggages of the Dutch civil servants.

### Marriage of Slaves

The slaves could not marry without the consent of their masters. The school master of the church to which the slave belonged could not register such marriages unless the consent of their master in writing was produced. Not only the slaves of the same master but slaves of different masters were allowed to marry, provided their masters consented to the marriage.<sup>4</sup>

### Succession to Slaves

If any of the slaves died without issue the master of the deceased slave could appropriate to himself such inheritance or dowries as were brought by the deceased in marriage and also half of the acquired property acquired during the marriage. The master only succeeded if the deceased did not have any brother or sister who were also slaves of the same master. If the deceased had brothers and sisters who were slaves of the same master the brothers and sisters succeeded to the property provided the master himself was not in a state of indigency.<sup>5</sup>

The children belonged to the proprietor of the female slave. Therefore, if a male slave who was married to a female slave belonging to another died the children did not inherit from

1. See Ancient Jaffna by Rajanayagam, p. 383, 384.

2. T VIII.1.

3. See *ibid* and M 1. Raghavaa is of the view that these were the archers of the Tamil invading armies.

4. T VIII. 2.

5. T VIII. 3.

their father. When the mother died the master had the choice either of appropriating to himself half the property which the deceased brought on marriage and a fourth of the property acquired during the marriage or to give it to the children of the deceased. The children of slaves belonging to different masters belonged to the proprietors of the mother.<sup>1</sup>

### Nallawa and Palla Slaves

Reference has already been made to the origin of these slaves. They were allowed to live away from their masters and to earn their own livelihood but they had to perform the government services which fell upon their masters to perform and in return the masters had to maintain and support them.<sup>2</sup> They were also under an obligation to cultivate the fields and repair the fences of the masters; and during the period of their employment, the masters had to maintain and support them. The master also had the right and liberty to call upon such male children of the slaves, as he thinks proper, to look after his cattle. Such children had to be maintained and supported by the master. The master was also under a duty to provide for all expenses that may be incurred by the female slaves in giving birth to a child.<sup>3</sup>

The slave could own property but the master could appropriate such property and sell the slaves to others.<sup>4</sup> But if he allowed the slave to remain in possession of such property for any length of time after such sale he forfeited his rights to such property.<sup>5</sup> But where by custom a female slave was given to a needy widow for the purpose of giving such slave as a dowry to the daughters and the female slave continued to live in their parent's house the widow was not entitled to give any part of the slave's property to her daughters as dowry since such property belonged to the master of the slave and could not be transferred without his consent.<sup>6</sup>

### Emancipation of Slaves

A married or unmarried man having no issues intending to emancipate his slaves had to inform the schoolmaster of the Church to which such slave belonged his intention to free them. On three consecutive Sundays his intention to free them had to be declared publicly in Church. Anybody claiming to have a right over such slaves was allowed to come

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1. T VIII.4.  
 2. Co. 54/123 p. 46; T.VIII.5.  
 3. T VIII.5.  
 4. T VIII.6.  
 5. Ibid.  
 6. Ibid.

forward and prevent the emancipation within a certain period. In case of dispute, the matter was referred to arbitrators appointed by both parties whose decision was considered as final. A married man who had no issue could not emancipate a slave who was given by way of dowry without his wife's consent. Husband and wife having children could jointly emancipate slaves in any manner they pleased. A man who had a child by his own slave could emancipate this child without the consent of his heirs and could even make a donation of a part of his hereditary property, provided it is not of considerable value. When an emancipated male or female slave died without issue, leaving brothers and sisters by his or her mother's side, and one of them being only emancipated, only the emancipated brothers and sisters inherited to the exclusion of the brothers and sisters who were in slavery. If there were no brothers and sisters on the mother's side who were emancipated who could succeed, the legitimate children of the deceased father succeeded to the deceased's property. If there were no such legitimate children the property reverted to him or her from whom such property was obtained and failing them to his or her heirs.<sup>1</sup>

### Law of Suretyship

The Thesawalamai contained peculiar rules governing the law of suretyship. When money was lent on the condition of its being repaid with interest, and the debtor defaulted, the creditor was given the liberty to take legal steps for its recovery and to sell the property mortgaged or pawned. If there was a surety, the creditor could proceed against the surety if the debtor absconded or was unable to satisfy the debt. On payment, the surety was entitled to ask the creditor to transfer his rights of action. Where two persons borrowed money jointly, the creditor was allowed to proceed against the first debtor he met and recover the full sum. The debtor was called upon to satisfy such debt and if he paid, the same he could claim half of it from the co-debtor.<sup>2</sup>

A person who contracted debts during his life time without the knowledge of his wife and children was obliged to pay the same.<sup>3</sup> When a husband and wife, who mortgaged their property, and later gave the same as dowry to their daughter without mentioning the mortgage, died leaving other property, the creditor could proceed against the other property. If there were no such property, the sons were obliged to pay the debt and if the sons had no means, the creditor had to wait till the sons acquired sufficient wealth to pay the debt.<sup>4</sup> The creditor could not allow the interest.

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1. T VIII.7.  
 2. T IX.2.  
 3. T IX.3.  
 4. T IX.5.

to exceed the capital. If he did so he was not entitled to recover such excess.<sup>1</sup>

### Loan of monies with agreement to receive interest in kind

If a creditor lent money and agreed to receive paddy in lieu of interest and the harvest failed the creditor could not recover any interest. Where a person borrowed seed paddy on condition of paying interest the quantity of the paddy must be stipulated in the agreement. If the harvest failed the creditor was not entitled to any interest. If the debtor had a good harvest and the creditor neglected to demand the interest out of the harvest he could not demand it later.<sup>2</sup>

### Exchange and Barter

Barter and exchange are also common among the Tamils in ancient times. If a person wish to exchange grain, paddy, *chamy*, *kurrakkan*, *kollu*, rice and *kachchan*, an equal quantity had to be returned according to the price. But any person willing to exchange paddy for *varaku* had to give  $1\frac{1}{2}$  *parai* or *varaku* for one *parai* of paddy.<sup>3</sup>

### The Law of Leases

If without previous agreement regarding the quantity of grain or paddy to be given by way of rent, a person sowed the field of another, according to custom, the person who sowed the field was entitled to  $\frac{1}{3}$ rd of the crop which remains after  $\frac{1}{10}$ th had already been deducted as belonging to the proprietor. In other words, the proprietor gets  $\frac{1}{10}$ th and  $\frac{2}{3}$ rds of the remaining  $\frac{9}{10}$ ths. If the harvest failed the proprietor could not recover anything, provided there was a general failure of harvest in that area. If others had reaped a good harvest in the same area then the failure of the harvest could be attributed to the negligence of the cultivator and the cultivator was not excused from paying the rent. If on the other hand the land sowed by the cultivator produced a tolerably good harvest while those of the other inhabitants of the village had a bad one, the proprietor was not to claim anything more than a share in proportion to that field.<sup>4</sup>

### The Law of Marriage

According to the Thesawalamai Code, ascendants and descendants and collaterals up to the third degree could not get

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1. T IX.4.  
2. T IX.5.  
3. T IX.6.  
4. T IX.7.

married. Among the first cousins, marriages between the two brothers' and two sisters' children were not permitted. Cross-cousin marriages were encouraged. Two adopted children could get married, provided there were no other barriers.

Child marriages appear to have been encouraged during the early period. Thus, Baldeus says, that it was regarded as a crime for a man to remain unmarried in the Tamil community in Jaffna. The unmarried people were put in the same category as murderers and destroyers of the human kind. For this reason, he states that children at 10 and 11 were betrothed, and it was not an infrequent sight to see them married at the ages of 8 and 10. In child-marriages, the consent of the children could not have been obtained.<sup>1</sup> The marriages were arranged by parents. Now by statute females under 12 and males under 14 cannot get married, and child-marriages are unheard of in modern society.

By the performance of customary ceremonies valid marriages could be contracted among the Tamils. The marriage ceremonies among the Vellalas of Jaffna<sup>2</sup> are almost the same as the ceremonies among the Tamils of Puttalam. The ceremonies among the Koviars and the other lower castes were not so elaborate. The usual ceremony consisted of the tying of a necklace, the *thali*, and the giving of a piece of cloth known as *kurai*. Often a simple religious ceremony is performed, known as *Pulleyar Puja* invoking the blessings of the deity Ganesa. Among the lower classes such as the Nalawars and Pallas, the ceremony consisted of the presentation of a piece of cloth and the serving of rice.<sup>3</sup>

1. Ibid. Chap. 48, p. 723

2. Laws and Customs of the Tamils, by H. W. Tambiah, p. 167 et. seq. Balasingham, Laws of Ceylon, Vol 2. Ch. 27.

3. For a fuller treatment Laws and Customs of the Tamils of Jaffna, p. 111, et. seq.

## CHAPTER VI

# THE CASTE SYSTEM AMONG THE TAMILS OF MANNAR AND JAFFNA

The social structure of the people of Jaffna and Mannar is based on the caste system. The members of each caste had various obligations to perform to one another, and corresponding to these obligations there were reciprocal rights. Many institutions and customs could not be understood unless the caste system in all its implications is studied.

### The Brahmins

According to the Kailasamalai, a Brahmin by the name of Gangathira Iyer was brought from India when the Aryachakrawathy, called Kulankai Chakrawathy, founded the capital of his kingdom, to officiate at the Temple. When the Vellalas of South India settled down in Jaffna the Brahmins must have come in large numbers to officiate in the temples. An interesting account of the Brahmins in Jaffna is given by Baldeus.<sup>1</sup>

Baldeus was a missionary who lived in Jaffna during the Dutch period and had a long and intimate knowledge of the social customs prevailing at that time. He states that the Brahmins living in Jaffna were men of great morality, sober, clean, industrious and moderate in their habits. They took no strong liquors and ate nothing which had life yet they were addicted to other pleasures. Notwithstanding that they were Christians they carried certain beads. They never married outside their families but frequently married their brother's and sister's children. Although they were opposed to incest they regarded this alliance with approbation, in view of the fact that they believed that they were descended from Brahma. Baldeus states that though they bear Christian names and knew the ten commandments and other points of Christian doctrine they still retained many of their pagan superstitions. "If you tell them of the Christian liberty in victuals and drinks," says Baldeus, "they reply, that they are not ignorant of it; but

1. See "A Collection of Voyages and Travels," 3rd Ed., Vol. 3, Chap. 17. Travels of Baldeus, Churchill's Translation, p. 721.

as of the essence of Christianity does not consist in eating and drinking, so they did not think themselves obliged to feed upon such things as are contrary to their nature and education, being from their infancy used to much tenderer food, which agrees with their constitution and makes them generally live towards a great age." The Brahmins although they became Christians in name remained Hindus. When religious toleration was established during the British period they became the priests of the Hindu temples in Jaffna.

### The Vellalas

The Vellalas are the landowners of Jaffna and their settlements have already been dealt with. The Vaipavamalai and the Kailasamalai state that they settled down with all their slaves and dependants.<sup>1</sup> Speaking about them Baldeus says :<sup>2</sup> "That the Vellalas were the highest caste but as they were converted to the Christian religion, the Brahmins who remained Hindus claimed priority over them. He states that the Vellalas wore a bifurcated garment similar to trousers, they also wore leather sandals and had a kind of bag called the *madi* in which they kept betel, papers, etc. On the right side they carried a knife in a sheath, and an iron pen with a silver head. They also kept a piece of steel to sharpen their knife. They wore earrings from their infancy. They were agriculturists and owned cattle, buffaloes, etc. Their habitations were both convenient and neat with beautiful gardens. Baldeus states that the Vellalas were the richest inhabitants of Jaffna. They did not marry except within their own family. Such marriages often took place only in the spring as among the Persians and the Romans.

### The Madapallis

The Vaiyapadal states that the Madapallis are immigrants and colonists. Mudaliar Rajanayagam is of the view that the word Madapalli is derived from madaipalli which means Royal kitchen.<sup>3</sup> Boake in his work entitled monograph on Mannar, states that the Madapallis are bastards of royal descent.<sup>4</sup> During the Dutch period there was a long struggle between the Vellalas and Madapallis for supremacy and the Dutch settled this dispute by appointing two officers from each of these castes called *Kanakapullais* or scribes to the *Commandeur*. In modern times the Madapallis have intermarried among the Vellalas and are intermingled with them.

1. Yalpana Vaipavamalai, by Britto, p. 15

2- *Ibid* p. 70.

3. See Memoirs of Van Rhee, p. 7.

4. Boake on Mannar District, p. 21.

### The Fisher Caste

According to Van Rhee there were six kinds of fishers: the Karayars,<sup>1</sup> the Mukkuwas, the Parawas, the Chimbawas, the Kaddears and Timmalars.<sup>2</sup> Boake states that only Karayars, Mukkuwas and Parawas and Timmalars were fishers in Mannar. The Kaddears were either lime burners or *chaya*-root diggers. It is likely that some of these Kaddears took up to fishing. According to Boake Timmalars were sea farers, but recently took up to carrying palanquins. The Kaddears he divides into Mamulis<sup>3</sup> and Weankally, the latter were *chaya*-root diggers.

### The Chiviars

The Chiviars were palanquin bearers and during the Dutch period they carried the palanquins of the *Commandeur* and Dissawe and supplied their houses and castles with water.<sup>4</sup> During the time of the Tamil kings they were servants of the king's household and they carried out such duties as carrying water, carrying palanquins, etc. Baldeus speaking of them says: "However as they are descended from courtiers so they are too proud to carry any ordinary person who must be content to be carried by the ordinary cooly labourers, who live all over the country; whereas the Chiviars inhabit in the district of the Church of Chundiculi."<sup>5</sup>

### The Kusavar

The potters were called Kusavars, their occupation being the manufacture of earthenware, and were found both in Jaffna and Mannar. According to Boake there were 14 families in Adamben, and 10 years later they had disappeared. The Kusavars are also found in the Madura District in India.<sup>6</sup>

### The Washermen

The Vannan or the dhoby is the washerman and he is an important official in all ceremonial occasions. They washed the clothes of the Vellalas. In India they are found in all Tamil districts.<sup>7</sup>

### The Barbers

The Barbers were also important dependents of the Vellalas, who performed various ceremonies on ceremonial occasions, such as weddings, funerals, etc.

1. The Karayars are a caste of fisherman who are also found in large numbers in Tanjore, Madras and South Arcot Districts of India. The name means coastmen—See Madras District Gazetteer Tanjore Vol. 1 p. 86.
2. Van Rhee, p. 8.
3. Mamul is a Malayalam word which means customary.
4. Van Rhee Memoirs, p. 9.
5. Baldeus p. 721 et seq.
6. See Madras Gazetteer, Madura, Vol. 1, p. 101, by W. Francis.
7. See *ibid* p. 101.



### The Kammalars

These were the artisans such as blacksmiths, silversmiths, goldsmiths, workers in brass, and carpenters. There is a tradition that in ancient times they lived together in a fort built of loadstone at Mantota, the ancient port near Mannar. On account of their contemptuous behaviour their huts were burned to the ground and they were exterminated.<sup>1</sup>

### The Koviars

These were the domestic servants of the Vellalas. Various theories exist as to their origin. According to one view they are herdsman (*kooidayar*). The Thesawalamai Code states that they were children of Vellalas who were sold as slaves. Others take the view that they are the remnants of the Sinhalese goiyas or goviyas. It is significant to note that in India there is no caste known as Koviars. The Koviars, although he was slave of the Vellala was regarded as a member of the household, and the Vellala wined and dined at the Koviars' wedding, and performed various obligations towards him. The word Corva represents various groups of Kovias, once the domestic slaves of the highest Vellalas. Van Rhee states: "The company also owns a large number of slaves. . . . They belong to various races and castes, the chief of these formerly belonged to the heathen kings . . . . They live by themselves : and are described as follows . . . . Maywale Cove, Tambele Cove, Attanhittan Cove, and Chivelenden Cove."<sup>2</sup>

### The Thanakarars

The Thanakarars are said to be the elephant keepers, who supplied the necessary fodder to the stables of the king. The word thanakarars in Sinhalese means a person who supplied grass. This caste again finds no counterpart in India, and the view that they were remnants of the Sinhalese, is therefore fairly well founded.<sup>3</sup>

### The Nalavars

The Nalavars were the slaves of the Vellalas and their occupation is to gather liquor and to pluck the coconuts. Various theories have been propounded regarding their origin. According to one view they were the remnants of a low caste among the Sinhalese and they took up to climbing later and therefore they were known as Nalavars (which in Tamil means to climb). They brand their cattle with the mark of the bow and arrow,

1. Caste, Customs and Manners of the Tamils, Simon Casie Chetty, p. 41.  
 2. Van Rhee Memoirs A. D. 1697 translated by Sophia Anthonisz, p. 21.  
 3. Ancient Jaffna, p. 383, by Mudaliar Rajanayagam.

and from this fact Mr. Raghavan is of the view that they were the archers who came with the invading Tamil armies, and later took up to climbing trees.<sup>1</sup>

### The Pallas

These were the slaves who accompanied the Vellalas from India. They are found in India too. They cultivated their master's fields, and are even today in an abject state of poverty.

### The Parayars

These are also known as Adidraavidars, which means the people who preceded the Dravidians. When the Dravidians settled down in Southern India the Parayars were already there. Their function is to play the drum at funerals, Baldeus describes them as the most despicable of all and states that their function was to carry filthy things, and that they had to salute the higher castes, with deep reverence and other ceremonies to show their submission.<sup>2</sup> Van Rhee divides Parayars into Kalicare Parayars, and Kottoccari Parayars. It must be noted that the Parayars were never the personal slaves of the Vellalas but were the *kudi makkal* (those who served the people) of the village.

During the Portuguese period a Foral relating to them states that there were 4 classes of Parayars : The Parayars of Utarao (Utaram means north), Ulu Parayars (Ullur Parayars—the indigenous branch), the Ulia Parayars (the Parayars who performed Ulium or services), Paravetas Parayars (Parivatu).<sup>3</sup>

### The Turumbars

The Turumbars were the lowest caste of dhobies<sup>4</sup> and washed the clothes of the Parayars and other depressed classes.

### The Chandas

The Chandas were the Shanars of India, according to Mr. Raghavan. The Chandas had ceased to be slaves during the time of Claas Isaacs.<sup>5</sup>

### The Chetties

The Chetties were the merchant class among the Tamils and during the Portuguese period they were divided into native Chetties, and *paradesi* Chetties; the latter were new-comers who had settled down from *paradesum*, or foreign country. They are also divided into Nattukottai Chetties who had come from the Ramnad district and who were money lenders, the Vannia Chetties or oil mongers<sup>6</sup> and the Colombo Chetties.

1. Tamil Culture, Vol. 1954 (1st ed.).

2. Baldeus Ibid p. 725

3. See King. The Kingdom of Jaffna Pattam, 1645. P.E. Pietris, p. 26.

4. See Monograph on Mannar by Boake, p 21.

5. Infra p, 2.

6. See Boake's Mannar, p. 22.

### The Vaniyar (Oil Mongers)

The Vaniyars (oil mongers) trade in oil. They came to Jaffna and settled down in recent times. In India they are found in the Tamil districts.<sup>1</sup>

### The Wanniar

The origin and history of the Wanniar will be discussed later. In India they are still found in the Coimbatore and Tanjore districts. They claim to be the Kshatrias of the fire race and generally claim a greater status than society is prepared to accord them.<sup>2</sup> In Jaffna they were intermingled with the Vellalas and are not found as a separate caste in modern times.

### The Kaikular

The Kaikular are a handful of people who live near Nallur. They are probably the weavers who came from the Coimbatore District in India. In India they were musicians and attendants at temples.<sup>3</sup>

### The Idayar

The Idayar are the pastoral class of the Tamils. They come from India but today they do not exist as a separate caste in Jaffna. The name is derived from the Tamil "idai" which means middle. It refers to their occupation of the middle part called *mullai* (pasture land) of the five groups of land mentioned in the Tamil works.<sup>4</sup>

### The Seniyan

The Seniyan of Jaffna are Andra weavers who came and settled down in Jaffna in recent times. In India they are found in the Telugu District. In the exercise of their trade they are distinguished from the Kaikolans in that they sometimes weave silk which the Kaikolans of South India never do.<sup>5</sup>

### The other Castes

There were several other castes mentioned by Mr. Boake.<sup>6</sup> In particular he mentions the painters, the Paradesie (mendicant), the Maravars, the Ayampadian, the Chalias, the Nathan Patti, the Kallans, the Vadukar, Odder—tankdiggers, Padiachy and Kannadians.

1. See The Manual of Coimbatore District by F. A. Nicholson 1887, p. 61. See also Madras District Manual North Arcot by Cox, edited by Stewart, Vol. 1. p. 231.
2. See Manual of the Tanjore District by Hemingway 1906 p. 82; Manual of the Coimbatore District by F. A. Nicholson 1887: p. 68.
3. See Manual of Coimbatore District by F. A. Nicholson, p. 6.
4. See North Arcot Manual by Cox 1825, p. 220.
5. See Madras District Manuals North Arcot by A. F. Cox edited by Stewart 1895. Vol. 1, p. 230.
6. See Boake on Mannar, pp. 21, 22.

## CHAPTER VII

# THE LAWS AND CUSTOMS OF THE VANNIAR DISTRICT

The 'Vanny' was the name given to that part of Northern Ceylon which is bounded on the north by the Jaffna Peninsula and on the south by Aruviaru and the district Nuwara Kelawiya, now merged in the North Central Province ; on the east by the district of Trincomalee and on the west by the district of Mannar.<sup>1</sup>

### The History of the Vanni

Tennent says, "Of its history no satisfactory record survives beyond the ascertained fact that after the withdrawal of the Sinhalese sovereign from their northern capitals in the 14th century, and the abandonment of their deserted country to the Malabars, the latter disorganised and distracted in turn by the ruin, they themselves had made, were broken up into the small principalities under semi-independent chiefs, and of these the Vanni was one of the last that survived the general decay."

The Vanni district was formerly said to be known as the *Adankapattu* ('a rebellious province'). Various accounts are given about the early settlements of the Vanni.<sup>2</sup> One of the rare and original manuscripts is the *Vaiyapadal* by Vaiya Puri Aiyar, the court bard of King Sekharaja Sekeran (one of the Arya Chakrawathies of Jaffna. It is an epic in verse, which gives an account of the colonisation of the Vanni.<sup>3</sup> It begins with a narrative of the conquest of Lanka by Rama, ending with the crowning of Vibhishana as the King of Lanka and gives a narrative of its subsequent history.

It says that Chinkan (Sinhan) when he became King of Ceylon sent messengers to the court of the King of Madura and

1. Manual of the Vanni District by J. P. Lewis, 1895 Government Printing Press, page 1.
2. Sir Paul Peiris is of the opinion that the Vanni chieftains were Mukkuwa chiefs, originally 12 in number. See 'Ceylon and Hollanders' 1658-1796 page 81, by Sir Paul Peiris. But Sir Arunachalam is of the view that they were Vellalas brought by Kulkodda Maharaja, Census Report, Volume 1. by Sir Arunachalam. The *Vaiyapadal* was printed by the late Mr. Arulpragasam, B.A.
3. The *Vaiyapadal* was printed by the late Mr. Arulpragasam, B. A. (Mad.)

sought the hand of the Princess. The King of Madura sent the Vannias who are described as '*Taraniper Kulathar*' of royal lineage to accompany the Princess Samathuti to Lanka. This event is said to have taken place about the year 3,000 Kaliyoga era.<sup>1</sup>

According to this work a series of colonisations follows. The King of Madura paid a visit to Lanka accompanied by colonists of all castes and a number of villages were founded.

The safety and tranquillity of the Veddahs<sup>2</sup> were disturbed and their chiefs Chahman and Muniyan approached the high castes for protection and for land to settle. The Mukkuwas ruled over by their chief Vedarasen asked for protection. The Vannias faced with this new wave of immigration united and organised themselves under King Sinha Bahu. The men set out in ships to Kulankai Aryan and encounter bad weather and meet a watery grave. The wives now take the reins of Government and on hearing the fate of their husbands immolate themselves in a fire at Selvivaikkal.

This was followed by the founding of a number of settlements of the Vannias governed by a chief. M.D. Raghavan traces the Vannias to their homes in India. He refers to the following quotation from Gustav Oppert's work entitled '*Original Inhabitants of Bharath Varsha or India 1893.*'

“ The word Vanni is derived from the Sanskrit Vahni, Fire ; Agni the God of Fire is connected with regal office as kings hold, in their hands, the Fire Wheel or Agniyachakra and the Vannias urge in the support of their name, the regal descent they claim. The existence of these fire races Agnicula or Vahnicula, Vanniya in North and South India is a remarkable fact. No one can refuse to a scion of the non-Aryan warrior tribe, the title of Rajaputra, but in so doing we establish at once Aryan and the non-Aryan Rajputs. The Vannias of South India may be accepted as the representatives of the non-Aryan element.”

The Vaiyapadal is a romantic epic set in exquisite Tamil verse, replete with amorous incidents, chivalry and romance. Although the work cannot be depended on as accurate history of past events, it does give an accurate account of contemporary events, and deals with the second colonisation of Jaffna by the Arya Chakrawathies and their retinue.

1. B. C. 107.

2. An aboriginal race in the forests of Ceylon.

According to Mr. Raghavan<sup>1</sup> the term Vannia was adopted as a title of distinction and thus the Mukkuwa chiefs were called Vanniars.<sup>2</sup> Veddah chiefs too adopted this title.

The Yalpana Vaipavamalai makes the settlement of the Vanniars in Ceylon to have taken place 1000 years earlier. According to this work a Maharaja of the city of Kaweri, named Kulukoddan, came to Ceylon in the year 358 of the *Salivakanar* era (A.D. 436-437) on a pilgrimage, visited Trincomalee and Tampalakaman and established himself in the latter place and started repairing the temple and the buildings attached to it. A Sinhalese army was sent from Anuradhapura to fight him but in view of the large numbers of his soldiers it turned back. Large tracts of land were given by Kulukoddan for the sustenance of the temple. It is also said that Kulukoddan sent for the Vanniars and settled them on the lands and ordered them to pay tribute to the temple.<sup>3</sup> The Vanniars increased in number and settled 59 families from Pandi and soon became too numerous. They soon fought for supremacy with the result that cultivation of the fields were neglected.

The Vanniars are referred to two centuries later. It is said that Ukkirasingham, a prince of the dynasty founded by King Vijaya's brother made a descent upon Ceylon, subdued the northern half and received submission from the Vanniars.<sup>4</sup> In course of time the number of the semi-independent principalities of the Vanni were reduced to 5 and later to 4, each governed by a chieftain or chieftainess under the title of Vanniyan or Vannichee. They paid tribute either to the Kings of Jaffna or to the Sinhalese Kings.

When the Portuguese conquered Jaffna they became nominally the sovereigns of the Vanni but in fact exercised little or no control over the interior. The Vanniars who lived in the interior were left unmolested during this period. When the Dutch wrested the kingdom from the Portuguese they too became the nominal sovereigns of the Vanni but the memoirs of the Dutch Governors bear ample testimony to the fact that it was with great difficulty that they exacted tribute from the Vanniars. The memoirs of Van Rhee states that the Vanniars should not be interfered with as they were a dangerous lot<sup>5</sup> but as the Vanniars became more rebellious the Dutch made an effort to bring them under control. The Dutch nowhere met a more determined resist-

1. See The Ceylon Sunday Observer, 27th September, 1953. "The Origin of the Vanniars."
2. Some writers identify the Vanniars with the Mukkuwas. See Sir Paul Peiris on the  
Hollanders.
3. See Yalpana Vaipavamalai, Britto's translation 1879, Appendix 34.
4. Britto page 9.
5. Van Rhee.

ance than from one of the native Princesses, Vannichee Maria Sembatte. After a sustained fight the Princess was subdued and carried away to Colombo.<sup>1</sup>

The Dutch thereafter placed the Vanni under the command of Lieutenant Nagel who subdued the Vanni District and brought law and order to this place.<sup>2</sup>

After the transfer in 1796 of the sovereignty of Ceylon to the British, the Vanniars became restive once more, and in 1803, when hostilities started between the British and the Kandyan King, Pandara Vanniyan, one of the dispossessed Vanni chiefs, who was later reinstated by the British, rebelled. On the 25th of August 1803, he attacked the Government House at Mullaitivu and drove the garrison away. The resurgents were later driven from Mullaitivu by a detachment sent from Trincomalee under Captain Edward Mudge, of the 19th Regiment, and soon the Pandara forces were captured and the power of the Vanni chiefs was finally extinguished.<sup>3</sup> The last representative and descendant of the Vanni chiefs was an old lady who resided near the fort of Jaffna in the year 1848.<sup>4</sup>

### The Administration by Nagel

An interesting account of the administration of the Vanni district by Lieutenant Nagel is given by Sir Alexander.<sup>5</sup> The dispatches contain a translation of the report sent by Nagel to the Dutch Government during their period of administration.

This report also contains a detailed account of the various villages that constituted the Vanni district, the origin of the people, their culture, laws and usages, the nature of the cultivation undertaken and its products.

Of particular interest to the students of Sociology and Legal History are the customs, manners and laws of the people of Vanni, at the time the Dutch took control of this territory. Nagel in his report says,<sup>6</sup> "The Dutch found these Vanni chieftains asserting themselves and decided to bring them under the administration."

In 1784, Don Gaspar Nalla Mapene was removed from the important district of Conagamam and his sister's daughters Nall Nachchi and Chine Natchy were directed to surrender their

1. See Tennent Ceylon; Fourth Edition, pages 508-510.
2. See Memoirs of Van Rhee.
3. See Cordiner, Volume Two, pages 243-246.
4. See Tennent 510.
5. Co. 54/125.
6. Co. 54/125. page 93.

divisions to Lieutenant Nagel. The inhabitants rose up in rebellion and drove the Dutch servants, while the two ladies escaped to Chettikulam. They barricaded themselves in their villages and attacked Nagel, who with a company of sepoy was able to hold themselves till reinforcement came. Finally the Vanniars were conquered and the Vanni was occupied by the Dutch.

### The Laws and Customs of the Vanniars

The report by Nagel contains interesting information regarding the laws and customs of the Vanniars during the Dutch period. He says : " The laws of the Vanniars were few, and not reduced to writing. The chiefs ruled the country contrary to the laws of nature. Morality was at its lowest ebb and one man did not hesitate to live with another man's wife. A wife could be purchased from the Vanniars and for violating the chastity of a young girl the only penalty was a fine. Their marriages were celebrated in the presence of the barber and washerman and the bridegroom presented a necklace called the *thali*, and a piece of cloth called a *kurai*.<sup>1</sup>

The administration of Nagel was considered a success. Amongst other matters, he established a Landraad, where land cases were heard and decided. He decreed that land disputes between the people should be decided in accordance with the principles of Thesawalamai.<sup>2</sup>

Thus, the Thesawalamai which was only applied to the Jaffna Peninsula was introduced into the Vanni district by Nagel during his administration. Hence it is not surprising that during the early British period there was evidence to show that Thesawalamai was applied to the Vanni district. When Sir Alexander sent a copy of the Thesawalamai Code to the Sitting Magistrate at Mullaitivu which is in the Vanni district, and asked for information whether the laws and customs as set out in the Thesawalamai Code were applicable to that area, he received a reply " that the whole of the Code was in use, among the native inhabitants of the district. "<sup>3</sup>

1. Ibid. page 549.

2. Ceylon and Hollanders 1653-1796, P. E. Peiris, 3rd Edition, page 94.

3. Co. 54/123 page 178.



## CHAPTER VIII

# THE LAWS AND CUSTOMS OF THE TAMILS OF TRINCOMALEE

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### Historical Introduction

The history of the settlement of the Tamils in the Eastern Province in Ceylon has already been discussed. According to tradition the first Tamil invasion of this part of Ceylon took place at about 200 A.D. A Chola prince by the name of Ellala is said to have invaded the eastern coast with his army but was met with stiff opposition and was driven away by the Sinhalese kings. From this time on to the middle of the 15th century A.D., the Tamils were the vassals of the Sinhalese kings. In 435 A.D. a second invasion by the Chola King Kulakodan was successful. He rebuilt the Konesar temple and endowed the same with large tracts of land. He also settled a large number of Vanniyars from the coast of India,<sup>1</sup> in the Trincomalee District, and made them to perform services to this temple.

The Batticaloa and Trincomalee districts are occupied chiefly by the Tamils. There must have been a constant stream of immigration to these places from India and the North Ceylon, from very early times. These districts are chiefly occupied by the Vellalas and the Mukkuwas. The laws and customs of the Tamils of this district, chiefly fall under two categories, the customary laws of the Vellalas and of the Mukkuwas.

A glimpse of the customary laws of the Tamils of Trincomalee could be gathered from the Johnstone Papers. When the Thesawalamai Code was sent to the Government Agent of Trincomalee by Sir Alexander,<sup>2</sup> in a letter, the Government Agent stated that he has consulted the leading Mudaliyars,<sup>3</sup> and "that the only point on which the Mudaliyars wanted reforms" was to abolish the liability of the children to pay their father's debts, which was enforced by the Thesawalamai. He suggested that the debts

1. See Monograph of the Batticaloa District of the Eastern Province, S. O. Canagaratnam 1921, page 88.

2. See Co. 54/123 page 134.

3. Titular rank among the Tamils conferred during the Dutch regime.

be paid out of the father's estate and that the burden cast on the children be removed.

A report signed by 12 Mudaliyars dated 10th April, 1815, was appended to this letter,<sup>1</sup> which states "that in reading country law sent to us by His Excellency The Governor, we the undersigned do hereby declare that several of the Laws containing thereto are still in use besides the use of administration, it is the only point more to be rejected." We have already stated how Nagel during his administration introduced the Laws of Thesawalamai to the Vanni district which extended to certain parts of the Eastern Province during the early British regime. Moreover, there were migrations and settlements from Jaffna to the Trincomalee district, and it is likely that the people who settled down in these areas had taken with them their personal laws.

Thus, it is clear that Thesawalamai was in force in the Eastern Province of Ceylon. The interesting question may be asked why, later, the law of Thesawalamai was not applied to the Tamil residents of Trincomalee. The answer to this question is to be found in one of the dispatches of Sir Alexander. He says:<sup>2</sup> "The customary laws of the Malabars of Jaffna applied to Trincomalee but the Magistrates unacquainted with it considered it obsolete."

Later, the Supreme Court referred the question of the extent to which Thesawalamai applied to Mr. Grenier, the Registrar of the Supreme Court. In his report Mr. Grenier reported that the Province of Batticaloa and Trincomalee did not belong to the "Province of Jaffna" during the Dutch regime and recommended that it should not apply to these districts. The Supreme Court therefore held that the Thesawalamai did not apply to these districts.<sup>3</sup>

### Land Tenures

Referring to the land tenures in the Trincomalee district Sir Alexander said,<sup>4</sup> "Native headmen consider the village as their property, none of the inhabitants are permitted to sell or purchase anything." Referring to the areas served by the Kantalai Tank he said,<sup>5</sup> "The size of the tank at Kantalai and the Tamil accounts of the fruitfulness of this district, at that time, show that Trincomalee, in consequence of the sanctity of its Pagoda,<sup>6</sup> was a general resort of pilgrims from every part of India,

1. Ibid 136.

2. See Lot 5/79 Ceylon Archives page 45-48.

3. See *Ellapale vs. Sittambalam* 1872-1876 Ramanathan Reports 114. For a further discussion see *The Laws and Customs of Jaffna* by H. W. Tambiah.

4. Co. 54/123 page 252.

5. Ibid page 46-48.

6. The reference is to the famous Konesar temple razed to the ground by the Portuguese.

the records leave no doubt that it formerly produced great quantity of gram." Sir Alexander refers to the fact that Governor Vander Graff about 10 or 20 years ago ordered Major *Forn Caver* to prepare a report dated 30th of December 1793, who submitted the same, wherein he pointed out the defects in the system of land tenure in this district.

## CHAPTER IX

# The Laws and Customs of the Residents of Cottiar Pattu, Thambalkamam and Cattooculam Pattu

The letter addressed to Sir Alexander by the Government Agent of the Trincomalee District has already been referred to. In this letter it is further stated that there are variations in the law of Thesawalamai in certain districts and the Report of the headman of these places was appended to this letter.

### The Laws and Customs of Cottiar Pattu

The variations from the law of Thesawalamai are set out in detail by the headmen of this area in their report,<sup>1</sup> which gives an account of the Mukkuwa Law that applied to these areas.

#### Marriage

Persons wishing to get married had to inform the Vanniar (headman) and if they were Hindus they entered into a contract of marriage, the breach of which was punished by death or corporal punishment. Later the Hindu marriage rites were performed by the Brahmin and rice was served to the parties. The Muslims or Moormen married according to the Mohammedan Law. The Catholics notified the Vanniar and married according to the rites of the Catholic Church.

#### Dowry

The father or mother giving dowry to their children gave it out of their own property whether hereditary or acquired. This was the original rule in Thesawalamai but later was modified during the Portuguese period.

#### Inheritance

The rules of inheritance in these areas differed radically from those of the Thesawalamai. They were based on the matrilineal

1. See Co. 54/123 page 1377.

system and is known as the Mukkuwa Law. The hereditary and other property devolved on the nephews and nieces, but the dowry and acquired property devolved on the children.

### Gifts, Otty and Sale

If anyone wished to gift, sell or otty (usufructuary mortgage) hereditaments or acquisition, the consent in writing of the children and other heirs had to be obtained. The Law of Thesawalamai allowed  $\frac{1}{10}$  of the hereditary property of the husband to be gifted without the consent of the heirs.

### Hire and Loan of Money and Paddy

One ammunam<sup>1</sup> of paddy was given as hire for one ammunam sowing extent. In case of loans of money, the person was allowed to charge 1 per cent. per month, and 20-50 per cent. on paddy.

### Adoption

In the case of adoption the consent of all the heirs of the adopting parents had to be obtained.

## THE LAWS AND CUSTOMS OF TAMBULGAMAM PATTU

The Laws and Customs prevailing in the Tambulgamam were set out in a report by the headman of the place as follows:<sup>2</sup>

### Marriage

Persons wishing to contract a marriage had to give information to the Vanniar or Mudaliyar of the place and must enter into a contract of marriage, the breach of which was punished by fine or corporal punishment.

### Dowry

The same rule applied as among the residents of Cottiar Pattu and each spouse had to give dowry out of his or her property.

### Inheritance

The same rules were observed as among the residents of Cottiar Pattu. The hereditary property of the husband devolved on the nephews and failing them to the children. If there were no children the property devolved on the nearest relation. If there were no such relations, it devolved on the church.

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1. A measure used in Sinhalese districts.  
2. Co. 54/123, page 138 et seq.

### Possession of Lands

Persons who wished to cultivate land notified the Vanniar or Mudaliyar and after obtaining a permit cultivated the same, but they were obliged to pay a tithe of  $\frac{1}{10}$  to the (Gentoo Temple) (The Koneswaran Temple). This custom of giving  $\frac{1}{10}$  of the produce suggests that all the land in the area were subject to a tenure and the overlord was the Hindu Temple. Subject to this servitude, such property could be alienated, gifted or be the subject matter of inheritance.

### Gifts, Sale or Purchase

As under the Law of Thesawalamai, the consent of the nephew and other heirs in writing had to be obtained before gifting any dowry or acquired property, otherwise the gift had no validity. It will be seen that hereditary property of the husband could not be the subject matter of any gift as it belonged to his sister's children. In purchase and sale, similar consent had to be obtained.

### Hire

If anyone hired the services of a man he must be supplied with food and two pieces of *verty* (a piece of cloth tied round the waist).

### Slaves

The master had to provide food and clothing to the slave and had in addition to bear the expenses of child-birth in the case of female slaves.

### Adoption

Any person adopting another had to get the consent of his or her heirs, in which event only, the adopted child inherited his or her property.

### Loans, Money and Paddy

Interest was allowed on loans of money ranging from 1 per cent. per mensem, and 23-30 per cent. on paddy.

## THE LAWS AND CUSTOMS OF CATTOOCULAM PATTU

The laws and usages of this part of the Trincomalee District are given in the report of the headman dated 26th March, 1815, submitted to Sir Alexander Johnstone.<sup>1</sup> The details of which are as follows :

The parents of the bride and bridegroom had to obtain the consent of the Vanniar to whom they offer betel leaves. In the

1. Co. 53/122. 140/-.

## Marriage and Dowry

presence of the Vanniar a marriage contract was entered into on a piece of palm leaf (*ola*), and the bride and bridegroom were made parties to this agreement. A breach of this agreement was penalised with a fine or corporal punishment.

After the bethrothal the marriage ceremony took place. The relatives were invited in the customary manner by being served with betel leaves. Certain class of people known as the *kudi makkal* (the barber and dhoby) had to be present. The dowry deed was written in the presence of those assembled at the wedding. The lands and movables given as dowry were given out of the mother's property. The marriage was celebrated according to Hindu rites by the Brahmin. The bridegroom tied a necklace, called the *thali* and presented the bride with a saree, called the *koorai*.

## Inheritance

It is the Mukkuwa Law of Inheritance that prevailed in this area. After the death of the parents the inheritance belonging to the father devolved on his sister's children. The acquired property of the father, and the dowry of the mother were inherited by their children. If there were no nephews and nieces (sister's children) the hereditary property of the father devolved on his children. If there were no children also, the maternal property went to the mother's nearest heirs and the paternal property to the father's nearest heirs. The acquired property was divided into two and one half went to the nearest maternal heirs and the other half to the nearest paternal heirs. In the absence of such heirs the property devolved on the deity of Konesar (the presiding deity at the Konesar Temple) at Trincomalee.

## Possession of Lands

The possession of lands in this area was on the same system of tenure as stated for the Thambulgamam district. Such lands could also be the subject matter of a form of usufructuary mortgage known as *otty*. The *otty* holder took the profits and produce of the land in lieu of interest and 1/10 was given as tithe during the Dutch period, to the Konesar Temple. In his report the Vanniar remarks that after the Dutch period 1/10 of the produce was given to the Government.

## Sales, Purchase and Gifts

The consent of the heirs had to be obtained for sales, purchases and gifts.

### Slaves

The female slave had to be provided with the expenses of childbirth. The slave had to perform household duties, such as procuring firewood, pound rice, etc.

The male slave cultivated the lands and the master had to provide the cattle and other implements for the cultivation. After harvesting, the seed paddy was restored to the master and the master and slaves shared the remaining paddy.

### Loan of Paddy and Money

If any person lent money he was allowed to charge 1 per cent. per mensem and if the loan was in paddy then 25 per cent. of such paddy.

### Adoption

Father and mother adopting a child rubbed a little saffron on the child's feet, washed the same and drank the water. The heirs of the adopting parents also had to consent.

We have stated the laws and customs of the Tamils of Trincomalee as found in the dispatches of Sir Alexander Johnstone. These are no more in force, being replaced by the general statute law and the Roman-Dutch Law applicable to Ceylon.



## CHAPTER X

# THE MUKKUWA LAW

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### The History of the Mukkuwas of Puttalam and Batticaloa

We had a glimpse of the Makkuwa Law when we considered the laws and customs of the people of Tambalagaman, Kottocolam. Mukkuwas were also settled at Calpentyn. An interesting account of the customs, manners, laws and origins of the Mukkuwas of Calpentyn is found in the Ceylon Gazetteer, in which an article on this subject has been contributed, by the late Simon Casie Chetty, who states that he obtained his knowledge of these laws and customs from his own personal observations.

The Mukkuwas claimed their descent from a place called Ayodhya or some part of Oud in Hindustan. The Mookwanas of West Gujarat and the Mukkuwas of the coast of Malabar, have a striking resemblance to the Mukkuwas of Ceylon. According to Casie Chetty when the coast of Malabar was overrun by the Mohammedans of Arabia, the Arabian conquerors imposed the Muslim religion on the people. In order to avoid this, the Mukkuwas transported themselves and established their residence in Ceylon. The Mukkuwas were first said to have landed at Kudremale from whence they emigrated to other parts of Ceylon, and in course of time formed several settlements.

Soon after their arrival, their chieftain named Vēdi Arasen had to contend with a rival called Manika Taliven who was the chieftain of the Karayars (fisher caste). The latter despatched some of his officers to Vēdi Arasen for the purpose of soliciting his daughter's hand, and when the proposal was turned down he collected a considerable number of armed men and waged war against the Mukkuwas. The Mukkuwas, who were at the time a defenceless people, got the help of the crew of an Arab vessel, which was anchored at Kudremale, and with their assistance slew the rival chieftain, and put all his troops to flight. This skirmish is said to have taken place in the plains between Mangalavli and Kattakadu and even now the Mukkuwas point out an ant hill in the vicinity, known by the name of Manikam Pottu, as the place where the remains of the slain chieftain were interred. In return

for the service rendered to them by the Arabs, the whole of the Mukkuwas embraced the Mohammedan religion, which many of their descendants later renounced in favour of Christianity through the influence of the Portuguese.

After defeating the Karayars, the Mukkuwas sent an embassy to the court of the Emperor, with costly presents. When these delegates reached the capital, at Sitawaka, the Emperor is said to have given them several copper sannasas, or rescripts whereby land in the whole district of Puttalam and Calpentyne was allotted to them for their maintenance as *paraveni*. As the Mukkuwas demarcated the boundaries by planting branches of trees, this form of tenure was known as *kuppumari* (literally breaking of branches) *paraveni*.

### The Tribunal of the Mukkuwas

The Emperor not only assigned lands but also established a royal tribunal at Puttalam called Muttra kudam, and appointed 18 of the Mukkuwas in control of this tribunal under the authority of a Dissawe or Pro-Consul. He also conferred on the 18 members, the title of Vanniar. They could not be capitally punished for any crime, and were exempted from the payment of tithes. Their relations, to a certain degree, were also exempted from performing labour to the Government.

Casie Chetty refers to these two copper sannasas, which is reproduced as Appendices 1 and 2 of the Ceylon Gazetteer, and states that in comparing the account given of the lands allotted to the Mukkuwas by the same Emperor and at the same time, there is a great discrepancy. Of the two sannasas one appears to have been given by Tami Valla Bhahoo, King of Madampe, and the other by Bhuvanega Bahu, Emperor of Sitawaka, at two distinct periods. According to Casie Chetty the Mukkuwas had a belief that there was an oral donation of the land by Mallala Tissa Raja 753 and 779 A.D., which was later confirmed by the grants of the two monarchs stated earlier.

Whatever may be the period of their grant, the Mukkuwas appear to have been in possession of lands during the time of the Sinhalese and Tamil kings, and for a considerable period maintained a sort of aristocratic government under their chiefs, till they were conquered by the Dutch, who not only abridged their powers, but also monopolised their sources of income.

The tenure by which lands were held by the Mukkuwas exhibited a strong resemblance to the feudal system of Europe. Originally they were not in any way

alienable, but the Moors settled down in these areas, and the lands of the Mukkuwas were sold.

After the Dutch conquest the Muttrakuddam or tribunal at Puttalam was abolished, and the Landraad established in its place. Out of the 18 Vanniars who were members of the tribunal, 6 were dismissed and the remaining 12 were appointed to officiate as members of the Landraad under the presidency of the Chief Resident or Opperhoofd Kalpentyn. The Landraad was later abolished by the British and the present system of courts was introduced, and consequently, the office and the title of Vanniar became extinct. The descendants of the Vanniars were not called upon to perform menial labour during the British occupation, but a few of them were occasionally asked by the Collector to assess tithes in the district.

### Tribal Organisation among the Mukkuwas

The Mukkuwas were divided into seven distinct tribes, each named after its founder or the particular occupation professed by him. They were as follows : Pichanda vagei, Nallanda vagei, Pala vagei, Koyta Vagei, Kalanga vagei, Mudivilangu vagei, Pandiya Tever, Vilangona vagei.

### The Dress of the Mukkuwas

The Mukkuwas bore a close resemblance to the Tamils in physiognomy, manners and gait. The dress of the men consisted of a cloth wrapped round the waist (*verti*), a shawl thrown loosely across the shoulder, and on the head they wore a turban. The women decorated themselves with gold ear-rings of various kinds, and their dress resembled that of the Moors.

### Marriage Ceremonies

Christian Mukkuwas followed the rules of their Church, the Mohammedans followed the precepts of the Koran, but both sects observed the custom of having the *thali*, tied round the neck of the bride, by the bridegroom. On this festive occasion their houses were decorated with white cloth. Besides the ceremony observed by the Tamils, the Mukkuwas observed the feast of purification. On the 7th day after a girl becomes marriageable, her parents invited their friends and relations to an entertainment. This ceremony of the Mukkuwas, according to Casie Chetty, was losing ground among the Christian Mukkuwas. A similar ceremony was performed when the boy attained age. The tying of the *talaicheelai* or a *head cloth* round his head, was performed at an auspicious hour, under the roof of a pandal (a canopy) erected for the purpose. People were invited and were

treated according to their rank. The young man on whom the ceremony was to be performed was seated on a covered stool, and the barber, after asking the permission of the assembly, shaved off his beard, after lathering it with milk. After the shave the boy was conducted under a canopy to a well, and a piece of cloth was spread before him to walk upon. He washed his body and returned to the pandal and placed himself on a seat. The piece of cloth was placed on a salver and was handed round to each of the guests who touched the same and blessed it. After this ceremony the chief of the caste took it and tied it round the head of the youth. On this occasion the guests made presents of money to the parents.

### The Caste System among The Mukkuwas

Among the Mukkuwas, caste was rigidly observed. The least infringement of a rule of caste subjected the offender *ipso facto* to expulsion from the community, and being deprived of the services of the barber and washerman.

### Succession among the Mukkuwas

The Mukkuwas differed from the other Tamil castes in Ceylon in regard to the right of succession and inheritance. The acquired property of a man was inherited by his sons and daughters equally, but the property which he had received from his ancestors called *mudusam* devolved on the sons of the sister, and on failure of heirs in that branch, on the sons of the mother's sister's daughter, and so on up to the fourth degree. But on failure of heirs within these degrees it devolved on his own children. A more detailed account of their rules of succession are given later.<sup>1</sup>

1. See chapter XI.

## CHAPTER XI

# MUKKUWA LAW BY BRITTO

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The rules of the Mukkuwa Law of Inheritance, dealt with in the Johnstone Manuscripts, are not comprehensive enough. A wealth of information could be obtained by perusing the monumental work by Mr. Britto on Mukkuwa Law published in 1876.

In his introduction, Mr. Britto says : " There is no reliable information on the subject, and tradition, as is usual in such cases, has not been slow to invest it with the halo of romance. The true origin should, probably, be looked upon, for in those primitive times where the Mukkuwa Law had no rules of moral or positive law to determine the paternity of their offspring."

" The Mukkuwa Law of Batticaloa is involved in much uncertainty. The only reliable material are a few decisions of the District Court and the Court of Requests of Batticaloa. Some of these decisions have been reviewed by the Honourable the Supreme Court. Still there remains great moot points, which must necessarily remain so until occasions arise for legal adjudication.

" The following pages contain the result of the compiler's inquiries among the learned Mukkuwas of Batticaloa and Calpentyn, and an examination of the cases consulted by him while practising Law at Batticaloa. None of these cases are older than the year 1844, but there is reason to believe that a careful search among the records of the Batticaloa courts, would be rewarded with the discovery of clear and important cases. It is to be hoped that some friend of the profession would make the search and add to the scanty information now presented to the public."

Britto's sources, therefore, are the opinions of the learned Mukkuwas during his time, and a few cases on Mukkuwa Law, which he published as an appendix.

The dispatches of Sir Alexander and Burnand's papers were not available to him, and they could supplement the scanty literature on the Mukkuwa Law. The Dutch records of the

Landraads which would have contained valuable information on this subject are not available in Ceylon.

### The Mukkuwas of Calpentyn

The Mukkuwas of Calpentyn seem to have abandoned the customs of their castes, long before the establishment of the Provincial Courts of Puttalam and Chilaw. But the record of the Landraads of Chilaw and of Puttalam, if they could be found now, would probably supply much valuable information on the subject.

The rule of succession, stated in Britto's work, is in accord with the decisions of the courts on Mukkuwa Law. His work, embodying his experience as an advocate, is entitled to great weight.

### TERMS IN MUKKUWA LAW

Before dealing with the fundamental concepts of the Mukkuwa Law, it is necessary to state the meaning of certain esoteric terms that frequently occur in the Mukkuwa Law. The Mukkuwas distinguished between acquired property which was called '*Theddam*' or '*Theddiyatheddam*' and ancestral property which was called '*muthusom*.'

Acquired property, or '*theddam*' was property acquired by occupancy, prescription, bequest or legacy obtained from strangers. The term 'strangers' included all persons except *mathakkal* and *muthakkal*. By the term *mathakkal*, a Mukkuwan meant not only his mother and her collaterals but also his father and his collaterals. By the term *muthakkal* a Mukkuwan meant his ancestors. The term included one's parents' ascendants, and collaterals of those ascendants. The term *kudi* was used to mean every person who is related on one's mother's side only and it was the family unit among the Mukkuwas. Persons of the same *kudi*, however distantly related, were recognised as relations. Beyond one's father and his immediate relations the Mukkuwan scarcely recognised any other relation on the father's side. The term *vaittu var* was a term used in Batticaloa as a synonym for *kudi* which term was used among the Karaiyar. It literally meant "womb tie" and is derived from the words *vairu* (womb) and *var* (tie or band). The word '*som*' means wealth and included movable and immovable property. By *muthusom* was meant *mathakkal som* and *muthakkal som*.

To illustrate these terms Britto takes a concrete case of a Mukkuwa couple who have no other property than their *theddam* or acquired property. In the hands of their children it became their *muthusom*. The moiety of the acquired property

acquired from the father would be paternal *som* and that acquired from the mother would be maternal *som*. When the daughter of this couple died leaving children it became maternal *muthusom* in the hands of the latter. Thus it would appear that this property was *theddam* or acquired property to the original proprietors, it was *muthusom* to the children of those proprietors, and it was maternal *muthusom* to the children of those daughters of those proprietors. In other words, what was *muthusom* to one's mother was maternal *muthusom* to one's self.

Hence, one's maternal *muthusam* included (1) One's mother's paternal *som*; that is her father's *theddam*. (2) Her paternal *muthusom*, *i.e.*, her father's *muthusom* not derived through his mother. (3) Her maternal *som*, *i.e.*, her mother's *theddam*. (4) Her maternal *muthusom*, *i.e.*, *som* which was *muthusom* to her mother.

The terms paternal *som*, paternal *muthusom* and maternal *som* were not found in Mukkuwa usage for reasons which would appear hereafter but the reader is requested to bear in mind the difference between maternal *som* and maternal *muthusom* as much of the difficulty which a beginner finds in understanding the Mukkuwa Law consists in his ignorance or forgetfulness of this difference.

Maternal *muthusom* was, sometimes called simply *muthusom*. It was also called sometimes Mukkuwa *muthusom*, Mukkuwa *kani*, Mukkuwa land, *paravanik kani*, *paravanik muthusom* and *marumakkal kani*. *Paravani* is a word of Sanskrit origin and means lineal descent or hereditary succession. And *paravanik kani* was a land which devolved by such descent or succession. *marumakkal* was the name by which a man called his sister's children, and a woman her brother's children.<sup>1</sup>

*Muthusom* continued to be reckoned as *muthusom*, whether it was received by the *urimai pillai* (heir) immediately from his *mathakkal* and *muthakkal*, or it was received from them immediately, that is, through the interposition of their other descendants or of trustees. *Muthusom* also continued to be reckoned as *muthusom* whether it came to the *urimai pillai*, by law, as inheritance *ab intestato*, or by will, as bequest or legacy: or by gift, as donation or dowry. Cattle kept for, and employed in the cultivation of a maternal *muthusom* land, was reckoned as a part of that land. The same applied to agricultural implements.<sup>2</sup>

The produce of *muthusom* land when separated from the land, became *theddam* or acquired property. A thing

1. Cf. Britto para 18.  
2. Cf. Britto 19.

purchased with *muthusom* money or obtained in barter for *muthusom* property did not partake of the nature of *muthusom* but was ranked among *theddam* or acquired property. *Theddam* may have consisted of every species of property, whether movable or immovable, whether acquired by the husband alone or by the wife alone, or by both of them together, whether obtained before their marriage, or after their marriage whether from actual strangers or from their own descendants and other relatives. A property was always presumed to be *theddam* until the contrary was established by proof.<sup>1</sup>

All questions connected with maternal *muthusom* land consisted of the rights of (1) Bare Dominium; (2) Possession, including the right of the possessor to cultivate the land and to retain a reasonable share of the produce as compensation for the trouble, risk and expenses of cultivation; (3) Enjoyment consisting of *usus* and *fructus* as distinguished from the other rights; (4) Disposal, including alienation, alteration, and encumbrance.

Each of these four rights has to be viewed as separate and distinct from the others. (1) While the dominium was vested in one heir, the possession and the enjoyment were vested in another, and the disposal in both. There were, however, two instances in which the right of disposal was vested solely in the holder of the enjoyment. (2) While the possession was vested in one heir, the dominium, the enjoyment and the disposal were vested in others. (3) While the enjoyment was vested in one heir the possession was sometimes vested in the same heir and sometimes in a different heir, according to certain fixed rules to be explained hereafter. (4) The disposal was always vested in the holder of the dominium, subject to the rights of the holder of the enjoyment. And as pointed out above, the disposal was sometimes vested in the holder of the enjoyment solely.

### THE POWERS OF THE HUSBAND OVER PROPERTY BELONGING TO THE FAMILY

The husband exercised all rights of the property to the fullest extent including the power of alienation, without the consent of his wife over all the *theddam*, his paternal *som*, movable and immovable, his paternal *muthusom* movable and immovable, his maternal *som* movable and immovable, his wife's paternal *som* movable, and her maternal *muthusom* movable.<sup>2</sup> But in respect of her paternal *som* immovable and her paternal *muthusom* immovable he had the mere management of them. He could not alienate them without her concurrence. No contract

1. Cf. Britto 20.

2. Britto on Mukkuwa Law, Rule 22



entered into by him without the wife's concurrence bound her or her estate.<sup>1</sup>

The maternal *muthusom* of the husband did not belong to him but to his sisters, over which he had only a right of management. As manager of the said estate, he could only alienate it for purposes of any debts incurred by him or his predecessors in its cultivation or in payment of any tax due on it to the government.<sup>2</sup>

The maternal *mathusom* immovable of the wife was entirely out of the marital powers of the husband. The wife's brothers were the managers of such property. And for the payment of any debts incurred in the cultivation of it, they could alienate the property. Regarding such property the wife's brothers and not her husband could represent her in a court of law.

### The Rules of Succession as Stated in Britto's Work

In the Law of Succession the distinction in Mukkuwa Law was between ancestral property (*mudusam*) and acquired property (*theddam*). Ancestral property was of two kinds, maternal ancestral property (maternal *muthusom*, *i.e.*, property which the mother inherited) and paternal ancestral property.

The acquired property of the spouses was divided into two. On the death of either spouse half belonged to the survivor, and the other half to the children of the deceased spouse or the heir's children.

But Britto used the word 'maternal' or 'paternal' som, as the case may be, to designate property acquired by the parents to distinguish it from *muthusom* which is what the parents inherited from their parents.

### Maternal Muthusom

When a woman died, the dominium in her maternal *muthusom* devolved on her daughters, and if any of them were dead, to the daughters of such deceased daughters. In other words, it descended strictly on the female line. Female children who claimed descent through females are called by Mr. Britto *pen vali yurimaip pen pillai*. So long as such children existed, they succeeded however remote their degree of relationship may be. Such children succeeded by representation to their mother's share, which she inherited through her father and mother. But as regards her paternal acquired immovable property and her paternal ancestral property she had only the management. The hus-

1. Ibid., Rule 23  
2. Ibid., Rule 24

band had no power of management over the property the wife inherited through her mother. Such power was vested in her surviving eldest brother, and the husband never inherited the property that the wife inherited from her mother.

### When Both Spouses were Dead

When both spouses were dead leaving no descendants, a division was made of their estate into two portions; one consisted of all the :

- (a) Property acquired by the father of the wife,
- (b) Property acquired by the brother of the wife,
- (c) Property inherited by her through her father and mother,
- (d) One half of her acquired property; the other half was her husband's portion.

If the wife has left children by the former marriage, her *mudusam* devolved on her children, subject to the right of her brother to manage her maternal ancestral property. If she has left no children her portion went in the following manner :

- (a) The mother.
- (b) Females who are descendants of the mother through females.
- (c) Maternal grandmother.
- (d) Failing these male descendants claiming through female children or grandchildren.

Regarding the husband's portion the succession was confined to the brothers, and sons of the brothers. Where there were children by different marriages, all the property acquired during the first marriage went to the children of the first marriage and properties acquired during the second marriage to children of such marriage, etc.

The maternal *muthusom* of the wife descended to the daughters as stated earlier and the maternal *muthusom* of the husband to his collaterals. In such property the right of possession and enjoyment, descended to her son per capita; the children of sons who predeceased got no share in the possession and management.<sup>1</sup> If all the sons were dead, the right to enjoyment went to the daughters equally.

1. See Britto XXXVI.

Possession descended from a male to his *marumakkal* (nephews) directly and did not go to the female, unless there were no brothers or sons of brothers or if they were incapacitated.

The right of enjoyment descended :

- (a) From the mother to her sons.
- (b) From a male to his surviving brothers.
- (c) When all the brothers were dead it devolved on their sisters per capita with the right of the children of the deceased sister to take by representation.

In other words, the brothers managed the maternal *muthusom* on behalf of the sisters, and the children of the brother succeeded to their maternal ancestral property, and the brothers had no right of alienating it except as managers, they could alienate it for debts incurred in cultivation or for payment of tax. But in actual practice, it was the eldest brother who was the manager of the maternal *muthusom*, although all the brothers were in law entitled to manage them. This corresponds with the rule of Marumakkattam Law that the eldest brother is the *karnavan* of the *tarward* property. When the eldest brother was dead, the next in order succeeded him.

A female in whom the dominium is vested could dowry any portion of the maternal ancestral property to her daughters. If such daughters did not dispose the maternal *muthusom*, they received as dowry or gifts all of the maternal *muthusom* attached to such property.

### Property Other Than Maternal Muthusom

If the spouses were living, the husband has all the rights of property in the following :—

- (a) All his acquisitions.<sup>1</sup>
- (b) Property he inherited from his father.
- (c) Property acquired by his mother.
- (d) His wife's movable property.

### Succession where One Spouse Survives the Other

The law was the same as stated earlier, except that the survivors had the right of disposition of all his or her portions, at will, except the *muthusom* lands.

1. Theddam.

The husband who was in possession and the enjoyment of his maternal *muthusom* land cannot alienate except for purpose of paying the tax or expenses of cultivation.<sup>1</sup> The powers of the mother over maternal *muthusom* has been considered earlier.

### LAWS OF MARRIAGE

Britto also states the usages prescribing the degrees within which marriages were allowed. The *kudi* was the unit of the Mukkuwa family, just as *gens* was the unit of the Roman society. The term *vaituvar* meant (literally womb tie) those connected through females. He postulated the following rules, many of which are his conjectures —

1. Intercourse between the sexes was once promiscuous and in the broadest sense of the word.
2. By degrees the following distinctions were introduced :
  - (a) Persons of the same *kudi* abstained from each other,
  - (b) Ascendants and descendants abstained from intercourse or marriage,
  - (c) Gradually collaterals abstained from each other,
  - (d) Persons abstained from the direct descendants of their collaterals.
3. In a state of society in which there was no marriage, natural prudence would dictate to the female, the expediency of securing the means of livelihood for herself and her future offspring, by requiring the male to give up to her whatever he earned during the period he visited her.
4. When a female died everything she left went naturally to her children and was divided among her sons and daughters also,
5. The daughters would continue to earn from their loves, in the same manner as their late mother did, and would transmit the *theddam* and *muthusom* to their issue, male and female alike.
6. But the case of a son was different, as distinct *kudis* lived in distinct villages, a male had to migrate from his village in search of women and abandon to his sister all that he could not easily carry away with him. The

1. Britto Rule 29.

idea of selling or bartering a land was unknown in ancient times.

7. Whether the male afterwards returned to his own *kudi* or died in the *kudi*, to which he had migrated, there was no question with respect to his *theddam*, or acquired property. In fact he might not have left any *theddam*, that he had not disposed of during his lifetime. Nor could any person claim the *muthusom* which he had left in his own village; as no Mukkuwa child knew its father. The *muthusom* accordingly would go to his sisters, his only undoubted relatives on the principle that the mother makes no bastard.
8. When in the process of time, man in the exercise of his superior strength, began to tyrannise over the woman, her property was placed under the power of her brothers and even of her own sons.

Britto says "all the rules of Mukkuwa succession seem to be but mere adaptations of the foregoing principles to suit the requirements of civilised commerce which obtains among the sexes. The Mukkuwas have in imitation of European notions long since abandoned their polygamous and polyandrous practices."

Finally he formulates the following rules :<sup>1</sup>

- (a) All inheritance was from the mother and none from the father.
- (b) Succession was traced through the mother.
- (c) *Muthusom* lands were out of the marital power.
- (d) Males were managers of it for the female.
- (e) The elder brother is the supreme manager.
- (f) Managers were bound to support their mothers but not their sisters.
- (g) Women could not hold land.
- (h) The most valuable movables went to the males.

### CONCEPTS OF MUKKUWA LAW

From what has been said, Mukkuwa society was matriarchal and regarding the maternal *muthusom*, the descent was matrilineal. Originally a man must have had no rights over any

1. Britto, Rule XLIV.

property. The eldest female must have been the undoubted head of the family, and all relationships and descents were only traced through her.

As a result of the superior prowess of man, he appears to have asserted successfully the right to look after the sister's property. Although in theory, all the brothers had the right to manage the sister's property, in practice, it was the eldest brother who was the manager of that property. The younger brothers were regarded as the assistants of the eldest brother in the management of such property. When the eldest brother died the next in age succeeded him.<sup>1</sup>

Gradually the male appears to have asserted rights of ownership to movable, even when they formed the maternal *muthusom* of his wife. Even as regards the immovable property a distinction appears to have been developed between the acquired property of the wife's parents which Britto describes as the paternal *som* and the maternal *som* of the wife, and property which the wife's mother inherited. The husband became the manager of the wife's paternal *som* immovable, and her paternal *muthusom* immovable. The wife could alienate such property with her husband's concurrence, but her maternal *muthusom* was entirely out of his marital powers, and as stated before the wife's brothers were regarded as the managers of such property. Thus the husband gradually asserted rights of management, and with the concurrence of the wife acquired *de facto* powers of alienation over property which she inherited through her father. As stated earlier the spouses had complete freedom to manage and alienate all their acquired property. So that, ultimately, the husband's powers did not extend only to maternal *muthusom* strictly so-called. By his process of evolution even in a strictly matrilineal society, the man gradually asserted his rights and in the course of time excluded certain types of properties from the operation of rules of matrilineal descent and asserted dominion over them.

In course of time it was possible for a man to assert rights over all property and thus we find many societies that were matriarchal change into societies based on the patriarchal pattern.

From certain rules of the Mukkuwa law already discussed, we had seen that the rule that males succeeded males and females succeeded females was gradually evolved. Thus, among the Mukkuwas of Batticaloa, half of the acquired property of the husband devolved on his brothers in the absence of any issue. Similarly, half of the acquired property by the wife devolved on her sisters in the absence of any issue. We have already seen that this was the rule of Thesawalamai, and the Tamil Vellalas of Tinnevely in South India.

1. Britto on Mukkuwa Law, Rule 38 (6).

## CHAPTER XII

# THE LAWS AND CUSTOMS OF THE TAMILS OF BATTICALOA

### The Laws and Customs of the Vellalas of Batticaloa

There has been a constant influx of the Tamils of Jaffna and the Vanni district into the region of Batticaloa. It was natural for these settlers to take with them their customary laws, namely, the Thesawalamai to the land in which they settled down. The dispatches of Sir Alexander show that the Vellalas of the Batticaloa district were governed by the Thesawalamai.

After sending a report on the customary laws of the Mukkuwas of Cattacolam Pattu, Cottiar Pattu and Thambilgamam Pattu, a letter by an official to Sir Alexander states: "Sir, I have ascertained the established usages to be in many other respects the same."<sup>1</sup> In another letter addressed to Sir Alexander dated the 6th October, 1815, the writer says: "At Batticaloa island and the villages adjacent the laws in every respect agree with the Code. It also agrees in every respect in the country of the Batticaloa District except in case of inheriting property."<sup>2</sup> These letters therefore suggest that the laws and customs at the Batticaloa island and the adjacent villages were the same as those of the Thesawalamai Code, but in the rest of the Batticaloa district where the Mukkuwa Law applied, the Law of Inheritance was different, but in other respects the customary laws of the Tamils of this district were the same as those of the Tamils of Jaffna.

The Thesawalamai fell into disuse during the early British period as a result of the failure to appreciate its basic principles by those who were called upon to administer justice during the early British period.

### The Laws and Customs of the Mukkuwas of Batticaloa

The Mukkuwas were the earliest of the Tamils to settle in various parts of Ceylon. They were the original inhabitants of

1. Co. 54/123 page 143.

2. Co. 54/123 page 145.

the Malabar country in India,<sup>1</sup> and they migrated to Ceylon in search of adventure and trade. Large settlements were founded in Jaffna during the times of the Ariya Chakrawathies and according to tradition they were banished from the northern coastal areas because they desecrated the shores of Kankesenturai and Kirimalai by spreading their nets and exposing fish in areas sacred to the Hindus. Large settlements of the Mukkuwas are found even today in the Batticaloa, Trincomalee, Calpenty, and Puttalam districts. The Mukkuwas of these areas were governed by their own system of customary laws, known as the Mukkuwa Law. The Mukkuwa Law has great similarities to the Marumakattayam Law and the Aliyasantana Law prevalent in the Malabar Districts of India. The resemblances are so great that it is legitimate to surmise that the original Marumakattayam Law in its pristine purity before it came into impact with the civilisation of the Nambudhri Brahamans and other races that settled down in Malabar was almost similar to the Mukkuwa Law of Ceylon.<sup>2</sup>

### The Origin of the Mukkuwa Law

The dispatches of Sir Alexander give an interesting account of the origin of the Mukkuwa Law. On account of its importance a verbatim account is given below :

“The modification which prevails among the Mukkuwa inhabitants in the Province of Puttalam, on the west, and in that of Batticaloa on the east side of Ceylon, of the peculiar law of inheritance which is observed amongst certain classes of people on the Malabar Coast, these modifications of that Law prevail in Ceylon, amongst the people called Moguas, who about 5 or 6 centuries ago, came from the Malabar Coast, and made establishments in the Province of Puttalam, on the west ; and in that of Batticaloa on the east side of the Island, in the former although some of the Moguas became landholders they did not acquire much influence in the Province ; but they also gradually acquired the complete government of the Province, in both these Provinces in as far as their own land and properties were concerned, they introduced the same Law of Inheritance as prevails amongst the Nayers and many other classes of inhabitants, on the Malabar Coast.”

“By this Law the female heir, instead of the male heir, is by law entitled to inherit all the property of their deceased relatives ; the two Proclamations of which English translations are given were issued upon the advice of the late Mr. Burnand, the then chief of the Province of Batticaloa, by the late Dutch Governor

1. See Lewis Moore on Malabar Law and Custom.

2. See the Laws and Customs of the Tamils of Jaffna by H. W. Tambiah.



Van der Graef—the object of this proclamation amongst other provisions was to constitute a Legislative Council of which all the heads of the Mogua families were to be members for the Government of their Province, in consequence of the policy adopted by Mr. Burnand, one of the ablest of the Dutch civil servants and by Governor Van der Graef, one of the most enlightened of the Dutch Governors of Ceylon. Moguas of Batticaloa may be considered as the first natives of Ceylon, or indeed in any part of Asia, who were authorised by European Government to become member of a Legislative Assembly for the Government for their own country : the rapid manner in which the whole Province improved in consequence of this establishment of such a Legislative Council is fully detailed in the very able memoir of the late Mr. Burnand on the state of the Province of Batticaloa, of which an English translation forms one member of the Dutch memoirs, which I have presented to the Library of the Colonial Office. A strong conviction in my mind after much local observation of the beneficial effects produced by the above system of policy in the Province of Batticaloa induced me in 1806 to advise Sir Thomas Maitland the then Governor to revive this council in the Province of Batticaloa, it having ceased to be summoned since the conquest of the Island by the British Government, and in 1809 to advise the late Lord Londonderry, the then Secretary of State for the Colonies, to establish a Legislative Council formed upon a similar principle for each of the Provinces, which was then under the British Government of Ceylon.”

This interesting account of the Mukkuwa Law contains certain statements which require further consideration. Sir Alexander was of the opinion that the Mukkuwas came in the 12th century A.D., but historians are not agreed on this point. The Mukkuwas were the original inhabitants of Malabar, and the Tiyans, Nayars and the Nambhudri Brahmins were later immigrants. Therefore it cannot be stated that the Mukkuwa Law is based on the Law of the Nayars. It is more correct to state that the Mukkuwa Law of Ceylon was based on the original system of law among the Mukkuwas of Malabar and has been preserved in Ceylon as no other system came into impact with it. The Marumakattayam Law of Malabar is only a development of the Mukkuwa Law after other tribes settled down in Malabar.

### The Sources of Mukkuwa Law

The sources of Mukkuwa Law are to be found in the despatches of Sir Alexander, Burnand's papers, the early decisions of the courts in Ceylon, and a treatise on the Mukkuwa Law by Mr. Britto, who as an advocate had the opportunity to study the Mukkuwa Law.

## Mukkuwa Law as Found in The Johnstone Manuscripts

In giving an account of the Laws of Inheritance of the Cottiar Pattu, Tambalagamam and Cuttacolan, Sir Alexander sets out the rules of Mukkuwa Law. Further information on Mukkuwa Law is contained in a letter sent on 6th October, 1815, in reply to Sir Alexander Johnstone's queries as to how far the Thesawalamai applied at Batticaloa. The letter says:<sup>1</sup> "At Batticaloa Island and the villages adjacent, the law in every respect agree exactly with the Code.

"It agrees also in every respect, in the country of Batticaloa district, except in cases of inheriting property, which is in the following manner:

"A man and a woman being married together, and having children or not, and the husband dying, the property, *mudusom* brought by him in marriage is inherited by his father's children, but property acquired by them both is inherited by their own children, but in case they have no children, and the husband dying, the acquired property is divided into two, one share goes to the wife, and other to the brother of the deceased, and if his brother dies, and got children, it goes to them, but if the deceased has no brother or brother's children then it is inherited by his sister or his sister's children.

"In the same way, the wife dying, her share of her acquired property goes to her sisters and in case her sister dies, and has children, it goes to them, but in case she has no children and sister's children then it goes to her brother or brother's children."

Thus under Mukkuwa Law the inherited property of the husband devolved on his sisters but the acquired property of the husband and wife, devolved on their children, in whose hands it became the maternal *mudusam*.

If there were no children, and the husband predeceased the wife, half of the acquired property went to the wife, the other half devolved on the husband's brother, and failing them on their children. If there are no brothers, then on the sisters and their children.

If the wife died, half of the *teddiattam* belonged to the husband and the other half devolved on her sister and her sister's children, and failing them the brother or the brother's children. Thus among collaterals, males succeed males and females succeed females. A similar rule is found in the Thesawalamai and this rule of Mukkuwa Law was perhaps influenced by the Thesawalamai.

1. Co. 54/123 page 145.

## CHAPTER XIII

# THE LAWS AND CUSTOMS OF THE TAMILS OF PUTTALAM

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In the early part of the 18th Century there were Chetties, Bellalas, Moguas, Waggayas, Parawas, Chandas and Kaddeyas among the Tamil population that inhabited the Puttalam District. According to Sir Alexander the Chandas of Puttalam were the earliest inhabitants and they were no other than the Shanars (a climbing caste of India). The other Tamil races were later settlers. The Nallawas migrated from Jaffna and settled down in Puttalam.

### The laws of the Bellalas and Chetties

The Laws of the Bellalas, Chetties and the Wagayas were almost the same. To Sir Alexander who was brought up in strict Christian tradition "these heathens were plunged in an unfortunate yet arrogant ignorance, absurdities and superstitions militating against reason!" The rules and customs of a people may appear to be irrational and absurd to an observer but yet to the person who is bound by them, they may be full of sanctity and reason.

### Marriage

In particular Sir Alexander refers to the prevalence of cousin marriages. If a person refused to marry his or her cousin, he or she forfeited his or her rights to the dowry or gifts from his or her parents to the benefit of the cousin whom she or he had refused to marry. It is unfortunate that Sir Alexander when he refers to the marriage of cousins does not distinguish between marriages of cross cousins and other cousins. He probably refers to cross cousin marriages which is so frequent in Tamil society both in India and Ceylon.

In Jaffna, Trincomalee and Batticaloa cross cousins only could get married. This rule of exogamy has been practised by the Tamils of Jaffna, so that although there is no legal impediment one could not marry one's father's brother's daughter or the mother's sister's daughter. Such cousins were and are

regarded as one's sisters and marriage between them will not be thought of or tolerated by Tamil society. Perhaps the same taboo existed among the Tamils of Puttalam. But in Tamil society the cross cousin marriage was not only encouraged but it is considered to be the moral duty of a man to marry his maternal uncle's daughter. The same custom prevails among the Kandyans where there is a similar obligation to marry a " *evassa* cousin " (*i.e.*, cross cousin).

The cross cousin marriage is an institution by which the mother's brother who was the manager of the sister's family and who laboured not for his children but the sister's children secured to his own child the property that would otherwise go out of the family. Such marriages are not peculiar to the Tamils but are prevalent in other societies. Malinowski says :<sup>1</sup> " The most important arrangement by which a father line is smuggled *but mother right* is the institution of cross cousin marriage. A man in the Trobiriands who has a son and whole sister gives birth to a girl child has the right to ask that this infant be betrothed to his son. Thus, his grand-children will be of his own kin, and his son will become the brother-in-law of the heir to chieftainship. This latter will therefore be under an obligation to supply the son's household with food and in general to be a helpmate to his brother-in-law and protectors of his sister's family. Thus, the very man in whose interest the son is likely to encroach is prevented from resenting and indeed made to regard it as his own privilege. Cross cousin marriage in the Trobiriands is an institution by which a man can secure for his son a definite though round about right to remain for life in the father's community through an exceptional matrilocal marriage and enjoy all the privileges of full citizenship."

We have elsewhere<sup>2</sup> developed the theory that the Tamils of Ceylon were originally organized on the matrilineal pattern and due to later settlements gradually accepted the patrilineal pattern of society. The cross cousin marriage is a relic of the matrilineal system of Tamil Society, which was prevalent among the Mukkuwas and the original Tamil settlers of Jaffna.

### Polygamy

Polygamy was allowed if the first wife was sickly and unable to manage the household but no polyandry was allowed.

### Divorce

Although man was allowed sexual freedom, the wife's adultery was visited with severe penalties. If the wife was guilty of forni-

1. Crime and Custom in Savage Society by Malinowski, page 110.  
2. See Laws and Customs of the Tamils of Ceylon by H. W. Tambiah.

eration the husband could get a divorce and if she was caught in the act of adultery she was subject to the degrading treatment of her hair being shaved off and outlawed from her caste.

### Property and Inheritance

In matters of inheritance and succession, the Hindu Joint System applied in a modified form:— On the death of a person his brothers and sisters succeeded to his property and the widow had only a claim for maintenance. The widow could, however, demand a certain sum of money to be settled on her (called *Taaletyan*) and if the husband's heirs gave her this sum she lived separately with her relatives and was thereafter not entitled to any maintenance. This institution of providing for the widow is an advance on the principles of Hindu Law. Further unlike the Hindu Law definite shares vested in the heirs. When the wife died her property went to her heirs and the husband was not entitled to it. This was the same under the Law of Thesawalamai.

### The Laws and Customs of the Mukkuwas of Puttalam

The laws and customs of the Mukkuwas at Puttalam were almost the same as those of their brethren at Batticaloa.<sup>1</sup>

### The Laws of the Parawas

In the despatches of Sir Alexander are also found the laws and customs of the Parawas of Tuticorin which are discussed later.<sup>2</sup>

### The Heathen Law amongst the Vellalas and Chetties of the Coast of Coromandel

Another interesting document found in the despatches of Sir Alexander is the collection of "Heathen Law amongst the Vellalas and Chetties of the coast of Coromandel." This is almost the Hindu Law. The law of adoption is secular and is similar to the "*manjaneer* adoption," known to the Tamils of Ceylon. Polygamy was allowed but not polyandry. Adultery on the part of the husband was condoned while adultery on the part of the wife was punished by her being turned out of the village. On marriage, it is the bridegroom who gave a gift called dowry to the bride's parents.

1. Co. 54/123 page 183 et seq.

2. Co. 54/123 page 210.

## The Laws and Customs of the People of Puttalam

In his dispatches Sir Alexander deals with the following castes among the Tamils :

- (a) Chetties.
- (b) Bellalas.
- (c) Moguas.
- (d) Waggayas.
- (e) The Nalluas.
- (f) Parrua.
- (g) Chandas.
- (h) Kaddeyas (*Chaya-root Diggers.*)

### Chetties

There were only a few Chetties living at Puttalam, in the early part of the 19th century. He says that "the few Chetties living at Puttalam were all heathens plunged, in an unfortunate yet arrogant ignorance, absurdities, and superstitions militating against reason."

According to their customs full cousins could marry each other and if the bride or the bridegroom, who are cousins, refused to marry the defaulting party forfeited the dowry or gifts from his or her parents in favour of the other party who was prepared to marry. Polygamy was allowed if the first wife was constantly ill and was unable to manage the household. If the wife was guilty of fornication the husband could divorce her and marry another. If the wife was caught in adultery her hair was shaved according to the custom and she was outlawed from her caste, and was not entitled to enjoy anything out of the properties she possessed before the marriage.

When a man died issueless, leaving his widow, his property was inherited by his brothers and sisters and their children. The widow being only entitled to the right of maintenance. If the widow was not prepared to get the maintenance, the heirs of the husband had to pay a certain sum of money (known as *taalitjan*) to her and she could live with her relatives thereafter, in which event, whatever she acquired thereafter, the husband's relatives had no claim to it.

When the wife died issueless her dowry belonged to her relations and the husband had no claim to it.

When the parents died leaving sons and daughters, the sons inherited their property but the brothers had to maintain their sisters and give them a dowry. Even if the parents left no

properties the sons had to perform their duty of providing a dowry to their sisters.

When a husband and wife died leaving behind a daughter and also brother's and sister's sons and their children, the daughters did not inherit the estate but the brother's and sister's sons or their children succeeded. If there are no such nephews and nieces, then the daughters succeeded.

If the daughter did not marry among relatives she forfeited the property in favour of the relations. To preserve the property in the family cousin marriages were encouraged.

### **The Bellala Caste**

The Bellalas of Puttalam had the same laws and usages as the Chetties.

### **The Wagaya Caste**

The customs and usages of the Wagayas were the same as the Bellalas. Most of them were Roman Catholics.

### **The Chandas and Nallawas**

The Chandas were the Shanars of India, and according to Sir Alexander, the most ancient inhabitants of Puttalam. They were Catholics and earned their living by drawing toddy.

The Nallawas came from Jaffna and they belonged to the Protestant and Roman Catholic faiths. Sir Alexander says: "Nothing particular can be said from their temper, manners, and customs, as they agree thereon with other Nallawas Christians and Heathens."

### **The Washerman Caste**

"The washers caste," says Sir Alexander, "is numerous at Puttalam and they are heathens and their manners, customs and temper agree with the fishers."

### **The Parruas**

"The Parruas were few in number," says Sir Alexander, "who earn even their livelihood by fishing and agriculture. These were found in Jaffna also. They are the Parruas from Tuticorin. They were brought for diving purposes."<sup>1</sup>

### **The Kaddeyas**

These were the chaya-root (a root used as a dye) diggers and they were heathens (Hindus) and their customs and usages were the same as the others.

1. See "A collection of Voyages and Travels" 3rd Edition, Vol. 3—Churchill's Translations.

## CHAPTER XIV

# THE CASTES AMONG THE TAMILS OF PUTTALAM

### The Brahmins

The Brahmins or *Biramaner* were the priests who officiated at temples, they divided themselves into a variety of small tribes or *gotras*, denominated after the patronymics of the names of their founders, or the particular mode of work followed by them. Casie Chetty gives 18 classes of Brahmins.<sup>1</sup>

Referring to Phillipus De Melbo's Dutch manuscript entitled 'Table of Malabar Caste,' Casie Chetty states that the Brahmins were divided into three classes, the race of Agni or worshippers of fire, the race of Kasyapa, or the worshippers of Siva, the race of Baradwaja, or the worshippers of Vishnu.

### Shatriyas

The Shatriyas were warriors and kings. The Tamil kings of the Chola, Chera, Pandyan kingdoms, were Shatriyas. The Chakrawathies or Kings of Jaffna were also from the stock of a Chola King by a Brahmin woman and hence they took upon them the title of Ariya Vansa.

According to Casie Chetty Madapaliyar, found in the Province of Jaffna, belonged to the tribe of Shatriyar and may be compared to the Bandaras among the Sinhalese. They are descended from the offspring of the Chakrawathies not by their queen consort but by the ladies of the harems.

### Vaisiyas

The Vaisiyas composed the nobility of the land and according to the classification made by Rev. Father Beschi, on the authority of Vira Mandalaven, they were divided into three distinct castes, namely, merchants, husbandmen, and the herdsmen. The Thana

1. Ceylon Gazetteer, Page 228.



Vaisiyas were divided into seven sub-tribes: Chetties, Velan Chetties, Kavery Chetties, Komely Chetties, Pattunukara Chetties, Sittaktu Chetties, Sholapurata Chetties. The Poo Vaisiyas were called the Velaler, and were sub-divided into the following sub-castes: 1. Karakatu Velaler, 2. Choliya Velaler, 3. Kodikal Velaler, 4. Tuluva Velaler, 5. Pandarattar, 6. Nynar, 7. Udyar, 8. Kontaha Velaler, 9. Savala Velaler, 10. Retti, 11. Nattampadi, 12. Ayambadiyar, 13. Maraver, 14. Kaller, 15. Paili. The Ko Vaisiyas were called the Idayer, and they divided themselves into three smaller classes: 1. Malei Idayer, 2. Valei Idayer, 3. Chivizar Idayer.

The Sutras, on whom devolve the lower offices of life, were found to serve the three classes of Vaisiyas, during their public ceremonies. The Sutras are distinguished by Mr. Melbo, into two branches or orders: 1. the domestic servants, *kudimakkal*, and 2. the town servants. The domestic servants were 18 in number and were classified as follows:

1. Navider, Barbers.
2. Oacher, Heralds who announce weddings and deaths.
3. Koller, Blacksmiths.
4. Tattar, Goldsmiths.
5. Kannar, Brass founders.
6. Tatcher, Carpenters.
7. Sipper, Masons.
8. Valayer, Game-keepers.
9. Paner, Tailors.
10. Cheku vaniyer, Oil-makers.
11. Elai vaniyer, Betel vendors.
12. Chunambu vaniyer, Lime burners.
13. Kavelpalli, Watchmen.
14. Pumala karer, those who sell garlands of flowers.
15. Vettiyan, those who burn dead bodies.
16. Kusaver, Potters.
17. Virakudiyar, those who blow Chanks.
18. Vannar, Washermen.

The town servants were forty-six in number and included the different tribes of:

1. The Karayars.
2. Sempadaver.
3. Timilar.
4. Mukkuven.
5. Chandar.
6. Kadeyer.
7. Nalaver.
8. Chayekarar.

1. Salupper, Woollen Drapers.
  2. Paravas
  3. Kareyas
  4. Pattanever
  5. Palli Villi
  6. Sempadaver
  7. Timilar
  8. Mukiar
  9. Paramber
  10. Vader, Huntsmen.
  11. Muchchiyer, Painters.
  12. Kuraver, Baker, makers.
  13. Iruler, Woodmen.
  14. Arippeer, Sifters.
  15. Ureikarer, Scabbard makers.
  16. Matruttuver, Medical practitioners.
  17. Tather, Stage players.
  18. Kalayer, Rope dancers.
  19. Ondipili, Snake dancers.
  20. Yalpaner, Lyrists.
  21. Parikulattar, Horse grooms.
  22. Tanakarer
  23. Mavutter
  24. Chandar
  25. Kadeyer
  26. Nalaver
  27. Eejuver, Arrack distillers or brewers.
  28. Chayekarer, Dyers.
  29. Upparaver
  30. Otter
  31. Uppalaver, Salt makers.
  32. Seder
  33. Seniyer
  34. Koliyar
  35. Kaikoler
  36. Saliyer
  37. Koviayar, Slaves of the higher order.
  38. Maraver, Makers of dry measures.
  39. Paivaniyer, Mat makers.
  40. Chiviyer, Palanquin bearers.
  41. Valluver, Soothsayers.
  42. Chakiliyer
  43. Semmar
  44. Parrayer, Tom Tom beaters.
  45. Paller, Ploughmen of the lower order.
- The different tribes of fishers and boatmen, and which are commonly called kuru kulam, *i.e.*, progeny of the planet Kuru, or Jupiter.
- Elephant keepers.
- The different tribes of people employed in distilling toddy and in manufacturing coarse sugar.
- Pond diggers.
- The different tribes of weavers, including lower and higher orders.
- Shoemakers.

## CHAPTER XV

# The Marriage Customs of the Tamils of Puttalam and Calpentyn

The following is an account of the ceremonies observed by the Tamils of Puttalam and Calpentyn, during their marriages, according to Simon Casie Chetty.<sup>1</sup> Casie Chetty was an erudite scholar, who was born at Calpentyn in 1807 and he held various offices.<sup>2</sup> He was a great research worker, and a prolific writer, and among his works are the Ceylon Gazetteer, The Hindu System of Natural History, Sanskrit and Tamil Dictionary, Treasury of Foreign Words and Phrases in use among the Tamils, The Tamil Plutarch, A History of Jaffna from the Earliest Period to the Dutch Conquest, Ancient Coins found at Calpentyn in 1839, The Customs and Castes among the Tamils of Puttalam and Calpentyn, and an Account of the Origin and History of Parawas, and an Essay on The Manners and Customs of the Moors of Ceylon.

His contributions have been published in the Journals of the Royal Asiatic Society in England and in Ceylon. Being a close observer and accurate research worker, his account of the Manners and Customs of the Tamils of Puttalam and Calpentyn carry great weight and therefore we shall state the Customs of the Tamils of Puttalam as set out by Simon Casie Chetty.

### The Ceremonies among the Vellalars and Chetties of Puttalam

Proposals of marriage were usually made by the parents of the parties, wishing to be united. When agreement had been reached, the Brahmin fixed the most propitious hour for ceremony. Having fixed the auspicious hour, invitations were sent to personal relations, and a pandal or booth was erected in front of their dwellings. A pole was erected on the north east side after certain ceremonies. Before it was affixed to the ground it was smeared with pulverised sandalwood and turmeric and the top was ornamented with a number of mango leaves and

1. Ceylon Gazetteer, pages 239-251.

2. See Memoirs of Simon Casie Chetty by Frederick Jayatileke 1862.

pieces of silk. Before the pole was finally fixed, small bits of gold, coral, pearls, together with chank and some coconut milk, were placed in the pit.

When the pandal was completed they proceeded to the *Modliar*, or headman of the district with 9 trays of betel leaves and arecanuts, arranged in such a way that one is placed on the other. The tray containing these was covered by a white cloth and presented to the headman, who gave permission in writing for the washerman to cover the pandal with white cloth inside and out, or inside only as the rank and condition of the parties allowed.

Having obtained the sanction of the *Modliar* or headman, they despatched a party of their friends into the country to announce the intended marriage to the people by presenting them with trays of betel leaves according to their rank and caste. While this was in process, the pandal was covered with white cloth and was adorned with coconut blossoms and the young shoots of coconut leaves.

Besides the pandal the triumphal arch near the dwelling was erected. This arch was adorned with leaves of the coconut tree, and below the arch a street way leading from the door of the habitation to the pandal was constructed with two rows of stems of plantain trees to which lamps were fixed. In the centre of the pandal of the house of the bride, an extra pole was fixed called the *Arasanikal*. Near this pole was raised a small altar of earth on which was placed a ball of cow dung, ornamented with a type of grass known as *kusa*. (*Poa cynosuroides*) to represent Pullayar, a deity who was believed to preside over those rites, as Janus was among the Romans. In front of the *Arasanikal* a quadrangular pit was dug, the inside of which was besmeared with cow dung for the purpose of kindling the sacrificial fire, called *Homam*. On the edge of the pit was fixed a serpent formed of clay in an erect position, and before it was placed three painted pots, piled one on the other, having on the top coconut streaked with turmeric and a lamp near them. When these preparations were completed, the bride's father informed the bridegroom who proceeded to her dwelling with the *thali*<sup>1</sup> and wedding apparel called *kurai*.<sup>2</sup> These articles were borne before him by a servant maid on a tray or a salver, attended by friends and relations.

If the bridegroom was a person of superior rank or was descended from headmen of distinction, the washermen spread white cloth on the road for him to walk upon, two others fanned him

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1. A golden pendant which was given by the bridegroom to the bride on the occasion of the marriage.
  2. A piece of cloth given at the time of marriage by the bridegroom to the bride.

with whisks, called *chamarams*, while four persons held a canopy over his head, the bridegroom was accompanied by musicians who played on their instruments, two barbers, who blew chanks and dancing girls and a number of boys carried lighted flambeaux, white umbrellas and flags.

As soon as the bridegroom was seen approaching, the bride's party welcomed him and sprinkled rose water on him. The bride who was adorned in splendid apparel and richly ornamented jewels was ushered into the pandal and both of them took their seats on cushions placed on the *Arasinikal* facing the east. The guests took their respective places and the Brahmin ignited the sacrificial fire, and occasionally threw into it certain kinds of fine grain, and dry twigs of trees. He kept up the sacrificial fire by throwing in ghee and invoked the blessings of the deities to accept the sacrifice thus offered and to endow the couple with happiness and prosperity.

The *thali* was placed on a salver and handed round to the guests who touched it with both hands and so blessed it. When this was done, the bridegroom tied the *thali* round the neck of the bride during which time the Brahmin divided the coconut which was lying on the painted pots into two equal parts, and pronounced a benediction while the barber sounded the chank and the musicians played on their instruments without intermission.

When the above ceremony was ended the rite called *Panigraham* was performed by the Brahmin by joining the hands of the couple and painting a *pottu* or dot on their foreheads with pulverised sandalwood and sacrificial ashes, and making them to circumambulate the fire three times during which ceremony the bride and bridegroom threw handfuls of paddy mixed with flowers into the fire, as they passed. After the circumambulations were over the Brahmin recited the following sentence: 'The sun and moon, this fire, and the 333 millions of gods here witness that son of A now gives his daughter Z as wife to X who is the son of Y.' At this stage of the ceremony the bride's father formally gave away his daughter to her husband.

When the marriage had been thus solemnised the bride was asked to place her right foot on a stone, while the bridegroom pointed out to her through an aperture made in the roof of the pandal, the constellation *Arundhudhi* (Castor and Pollux) which was considered as an emblem of matrimonial virtue.

When the newly married pair were about to withdraw, the parents and relations sprinkled them with turmeric water impregnated with *kusa* grass, the intention being to protect them from all kinds of witchcraft and evil eyes. The relations and friends pronounced a blessing by using the following words. 'You shall flourish like the banian tree, and take root like the *kusa* grass, you shall shoot up like the bamboo and live without end.'

After these ceremonies were over the bridal couple were conducted into the bridal chamber and the assembly broke up after partaking of the food and entertainment provided for them.

On the fourth day a whimsical ceremony was performed called the *Nalanchadangu*. The newly married couple were led in procession to a well, where the husband stood with one end of the wife's clothes about his loins and she with the other, they then poured water on both their heads, and sprinkled them profusely with the juice of turmeric.

The marriage ceremonies above described were observed among the Chetties and Vellalas who professed the Hindu religion. The Christians did not observe these except the tying of the *thali* around the bride's neck, and the handing over of a wedding ring.

### The Marriage Ceremonies of Kammalars or Artificers

These artificers (such as the Blacksmiths, etc.) followed the ceremonies of the Chetties and Vellalars.

### The Marriage Ceremonies of the Karayars

The ceremonies of the fishers differed materially. They recognised three forms of marriage; the first was called *Malei manam*. It was performed by the bridegroom's sister who tied the *thali* around the neck of the intended bride, after decking her person with garlands made of certain flowers, and anointing her with sweet scents. After their marriage if either party disagreed they could part, by paying a fine of 25 rix dollars to the temple.

The second form of marriage was called *Sirutali*, which is nothing more than the performance of tying the *thali* without any ceremonies whatsoever. Such marriages could be dissolved at will, by the payment of 12 rix dollars and 6 fanams to the temple.

The third form was *Manjelpusal*. This ceremony was performed even without the tying of the *thali*, the bridegroom's

sister besmeared the bride's garments with pulverised turmeric and the marriage was complete. Either party could divorce the other at will, by paying 6 dollars and 3 fanams to the temple.

### **The Marriage Ceremonies Among The Parawas**

The Parawas, who were Christians, differed so little in their ceremonies from the other castes, as to claim particular notice, with the exception of a very remarkable custom which they observed at their wedding feast. If a person of inferior rank or a person who has lost the privileges of the caste, happened to join the wedding feast, the barber was informed about his presence and the barber without saying a word extinguished all the lights and turned out the daring intruder without allowing any other person present to recognise the person who was so ignominiously dismissed from their society.

## CHAPTER XVI

# THE LAWS AND CUSTOMS OF THE TAMILS OF CALPENTYN

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When Sir Alexander Johnstone sent a copy of the Thesawalamai Code to the authorities at Calpentyn and desired to know whether the Thesawalamai applied to the locality, the matter was placed in the hands of Mr. Simon de Rosairo, who in a letter dated the 23rd of July, 1815,<sup>1</sup> which was accompanied by a report, stated that the laws and customs set out in his report were observed by the Tamils of Calpentyn. In his letter he says: "The above law is required for the inhabitants of Calpentyn and Puttalam, for the Christians, Chetties, Bellalas, Carrears, Sempadawar (a fisher caste) Hindus."

"As the Christians and Tamulers do not keep the whole country law of Jaffna, I have only specified from article to article which are in use in Calpentyn and Puttalam and those articles which are not in use, I have also specified and I further beg leave with profound respect to inform Your Lordship that for the Christians and Tamulers of Calpentyn and Puttalam the same law of justice is required, as used by the Christians and Tamulers." With reference to the articles of the Thesawalamai Code the summary of his Report is as follows:

**ARTICLE 1.**—If a Tamil died issueless leaving inherited and acquired property his relatives inherited his inherited property and half of his acquisition.

**ARTICLE 2.**—If one co-owner had cultivated a portion of his land, on a partition, the lot so cultivated should be given to the co-owner who was responsible for the cultivation.

If a person planted another's land, the planter got  $\frac{1}{3}$ rd of the plantations, and the owner of the soil  $\frac{2}{3}$ rd.

**ARTICLE 3.**—The circumstances mentioned in the 3rd article respecting gifts were not observed in Calpentyn.

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1. Co.54/123 page 161



ARTICLE 4.—This article states that *otty* mortgage known to the Thesawalamai applied at Puttalam, but the mortgagor if he wished to redeem garden land, had to give notice before November and pay the amount due before that month but he got possession after one year. If the profits of the land was not sufficient, the mortgagor could deliver the land to the mortgagee and wait for a year. If the mortgagor did not pay the amount due, the heirs had to be informed about it and they who could redeem it. If the heirs failed to redeem the *ottied* land it became the property of the mortgagee.

According to the customs of the place, the lands were mortgaged by way of *otty* for a fixed number of years. (Such as 3, 5, 8 and 10 years). But if the owner wished to redeem them within the time fixed, he was allowed to do so.

ARTICLE 5.—Pawning gold and silver jewels. If the pawnee used the jewels pawned he was not entitled to any interest.

If a bull which is lent for hire dies, the owner could claim the value of the bull.

The remaining part of Article 5 was not applicable to Calpentyn.

The surety who paid the debts was given the right to recover the sum so paid from the debtor's property. The husband's debt had to be honoured by the wife and children, even if contracted without their knowledge.

ARTICLE 6.—No written document was necessary to evidence the sale of cattle, sheep, etc. Once the dung of the animal was handed over by the seller to the purchaser the sale was complete.

ARTICLE 7.—The provision of Thesawalamai dealing with slaves had no application.

ARTICLE 8.—If a debtor agreed to pay the debt before a certain period and did not pay, the creditor could sell the land given in pledge. If no property was given as security or if the debtor had no property nothing further could have been done. The rest of Article 8 had no application.

The usages and customs existing among the Fishers, Parawas and Heathens of Calpentyn were also collected by Domingo Aratchy and embodied in a report annexed to a letter dated 1st July, 1815.

According to this report adoption was not known amongst them. Dowry was given. On the death of a spouse his hereditary property, dowry property of the wife, and the acquisition were equally divided between the surviving spouse and his children, or if there were no children, by the surviving spouse and his heirs.

The Roman-Dutch Law of community of property was applicable. The same rule of inheritance was observed among the Bellalas of Puttalam.<sup>1</sup> The adoption of a child (called *Manjaneer Pulle*) was not in use among them.<sup>2</sup> Gifts could be revoked in the hands of the donee and his descendants. Coconut lands and paddy lands *ottied* could not be redeemed till the *otty* holder reaps the harvest. If pawned articles were used no interest was payable to the pawnee.

Reports on the existing usages among the Chetties, Vellalas and Washermen of Calpentyn by Simon de Rosairo,<sup>3</sup> and Domingo Aratchy were sent to Sir Alexander.

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1. Co. 54/123 page 168.

2. Ibid.

3. Ibid., pages 173-178.

## CHAPTER XVII

# THE CHETTIES OF COLOMBO AND PUTTALAM

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The Chetties of Colombo and Puttalam were classified as the Tana Vaisayas by Simon Casie Chetty.<sup>1</sup> They belong to the same stock as Kovalan and Kannaki whose story had been immortalised in the epic known as Silappathikaram by the poet Ilango Adigal.

The Silappathikaram describes the story of Kovalan, the son of a rich merchant who married Kannaki.<sup>2</sup> Kovalan fell into evil ways by falling in love with a dancer by the name of Madhavi as a result of which he expended all his wealth and was reduced to penury. The faithful Kannaki, who is described as the embodiment of virtue and chastity, gave her anklets to Kovalan in order that he may sell it and start business. This work goes on to say that the couple visited Madura, the capital of the Pandyan King, where, while Kovalan was attempting to sell his anklets the King's goldsmith who had stolen the anklet of the Queen, implicated Kovalan falsely of stealing her anklet. Kovalan was tried in the Pandyan court and as a result of a miscarriage of justice he was executed whereupon Kannaki proved his innocence by producing the other anklet before the King. As a result of a curse by Kannaki the capital of the Pandyan kingdom was said to have been burnt, and Kannaki was later deified as Pattini, the goddess of chastity. Pattini worship was inaugurated in India and was brought to Ceylon by Gaja Bahu and is in vogue even today among both the Hindus and Buddhists of Ceylon.<sup>3</sup>

The Silappadikaram was written in the 2nd century A.D. and it gives a clear and vivid account of the civilisation and culture of the Tamils who lived during that period. In particular it gives a description of the merchant classes from whom the Chetties of Colombo and Puttalam descended. According to this work the rich Tamils who belonged to the merchant class, lived in upstairs mansions, and had a social life comparable to the western civilised races.

1. Caste, Customs and Manners and Literature of the Tamils by Casie Chetty, p 35 et seq.
2. Silappadikaram by Dikshitar Appendix 4, p 370.
3. Parker's Ancient Ceylon, p. 161 and 151. Ceylon Antiquary, Vol. 1. No 2, p. 128.

The King in his administration was assisted by the "Assembly of Five". (*Aimperum Kulu*) which consisted of the Minister, the Court Astrologer, The Commander-in-Chief, an Ambassador and a Spy) and by a group of 8 officials (*Enperayam*) :—The Superintendent of Accounts, the Head of the Executive, the officer of the Treasury, the Chamberlain, the Representatives of the Citizens, the Chief of the Elephant Warriors, and of the Horse Warriors).<sup>1</sup> An elaborate account of the political institutions that existed during the period is found in the works of Dikshitar,<sup>2</sup> and Ayyangar.<sup>3</sup> Justice was administered by the Chief Magistrate who sat in the hall of Justice (*arakkalam*). Those who administered justice had to be versed in the Codes of Law.<sup>4</sup> As an ultimate Court of Justice the king administered justice. There were jails and superintendents of jails. Capital punishment was awarded in cases of theft. The 6 main offenders, according to the laws of the state, were perjurers, pseudo saints, unchaste women, disloyal ministers, adulterers, tale-bearers.

The state was divided into provinces (*nadus*), which were sub-divided into districts (*kurram*), which in turn was sub-divided into villages. Every village had the village assembly presided over by the elders, called the *manram*, which transacted the business of the village. In the towns, there was excellent municipal administration, and life in the towns was one of luxury and ease. There were public performances, and music and dancing, in which their women freely participated. The women decked themselves with costly attire and ornaments, painted their bodies with scented paste and powders, and were decked with garlands of exquisite taste.

The women in the town were classified into two divisions, housewives who led a pure life, and prostitutes who lived in special quarters where both young and married men assembled and wasted their wealth. The village life was mainly agricultural and pastoral. The villagers too mixed freely and even women took part in public performances and dances. Two types of marriages were recognised. A recognised institution called the *karpū*, and the other clandestine marriage called the *kalavu*. The latter corresponded to the *gandharva* form of marriage, described by writers in Hindu Law.

From what has been said, the Tamils, and in particular the Vaisiya community, enjoyed a very high degree of civilisation as early as the 2nd century A.D. Trade and merchandise

1. Silapaddikaram, Cantos 111, 1. 126, v.l. 157, xxvi, 1. 38. Also Manimekela Canto i. 1. 17.  
 2. Hindu Administrative Institutions, 1929.  
 3. Hindu Administrative Institution in South India.  
 4. Sil :—Cantos xxii. 1.8. xxvi, 1. 246 xxvii. 1. 222.

was in the hands of the Chetties, who were the Tana Vaisiyas, among the Tamils. The great saints and literary men as Cheraman, Perumal, Nayanar, and others were produced by this community.

There is evidence that some of the Colombo Chetties had settled down in Puttalam and Colombo during the time of the Sinhalese kings.<sup>1</sup> Some of them came during the Portuguese time from India and settled in Ceylon.<sup>2</sup> Still others came during the Dutch and the early British period. They brought with them the other castes who served them. The main settlements in Colombo of the Chetties were at Sea Street, Chetty Street, New Chetty Street, and the Kotahena area. The Silversmiths settled down at Silversmith Street, the Barbers at Barber Street, and the Dhobies in Washermen's quarters. In Calpentyn and Puttalam too there were similar settlements. The tribal head of the Chetties were known as *Setti-talamai*, whose duty it was to look to the maintenance of the social status and respect of the Chetty community.

The Chetties who came during the Dutch and Portuguese periods embraced the Christian religion and some of them even married and intermingled with the Portuguese and Dutch,<sup>3</sup> who encouraged such unions. Some of them attained very important positions not only in Ceylon but also in Holland.<sup>4</sup> A reference to a Ceylon Government Gazette of 26th July, 1860, shows the presence of about 250 Protestant Christian Chetties at a first service held in a church at Colombo. There must have been Chetties who were Catholics, and Hindus during this period. The Johnstone Manuscripts which contain a collection of the laws and customs of the Colombo Chetties, in 1807, describe the majority of them as Hindus. According to the Ceylon Gazetteer, which was published in 1833, the Tamils resident in Colombo were mostly Chetties. This indicates that a large influx of the Colombo Chetties took place during the early British period. It is likely that a large number of them came over as officials, when Ceylon was administered under the Madras Presidency. Today the majority of the Colombo Chetties are Roman Catholics.

1. Short History of the Ceylon Chetty Community by Aserappa, p. 28 et seq.
2. The Simon Casie Chetty family settled in 1620, they came from Alwar Tinnavelly in South India.
3. The Short History of the Ceylon Chetty Community by Aserappa 1930.
4. Dr. Peter Philip Ondaatjie.

## CHAPTER XVIII

# THE LAWS AND CUSTOMS OF CHETTIES OF COLOMBO

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The Johnstone papers contain an interesting account of the laws and customs of the Chetties of Colombo. The Chetties of Colombo referred to by Sir Alexander are no other than the Colombo Chetties of Ceylon. The majority of them today have embraced the Roman Catholic religion, but it is interesting to note that the majority of them were Hindus in the early part of the 19th century in view of the fact that the customs recorded by Sir Alexander referred to Hindu customs observed among them. The following is a *verbatim* account of the customs and laws observed among them as found in the Johnstone Manuscripts:

1. "When a marriage is intended to be consummated the relations of the persons intending to enter into matrimony give previously information thereof to the Heathen Headmen, whereupon the Brahmin and the servants required for the performance of the ceremony, viz., the barbers and washermen, etc., are sent for. In the presence of the friends, the fire is held as a witness and according to their Heathen persuasion the *Tiromany Nelem*<sup>1</sup> is tied, which is a gold jewel wherewith the bride is adorned by the bridegroom, in token of his recognizing her as his legal wife, which jewel the wife never puts off before the husband's death, according to the aforesaid manner a marriage ought to be consummated."

2. "When children are procreated from such a marriage, the daughters may claim nothing whatever except the dowry given or bequeathed to them by their parents at their marriage. After the parent's death, the sons only inherit the remaining property and are obliged in their capacity of heirs to have the funeral ceremonies performed at the death of their parents according to heathen persuasion, which they ought to do even in case the parents leave no property behind; and the sons are not only obliged to observe the funeral ceremonies, but also to maintain the unmarried daughters."

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1. *Thali* or chain with a pendant given at the time of marriage by the bridegroom to the bride.

3. "When a husband departs this life childless, and leaves behind a widow, she has not only a claim to her dowry but is also given a part of the other property as may be stipulated for her by the Headman and the relatives, according to her age and situation in life, in order that she may be enabled to reside either with her parents or relations without entering a second marriage."

4. "When a husband departs this life leaving behind children, the eldest son enters upon the estate and maintains the widow and the other children, and in case all the children are underage, then the husband's relations, and the Headman take over the properties appertaining to the deceased in the presence of friends, and the widow and the children must be properly maintained therefrom. When the children become of age the daughters must be married and their dowries must be given to them, but should the sons also enter into matrimony, the estate and the widow must be given over to one of the married sons who is known to have more experience than the others in order so that he may maintain them."

5. "In case the wife departs this life leaving behind children the daughters get only their dowry but not the sons; and when a man after the death of his wife marries a second wife and departs this life, leaving behind children of the second bed, also then, the eldest son of the first bed, if he is a fit person enters upon the estate and maintains the widow and the other children, and should he neglect it the relations and the Headman must give to the widow the share appertaining to her from the estate and divide amongst the sons of the first bed and second the remaining properties in equal portions."

6. "The dowry which is given or bequeathed to a daughter with the consent of her parents may not be used by her husband without consent of his wife nor be disposed of for debts contracted by him."

7. "When married persons have no children and are desirous to bring up a child as their heir, they may for the purpose adopt a son of their relations, according to the heathen manner, which adopted son inherits the whole estate after the death of the persons by whom he has been adopted and must perform the funeral ceremonies."

### **Commentary on the Laws and Customs of the Chetties of Colombo**

It is from the point of view of comparative jurisprudence and the study of the customary laws, that it is useful to compare and

contrast the Hindu Law concepts with these customary laws on such matters as marriage, inheritance, joint family system.

### Marriage

The Hindus, although belonging to the Hindu faith, were diversified in their custom and culture. Several tribes having peculiar matrimonial customs later coalesced and were brought under the operation of Hindu Law.

The eight forms of marriage referred to by the Hindu writers<sup>1</sup> were survivals of the customs of the various tribes and castes which comprised the Hindus. Of the various forms of marriage, the most dignified and sacred form was the marriage known as *Brahma*. The essence of the *Brahma* form of marriage is that it is a gift of the daughter *kannikai thanam*. Although originally intended only for those versed in the 'Vedas,' it became lawful for all castes to adopt this form.<sup>2</sup>

The Chetties of Colombo adopted the *Brahma* form of marriage. The Brahmin performed the customary rites. The barber and washerman were important officials (*kudimakkal*, i.e., those common to the village as opposed to *adimakkal*). Their presence was necessary at the wedding of a Colombo Chetty. Amongst the Tamil races a necklace called the *thali* was tied by the bridegroom as a token of taking the woman as his lawful bride. The *thali* among the Chetties was known as "*tirumony nilaam*." The forms of marriage amongst the Chetties was almost the same as amongst the higher caste of the Tamils.<sup>3</sup>

### Inheritance

The customs of the Chetties of Colombo as recorded by Sir Alexander show that the daughter claimed nothing but had to be content with the dowry which was given to her. Only the male heir succeeded to the inheritance. The eldest son took charge of the property and became the manager. As manager of the estate he had to look after his brothers, unmarried daughters, and his widowed mother.

As in Hindu Law, the eldest son of the joint family became its manager (*karta*), and he had to maintain the other members of the joint family, and represented the family in all transactions.<sup>4</sup>

1. *Vide* Mayne 10th edition.
2. Mayne 10th Edition, page 133.
3. For a description of the marriage ceremonies among the various caste of the Tamils of Jaffna, See the Laws and Customs of the Tamils of Jaffna by H. W. Tambiah.
4. Mayne 10th Edition, page 385.



In Hindu Law the members of a joint family are those who claimed descent from a former ancestor, but co-parceners were a smaller category. Co-parceners are those who have the right to enjoy and hold the joint property, to restrain the acts of each other in respect of it, and to burden it with debts and at their pleasure and to enforce partition.<sup>1</sup>

The laws of the Chetties did not recognise the joint-family system as known to the Hindu Law in its entirety. In Hindu Law there can be no limit to the number of persons who constitute the joint family.<sup>2</sup>

Under the Hindu Law no co-parcener had a definite share, except on partition. But the laws of the Colombo Chetties, subject to the power of the eldest brother to give dowries, each brother had a vested right.

Differing from Hindu Law the widow of a Colombo Chetty could demand settlement of some property on the death of her husband. Except in *stridhana* the Hindu Law never recognised the separate property of the woman. It is only by legislation that the woman's separate property was created.<sup>3</sup>

### Adoption

Adoption was allowed among the Chetties of Colombo, only if there were no children. The adopted son must be a relation. It is said that adoption is accordingly "heathen custom." Unfortunately the details of the ceremony of adoption are not given. The adopted son inherited the property of the adopting parents and was obliged to perform the funeral rites.

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1. Ibid, page 338.

2. Mayne ibid page 338.

3. The Hindu Women's Rights to Property Act 1937

## CHAPTER XIX

# THE PARAWAS OF CEYLON

### The History of the Parawas

An account of the history of the Parawas of Puttalam is given by Simon Casie Chetty in an article contributed to the Journal of the Royal Asiatic Society of Great Britain and Ireland (1837 Vol. 4, p 120). According to Simon Casie Chetty the Parawas rank first among the types of fisherman of the Tamil community. The Tamil dictionary entitled Nigundu Sulamani describes them under the head of the inhabitants of the sea coasts. The author of the *Historia Ecclesistica* published in Tamil at Tranquebar in the year 1735 identifies them with the Tarvaim of the Scriptures, and adds that in the time of Solomon they were famous mariners.

There is a belief among the Parawas that their original country was Oude or Ayudhya. They are found in the sea ports of Tinnavelly in the south of India and also in the provinces of the north west coast of Ceylon. The Parawas were once a very powerful people and derived ascendancy over the other tribes of the Tamils by their knowledge of navigation. They had a succession of kings among them by the title of *Adiyarsen*, who resided at a place called *Uttara Kosamangay* which was situated in the neighbourhood of the city of Ramnad in South India. The *Mahabharata*, the epic which describes the story of the Pandawas, refers to the king of the Parawas who resided on the banks of the Jumna. This shows their ancient origin. Alli Arasany is said to have resided in Kudremala on the north west coast of Ceylon and the Parawas as a community are conspicuously mentioned in the drama that depicts her life. They were said to have been employed by the princess for fishing pearls off the coast of Puttalam. After the conquest of the Deccan by the Mohammedans the Parawas were deprived of their fisheries and were treated by the Moors with great contempt. When the Portuguese established themselves in Cochin, the Parawas, on the advice of Juan de Croos, deputed their headmen (*pattankattys*) to seek the aid of the Portuguese to free them from the yoke of the Mohammedans. Having succeeded in obtaining a ship and some

troops they were soon delivered from the clutches of the Moham-medans. Nearly 20,000 Parawas became Roman Catholics but they soon lapsed into Hinduism. In the year 1542 Francis Xavier, the great Catholic Missionary brought them back to the Roman Catholic church.

When the Dutch took possession of Tuticorin, they employed the zealous missionary Dr. Baldeus to convert them to the Protestant faith, but met with little success. The Parawas were divided into 13 classes. The first class were chiefly headmen, the second were dealers in clothes, the third were divers for corals, the fourth were sailors, the fifth were divers for pearl oysters, the sixth were divers for chanks, the seventh were packers of cloth, the eighth were fishers for tortoises, the ninth were fishers of porpoises, the tenth were fishers who caught sharks and other fish, the eleventh were palanquin bearers, the twelfth were peons who waited on their chiefs, and the thirteenth were fishers who caught crabs. They had the same ceremonies at weddings and funerals like the other Tamil tribes, and fuller description of these are given in the despatches of Sir Alexander Johnstone. The Parawas in Ceylon who lived in the early part of the 19th century had their headmen called *adapemars* who were under the control of the *Mudaliars* of the District. In South India they formed a distinct community, presided over by a chief called *Jadi Talavan* or head of the caste, who resided at Tuticorin and held his office upon the same tenure as Zamindars, under the Dutch East India Co. He was called by the Dutch the Prince of the Seven Havens, and had many exemptions and privileges attached to his office, among which was the appropriation of a certain portion of the pearl oysters in his territory.

## CHAPTER XX

# THE LAWS AND CUSTOMS OF THE PARAWAS AND CHETTIES

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### Introduction

Members of the Parawa community came out to Ceylon for purpose of trade. During Sir Alexander Johnstone's time there were several of the Parawas in Ceylon. Sir Alexander made an endeavour to collect their laws and customs, and an interesting account of their customary laws is found in his despatches. These customary laws dealt with such matters as inheritance, marriage, loans of money, etc.

### Law of Inheritance

The laws and customs of the Parawas and Chetties of Tuticorin bear a striking resemblance to the law of Thesawalamai. Under the laws of the Parawas the sons inherited the father's property, but they were under an obligation not only to pay the father's debts but also to provide a dowry for the unmarried sisters. The father during his life time dowered his daughters and these daughters had no more claims to the paternal estate. In the absence of sons, the daughters inherited the father's property. If a man died without issue his brother succeeded to his property to the exclusion of his sister. The brother failing, such property was inherited by the sisters.

If a husband died and the widow survived him, she remained in possession of the whole of the property and maintained the children out of the income. If she decided to marry a second time, she had to surrender the property of her first husband to the children of her first marriage who attained the age of maturity. But after her death, her dowry was equally divided between the children of the first and second beds. If a person married two or three wives and had children by them, the dowry property of each wife was divided between the children procreated by such marriages, but the property of the father was divided between all the children equally.

Adoption was allowed among the Parawas and adopted children had the same status as the lawful children of the adopted parent. From what has been said earlier, the customary laws

and inheritance of the Parawas were similar to the law of the Thesawalamai.

### Slavery among the Parawas

Slavery was a well established institution among the Parawas. But they had the curious custom that no member of the Parawa tribe could be enslaved. A Parawa was allowed to purchase slaves of other castes. The slaves could be purchased and in case of necessity, such slaves could be sold to others. Slaves left behind at death were not inherited by the children but had to be emancipated by them. The children of slaves were not regarded as slaves but their parents could sell them into slavery to their own masters and if the masters declined then such children could be sold to strangers. The customary laws of the Parawas governing slavery were more humane than those of the Thesawalamai.

### Loans of Money

The Parawa community being a trading class, had certain peculiar customary laws governing loans. Excessive interest could not be levied. A lender was only allowed to charge one per cent. on the loans. If the borrower did not pay the money agreed upon, *parate* execution was allowed in the case of movables which were given as security by the borrower.

Two types of loans given to traders are referred to ; in the transaction known as *ottalappm*, the net profits were divided equally between the lender and the borrower. In the loan transaction known as *soodoo pacoosoe*, the net profits were divided in the proportion of two-thirds to the creditor and one-third to the debtor. But if there was any loss such loss had to borne by the creditor only.

It was customary to lend out money on the understanding that the principal and interest at the rate of ten per cent. would be repayed on the twenty-first day of the arrival of a particular vessel at a particular place. If there was a delay in the arrival of a ship, interest could be charged on the loan ; but if the delay was at sea the creditor had to bear such losses.

### The Marriage Customs of the Parawas

Many customs observed at the marriage of Parawas are also observed among the Tamils of Jaffna. In Jaffna, the bridegroom was greeted at the entrance of the bride's house, by the younger brother of the bride. The bride's younger brother washed the feet of the bridegroom ; the bridegroom in turn gave a ring to the former. A similar custom is recorded among the Parawas.

The Tamils of Jaffna also observed a ceremony on the fourth day of the wedding, when the bridegroom returned home. This was known as the *nalam chadangu* (which literally means the fourth day ceremony). The Parawas also celebrated the fourth day of the wedding; and had a ceremony called *nalam neer chadanku* at which clothes were exchanged by the brothers-in-law. Such a custom does not obtain among the Tamils of Jaffna.

Another custom recorded among the Parawas was known as *wasatpaddy sudandram* (literally means gift of wealth at the door step). It is of sociological interest and brings into prominence the importance of marriage between cross cousins among the Tamils. It is said that according to Parawa custom a bride ought to be married to her father's sister's son: but as religion (Roman Catholic religion) prevented such marriages, the bridegroom had to pay a price to the father's sister's sons who was deprived of the bride. The father's sister's children in turn gave a present of a cloth to the bridegroom. If such a gift was not given the bridegroom could deduct a sum of money equivalent to *anjoopon* (five pieces of gold) and pay the balance to the bride's cousins. This custom recognises the right of preference of the cross cousin to marry the bride.

The bridegroom presented a cloth and the sisters of the bridegroom had to dress the bride with this cloth. As a recompense, the wife's relation paid half the value of the cloth to the sisters. The sisters of the bridegroom also had to carry such articles such as sandalwood, rosewater, arecanuts, betel, fruits, tender coconuts and garlands, to the house of the bride for the purposes of the *thali* ceremony. The bridegroom had to pay to the sisters double the value of the articles carried by them to the bride's house. Among the Tamils of Jaffna, tying of the *thali* (golden necklace) was regarded as an essential ceremony.

The feast at the wedding was also regarded as an important function among the Tamils of Jaffna as well as among the Parawas. At such feasts only relations and friends of equal status sat together. Instances were not wanting when some of the closest relatives insulted the bride and bridegroom by not dining under the pretext that they belonged to a shade higher in caste than some unfortunate member of the family who happen to sit at such a feast.

Among the Parawas a similar custom was observed; those who served the Parawas for two or three generations were given the respect due to them but were not allowed to sit at such feasts. Slaves, emancipated slaves, adultresses, illegitimate children, and persons performing menial services were also excluded from such feasts.

## CHAPTER XXI

# HINDU LAW AND THE CUSTOMARY LAWS OF THE TAMILS OF CEYLON

### Hindu Law is Based on the Customary Laws of India

As Mayne points out, until very lately, writers on Hindu Law have assumed, not only that it was recorded exclusively in the Sanskrit Texts of the early sages, and the Commentaries upon them, but those sages were the actual originators and founders of that law.<sup>1</sup> The earliest work on Hindu Law which attracted the European scholars were the Institutes of Manu. Various other works have been later found and Hindu Law as understood in modern times, is the law of the Smritis as expounded in the Sanskrit Commentaries and Digests, which modified and supplemented by custom is administered by the courts.<sup>2</sup> Independent researches by such scholars as Mayne and others show that the Hindu Law itself is based and derived from the basic principles of the customary laws that existed in India before the advent of the Aryan invaders.

Mayne says :<sup>3</sup> “My view is that Hindu Law is based on immemorial customs which existed prior to and independent of Brahminism. That, when the Aryans penetrated into India, they found there a number of usages either the same as, or not wholly unlike, their own. That they accepted these with or without modifications, rejecting only those that were capable only of being assimilated, such as polyandry, incestuous marriage and the like. That latter lived on merely local life, while the former became incorporated into the customs of the ruling race. That when Brahmanism arose and the Brahman writers turned their attention to law, they at first simply stated the facts as they found them, without attaching to them any religious significance. That the religious element grew up and entwined itself with legal conceptions, and then distorted them in three ways. First, by attributing a pious purpose to acts of a purely secular nature. Secondly, by clogging those acts with rules and restrictions suitable to the assumed pious purpose. And, thirdly, by

1. Mayne on Hindu Law 1900 Edition, p. 1.  
2. Mayne on Hindu Law 10th Edition, p. 1.  
3. Mayne 1900 Edition, p. 4.

gradually altering the customs themselves, so as to further the special objects of religion or policy favoured by Brahminism.”

After stating that it would have been impossible for the Brahman writers to have forced the usages on the peoples of India, he says :<sup>1</sup> “ In Southern India, at all events it seems clear that neither Aryans nor of Brahmans have settled in sufficient numbers to produce any such result. We know the tenacity with which eastern races cling to their customs unaffected by the examples of those who live near them. We have no reason to suppose that Aryans in India ever attempted to force their usages upon the conquered races, or they would have succeeded in doing so if they had tried. The Brahman treatises themselves negative any such idea. There is not an atom of dogmatism or controversy among the old Sutra writers.” Referring to the three distinctive features of Hindu Law, namely, the undivided family system, the order of succession, and the practice of adoption, he says :<sup>2</sup> “ The two latter are at present thoroughly saturated with Brahminism. Its influence upon the family has been only exerted for the purpose of breaking it up. But in all cases, I think, it will be satisfactorily shown that Brahminism had nothing whatsoever to do with the early history of those branches of the Law.”

### The Joint Family System

The joint family system, says Mayne :<sup>3</sup> “ Is only one phase of that tendency to hold property in community which it is now proved was the ordinarily mode of tenure. The attention of scholars was first drawn to the point by the Sclovonian Village Communities. But is now placed beyond doubt that joint ownership of a similar character is not limited to Sclovonian or even to Aryan races ; but is to be found in every part of the world, where men have once settled down to an agricultural life. In India, such a corporate system is found universally, either in the shape of Village Communities or of the simple joint family. So far from the system owing its origin to Brahminism, or even to Aryanism, its most striking instances are found precisely in those provinces where the Brahman and Aryan influence was weakest.” After referring to the joint family system as it exists in Punjab Mayne says :<sup>4</sup> “ Next to the Punjab the strongest traces of the Village Community are found among the Dravidian races of the South. Similarly, as regards the joint family it still flourishes in its purest form, not only undivided but indivisible among the polyandrous castes of Malabar and Canara over whom Brahminism has never attempted to cast even.

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1. Mayne, page 5  
 2. Mayne, page 5  
 3. Mayne, 1900 edition, page 6  
 4. Mayne, page 7



the hem of its garment. Next to them, probably, the strictest survivor of the undivided family, among the Tamil emigrants from the South of India. It is only when the family system begins to break up that we can trace the influence of Brahminism and then break up proceeds in the direct ratio of that influence."

From what has been said earlier about the Law of Thesawalamai it is clear that the joint family, consisting of the parent and the children and their descendants, was both undivided and indivisible. No partition was allowed as in Hindu Law during the lifetime of the father or the mother, provided the latter remained unmarried. It is only on the death of both parents, that the fragmentation of the undivided family took place and each son became in turn the head of his own joint family. The customs of the Mukkuwas as stated earlier also recognised the joint family as found in the Marumakattayam and the Aliyasanthana Laws of South India. The usages of the Tamil Bellalas and Chetties of Puttalam went a step further. Even after the death of both parents there was no disruption of the joint family and the eldest son became the manager of the joint family and no partition could be demanded by the other children. The widow, however, was given the right to demand a certain sum of money to be settled on her, called *talletyam*. The laws and customs of the Parawas and Chetties of Puttalam and Colombo also exhibited traces of joint family system.

### The Law of Inheritance

Mayne says:<sup>1</sup> "The case of inheritance is even more strongly in favour of the same view. The principle that 'the right of inheritance according to Hindu Law is wholly regulated in reference to the spiritual benefits to be conferred upon the deceased proprietor' has been laid down on the highest judicial authority, as an article of the legal creed which is universally true, and which it would be heresy to doubt. It is strictly and absolutely true in Bengal. It is not so elsewhere. Among the Hindus of the Punjab the order of succession is determined by custom and not by spiritual considerations." The principles of Thesawalamai bear out Mayne's contention that among the Dravidian races inheritance is based not on religious but on secular motives. Thus, the undowered daughters and cognate were preferred to more distinct agnates. By the Hindu Law the latter were given preference of succession by the fiction of spiritual benefit. Under the Mukkuwa Law, all inheritance could only be claimed through females on the principle that the mother is the undoubted relation. As will be shown later, the Mukkuwa Law

1. Mayne, page 7.

was derived from the customs and laws of the polyandrous races which are now governed by the Marumakattayam and the Aliyasanthana Laws of South India. These systems of law which are based on matrilineal descent regard woman as the head of the family and all relationships could only be claimed through the common female ancestors. In Mukkuwa Law, the eldest female was the head of the *kudi* and all persons could only claim inheritance if they were related to her by what is literally termed as '*vay uttu var*' which means womb tie.<sup>1</sup>

Similarly the customary laws of the Chetties of Puttalam and Colombo and Calpenty, the Parawas and the Bellala inhabitants of Puttalam show that unless inheritance is based on secular motives and not based on the fiction of religious merit.

### The Law of Adoption

Mayne says:<sup>2</sup> 'The Law of Adoption has been even more successfully appropriated by the Brahmans and in this instance they have almost succeeded in blotting out all trace of an usage existing previous to their own. There can be no doubt, that among the Aryan races who have practised ancestor-worship, the existence of a son, to offer up the religious rites, as always been a matter of primary importance. Where no natural born son exists, a substituted son takes its place. This leads naturally to the practice of adoption. But apart from all religious considerations, the advantages of having a son, to assist father in his life, to protect him in his old age, and to step into his property after death, could be equally felt, and are equally felt by other races. We know that the Sudras practised adoption, for even the Brahminical writers provide special rules for their case. The inhabitants of the Punjab and North Western provinces whether the Hindus proper, Jats, Sikhs, or even Mohammedans, practise adoption without religious rites, or the slightest reference to religious purposes. The same may be said of the Tamils in Ceylon.'

Mayne only examined the Law of Thesawalamai when he says that the adoption among the Tamils of Ceylon was secular in nature. The customs recorded in the Thesawalamai clearly show the secular nature of adoption. Preference was given to relatives and even females could be adopted. The only ceremony necessary was the drinking of the saffron water after the relatives and heirs who would be affected by the adoption dipped their fingers into the bowl which contained the saffron.

1. See Britto's Mukkuwa Law.

2. Mayne, page 8.

water. The laws and customs of the Mukkuwas, the Parawas, the Chetties and the Vellalas of Puttalam lend further support for Mayne's proposition that adoption was known to the Dravidian races much earlier than the advent of the Aryans.

### The Usages of the Tamils of Ceylon

We have cited at length the dictum of such an erudite scholar as Mayne to show that the Dravidian usages existed prior to the advent of the Aryan hordes and the three basic and fundamental concepts known to Hindu Law were really derived from the Dravidian usages, by the Aryan tribes.

Referring to the Law of Thesawalamai Mayne says:<sup>1</sup> "Another work of the greatest interest, however, which I believe no previous writer has ever noticed is the Thesawalamai of description of the customs of the Tamil inhabitants of Jaffna in the Island of Ceylon. The collection was made in 1707, under the orders of the Dutch Government, and was then submitted to and was approved by 12 *Modaliars*, or leading natives, and finally promulgated as an authoritative exposition of their usages. Now we know that from the earliest times that has been a constant stream of immigration of Tamulians into Ceylon formerly for conquest and latterly for the purpose of commerce. We also know that the influence of Brahmins or even of Aryans among the Dravidian races of the South has been of the very slightest, at all events until the English officials introduced their Brahmin advisers. The customs recorded in the Thesawalamai can therefore be taken as very strong evidence of the usages of the Tamil inhabitants of the South of India two or three centuries ago or when it is certain that those usages could not be traced to Sanskrit writers." Mayne also has shown that similar customary usages are found in the Madura Manual by Nelson, the Malabar Manual by Logan, the North Arcot Manual by Cox, and the South Canara Manual by St. Murrock, The Manual of the Administration of the Madras Presidency of 1895 and The Madras Census Report of 1871 by Dr. Cornish and the Decisions of the Pondichcheri Courts collected by L. Sorge. In the Pondichcheri Courts till 1847 there was a conflict as to whether Hindu law applied. To these must be added, the collection of Mukkuwa Law in Ceylon by Mr. Britto, the collection of the Laws and Customs of the Mukkuwas of Batticaloa, Trincomalee and Calpenty, and The Laws and Customs of The Chetties of Puttalam and Colombo and Bellalas of Puttalam as found in Sir Alexander Johnstone's despatches. While agreeing with Mayne that the Thesawalamai is a collection of the usages of the Tamils before Brahminism could make itself felt, we do not agree with him that it was a collection of the usages of the Tamils of South

1. Mayne, page 48.

India two or three centuries ago. We have shown elsewhere<sup>1</sup> that the Thesawalamai of Jaffna contains a curious blend of the laws and customs of the early settlers from Malabar and the laws and customs of the Vellala families who migrated and settled down in large numbers during the time of the Arya Chakrawarthies of Jaffna. The Tamils who migrated later, although not influenced by Hindu Law, had rule of inheritance based on patrilineal descent. The earlier settlement in Jaffna consisted of settlers from the Malabar district who brought with them rules similar to the Marumakkatayam and the Aliyasanthana Laws of India based on matrilineal descent. When these two social groups of Tamils were forced to live a compromise had to be found by which, the two inconsistent rules of succession had to exist side by side. Thus, we have the peculiar rule of Thesawalamai running throughout the web of the law of inheritance that males succeed males, and females succeed females.

Even such an erudite scholar as Ganapathy Iyer<sup>2</sup> is of the view that Hindu Law, Burmese Law, the Thesawalamai, and the customs of the Punjab, have such close resemblance, that they must have evolved from the same sources. He says: "The Burmese Law must have the same common source as the Hindu Law of the Aryans in India, though the developments, (owing to the influence of Buddhism) must have been on different lines. So also the rules in the Thesawalamai, a compilation made in 1707 A.D. by the Dutch Governor of Ceylon closely resembles the customary laws in the Punjab, and traces of the common origin of the rules in the Thesawalamai and the Hindu Codes are easily discernible."

### **Influence of Hindu Law on the Thesawalamai**

Referring to the influence of the Hindu Law on the customary usages of the Tamils of South India<sup>3</sup> Mayne said, "We also know that the influence of Brahmans or even of Aryans of the Dravidian races of the South has been the very slightest, at all events, until the English officials introduced their Brahmin advisers." The Thesawalamai as collected by Claas Izaacs in 1707, contained a few rules taken from the Hindu Law, references to text books on Hindu Law are given in the footnotes of the English translation of the Dutch version made by Sir Alexander Johnstone. These references show that similar principles exist in Hindu Law and therefore the person responsible for the annotation thought that they were taken from the principles of Hindu Law. The other

1. Laws and Customs of the Tamils of Jaffna by H. W. Tambiah, pages 1-26.  
 2. Ganapathy Iyer on Hindu Law, Vol. 1, page 36.  
 3. Mayne 7th Edition, page 50.

customary laws of the Tamils show that many of these principles which are attributed to Hindu Law, such as the duty of the son to pay the father's debts, were found in the laws and customs of the Tamils of Ceylon. During the time of the Arya Chakrathies it was possible that there might have been Brahmin advisers to the authorities, who resorted to treatises of Hindu Law when the customary laws were silent.

Sir Alexander Johnstone after his first visit to Jaffna states that there is evidence that the Hindu Law supplemented the Law of Thesawalamai. He says:<sup>1</sup> "The Tamils some of whom are Christians but most of whom are worshippers either of Vishnu or Shiva, (independently of the Dharma Sastra, the source of all Hindu Law, the Viguyan Ishuar, a tract of great authority in the South of India and Videya Vanga's commentary of the text of Parasara, a work of equal authority in the Mysore country) have a customary code of their own called Thesawalamai; which although it provides for many cases, leaves others to be decided according to the general principles of Hindu Law as evidenced by the three works to which I have just alluded."

It is possible that these three works on Hindu Law were introduced by the Brahmin officials who were brought to Ceylon by the British when this Island was under the Madras administration. If these works have been used during the Dutch period some reference would have been made either by Claas Izaacs or in the memoirs of the Dutch Governors. On the contrary the memoirs of the Dutch Governors state that if the customary laws of Ceylon were silent, the Roman-Dutch Law was administered to supplement the Thesawalamai.

Although Hindu Law had very little influence on the development of Thesawalamai yet it cannot be said that it had no influence of any kind. Hindu Law and Aryan civilisation came into contact with Dravidian usages and culture from very early times. It is, therefore, not surprising that the Dravidian usages themselves have taken over certain conceptions and rules peculiar to the Hindu Law. As Dr. Allen remarks:<sup>2</sup> "Not infrequently institutions spread like a craze and this is true not only of isolated usages but also of whole codes of Law." Therefore it is not surprising to find certain traces of Hindu Law in the Law of Thesawalamai.

### Joint Family

As has been observed earlier the joint family system was first recognised by the laws and usages of the Dravidian races of

1. Van Leeuwen Commentaries, Ceylon Edition, Introduction p. 788.  
2. Law in the Making by C. K. Allen, 2nd Edition, page 65.

Southern India. The Hindu Law, merely developed this concept, and added glosses to the main principles of that institution. In turn the Hindu Law had influenced these customary usages, thus the rule in Thesawalamai that whatever the sons earned they were bound to bring into the common estate, except wrought gold and silver ornaments, even when they have married and quitted the paternal roof, appears to be taken from the Hindu Law.<sup>1</sup> The provision that sons are bound to pay the debts of their father is found not only in the Thesawalamai, but in certain other customary laws, such as the laws and customs of the Parawas and Chetties.<sup>2</sup> It is doubtful whether this provision is taken from the Hindu Law or whether the Hindu Law itself is indebted to the customary laws of the Tamils of South India for this rule. Similar provision, however, is found in Hindu Law.<sup>3</sup>

It has already been stated that the joint family, as found in the polyandrous races of Malabar and Canara and the laws of the Mukkuwas, was both impartible and indivisible. But due to the influence of Hindu Law, under the Law of Thesawalamai, the children could ask for a partition if 'age renders the parents incapable of administering their own acquired property'.<sup>4</sup> Under the Law of Thesawalamai if the husband and wife have no children and are therefore desirous to give away some of their goods to their nephews and nieces or others, it cannot be done without the consent of the mutual relations and if they will not consent, they may not give away any more of their hereditary property and dowry. Similar provision is also found in the Hindu Law, and joint family property could not be gifted without the consent of all the members of the joint family, provided such members had the capacity to contract.<sup>5</sup> Under the Law of Thesawalamai a pawnee forfeited interest on the sum of money lent by him if he used them or if he lends them to others. Similar provision is found in the Hindu Law.<sup>6</sup> If two persons jointly borrow a sum of money from another and bind themselves, the lender may demand payment of the amount so lent, from the debtor he happened to meet first. Similar provision is also found in the Hindu Law.<sup>7</sup>

1. Colebrooke's Hindu Law, Vol. 3, p. 27.

2. Ref. 54/123, p. 214.

3. Colebrooke on Hindu Law, Vol. 1, pp. 273 and 274, and the note by Sir W. Jones.

4. T. 18. See also Colebrooke on Hindu Law, Vol. 3, pp. 23-24 and 38-39.

5. Colebrooke's Hindu Law, Vol. 2, p. 246.

6. Colebrooke, Vol. 1, p. 149.

7. Colebrooke on Hindu Law, Vol. 1, p. 110.

## CHAPTER XXII

# The Marumakattayam Law and the Customary Laws of the Tamils of Ceylon

### The Marumakattayam Law.

The Marumakattayam Law as administered by the courts is a body of customs and usages which have received judicial recognition in India and prevails among the castes which form a considerable section of the people inhabiting the west coast of South India, namely, the Indian States of Travancore and Cochin, and the Districts of Malabar and South Canara which formed the ancient kingdom of Kerala. In South Canara, the system is known as Aliyasanthana. Literally the meaning of the word Marumakattayam is inheritance through nephews and nieces and the Canarese equivalent of Marumakattayam, namely, Aliyasanthana, means also the same thing.<sup>1</sup>

When one compares the incidents of the above systems of law with those of the Mukkuwa Law one is forced to come to the conclusion that the Mukkuwa Law took its roots from the purest form of the Marumakattayam Law as it existed among the aborigines who inhabited the Malabar Coast. Lewis Moore in his work on Malabar Law and Custom states that Mukkuwas or fishermen of the coast were the indigenous people of Malabar.<sup>2</sup> According to history and tradition some of these Mukkuwas migrated to Ceylon and first settled in the northern parts of Ceylon and later migrated and formed colonies in the Batticaloa and Trincomalee districts in the Eastern Province of Ceylon and in the Calpentyne and Puttalam district on the west coast of Ceylon. Although due to historical and political vicissitudes there might be slight variations between the Marumakattayam Law and the Mukkuwa Law the basic concepts are the same.

### Comparison between Marumakattayam and Mukkuwa Law

Under the Marumakattayam Law, the unit of the family was known as the *tarwad*. It takes its origin from the word *tara*

1. Mayne 10th Edition page 967. See also Madras District Manual South Canara by J. Sturrock page 141 et seq.

2. Malabar Law and Custom by Lewis Moore, page 7.

which was a quasi-political Nayar organisation. A *tara* is not coterminous with *desom* or village.<sup>1</sup> A *desom* may have more than one *tarwad* and sometimes a *tara* included two or more villages. The Nayar inhabitants of the *tara* formed a tribal government under the rule of their chief or *karnavar*. The chiefs or *karnavars* of the different *taras* formed the remarkable corporation known as the 600 *vanad*.<sup>2</sup> The *tara* as a political tribal organisation ceased centuries ago, in India<sup>3</sup> except *tarwad* in its narrow sense of a Marumakattayam family. The *tarwad* consisted of all the descendants of the female line by one common female ancestor.<sup>4</sup> Among its members there was community of property. The *karnavar* who is usually the senior male in the *tarwad*, functioned as its manager.<sup>5</sup> In him is vested the property of the *tarwad* not as absolute owner but as agent and representative of the *tarwad*.<sup>6</sup> The junior members of the *tarwad* were known as *anadarvans*, which literally means he who comes after.<sup>7</sup> Comparisons have often been made between the *tarwad* and the Roman *gens*.<sup>8</sup> But this comparison has been condemned.<sup>9</sup> The power of the *paterfamilias* in the Roman *gens* was absolute and unfettered in the early Roman Law, although it became subject to various restrictions based on humane principles. The *karnavar*, on the other hand, although he was powerful, did not have all the powers of the *paterfamilias*. He had the junior members of the *tarwad* in his power and was under an obligation to maintain them so long as they remained in *tarwad*. The junior members could not acquire any property of their own but whatever they acquired belonged to the *tarwad*. They had no separate existence apart from the *tarwad*, and could not represent the *tarwad* but were entitled to residence and maintenance.<sup>10</sup> The *tarwad* also branched off into smaller units, known as *tavali illams*. They were more or less separated from the parents' stock.<sup>11</sup> As the *karnavar* had to look after the family of the *tarwad*, whatever he acquired went not to his own children but to the members of the *tarwad*, who were usually his nephews and nieces through his sisters. Among the more influential families, and more especially those of the Rajahs called Kovilagams, it was customary to set beside portions of the earned property for the life enjoyment of the senior members. The

1. The Principles of Marumakattayam Law : 1906 edited by Joseph.
2. Indian Antiquary Vol. 24, page 285.
3. But among the Mukkuwas a similar political organisation existed see page 7.
4. Malabar Law and Custom by Lewis Moore, Appendix 3, page 424.
5. Lewis Moore on Malabar Law and Custom, page 416.
6. Joseph page 54.
7. Lewis Moore, page 410.
8. See dictum in *Katutha Krishnan v Tharyan Iy* page 6. Travancore L.K. 49 cited by Joseph at page 55.
9. Joseph page 55.
10. Joseph page 55.
11. Lewis Moore, page 424.



separate estates, thus created were known as *stanam*. The word *stanam* meant dignity and denoted the status of the senior members of the family, the theory, being that the separate estates were assigned to enable them to maintain their position.<sup>1</sup>

A custom arose by which the *karnavar* settled a part of his acquired property on his wife and children. As Justice Holloway said in the case of *Erambapalli Korapen Nayar v. Erambapali Chennan Nayar*. (6 Madras H.C. 411): "As in all Hindu Law, so in the archaic form of it which exists in Malabar the first conception of a family is of an indissoluble unit, a mere aggregate with no separate rights living under one head united more especially by the connection with the same sacra. In Malabar, as elsewhere, the inconvenience of this state of things has made itself felt and families becoming very numerous have split into various branches, have in fact become new families." In the course of time, although it was against the accepted theory and principle of Marumakattayam Law, the separate property of the member of a *tarwad* was inherited by his branch of the *tavalli* (sometimes called *thavazhi*) and did not lapse to the main *tarwad*. But sometimes the husband or the father of some of the members of a *tarwad*, provided a separate house out of his self-acquired property for his wife and children and the new household then became a separate branch of "*thavali*," (*thai* mother and *valie* way) of the original *tarwad*, but retained both communities of pollution, and community of property with it. In the *thavali*, as in the original *tarwad*, descent is traced in the female line. Every member of a *tarwad* was entitled to dispose of property acquired by himself as he wished; but at death, any property which might not have been disposed of by gift or otherwise lapsed to the *tarwad*.<sup>2</sup>

In the Mukkuwa Law the unit of the family was known as the *kudi*. Britto defines *kudi*, as follows: <sup>3</sup> "The term *kudi* is used by all Tamil speaking classes of Batticaloa to mean every person who is related to one on the mother's side only. Persons of the *kudi*, however, distantly related recognised each other as relations. *Vayittuvar* is a term used in Batticaloa as a synonym for the term *kudi* generally among the Karaiyars. The term is derived from the word *vaiyru* (womb) and the word *var* (tie or band), so that it literally means all those who are descended from the same mother. So that all relationship was claimed through females and the eldest female was regarded as the virtual head, and the eldest male who was usually the brother, managed the

1. See Madras District Gazette; Malabar and Anjingo (1908) by C. A. Innes edited by E. B. Evan page 96.  
 2. 1908 Madras District Gazetteers; Malabar Anjengo Vol. 1, page 96.  
 3. Britto on Mukkuwa Law, page 43.

property for the *kudi*. In course of time, just as *tavali illams* separated from the parent *tarwad*, families separated from the principal *kudi*, and formed separate *kudis*. The *karnavan* of the Marumakattayam Law and the *ejaman* of the Aliyasantana Law had their counterpart in the eldest male member of the *kudi* among the Mukkuwas of Batticaloa.

Just as in Marumakattayam Law so also in Mukkuwa Law all inheritance was claimed through females. In both systems of law the family unit consisted of the eldest female member and the female descendants. The eldest male member of the *tarwad* or the *kudi*, became the manager of the joint family of the *tarwad* or *kudi* respectively. Succession under both systems of Law was traced through females. Under both systems the manager was bound to support the members of the family. The *tarwad* property devolved on the members of the *tarwad*, similarly under the Mukkuwa Law the property of the *kudi* devolved on the members of the *kudi*. Under both systems of law the eldest male member of the family unit could not acquire any property for himself but whatever they acquired went to the sister's children, but in course of time due to the disintegration of the family when separate *tavali illams* were formed, *kudis* got separated. The self-acquired property of the *karnavar* or the manager of the *kudi*, as the case may be, devolved on his wife and children, who now became a separate unit. The powers of the *karnavan* and the manager of the *kudi* were almost the same. All these facts show that the Mukkuwa Law of the Mukkuwas, and the Marumakattayam and the Aliyasantana Law evolved from the laws and usages of the polyandrous races who originally inhabited the Malabar Coast.

### Comparison between the Thesawalamai and the Marumakattayam Law

Reference has already been made to an earlier colonisation of Jaffna from the Malabar Coast of India, and the later colonisation of the Vellalas and their dependents, from the eastern coasts of India, during the time of the Arya Chakrawathies. Therefore the Thesawalamai contains a mixture of the basic principles of the usages of the Dravidian races of the west coast of India, based on the matriarchal system and of the Vellala families, whose texture of society is based on the patriarchal pattern.

In both systems there is the fundamental difference between ancestral property and acquired property. Under the Law of Thesawalamai the husband is placed in the same position as regards the members of his family as the *karnavar* of the Marumakattayam Law towards the members of his *tarwad*. The powers of the husband, governed by the Law of Thesawalamai, to manage

not only the acquired property and his own *mudusam* property but also the dowry, could be compared to the powers of the *karnavar* over the *tarwad* property. After the death of the father, the Thesawalamai regarded the mother as the head of the family, so long as she remained unmarried. This rule is perhaps a survival from the original Law of Thesawalamai as it existed among the first colonists of Jaffna, where the matriarchal system prevailed.

The rule of Thesawalamai that on the death of one's wife one had to hand over the property of his former wife, and half the *thediathettam* and the custody of the children to the maternal grandmother in the event of his remarriage is perhaps a survival of the rule that prevailed among the first colonists who were organised on a matriarchal basis that when the man remarried he went out of the family unit, leaving the property and the custody of the children of the family to the eldest female of the family. The rule of Thesawalamai that if a person wished to gift a property he could only do so to his nephews and nieces, is based on the fact that in a matriarchal system his true heirs were sister's children and not his own children. The peculiar rule of Thesawalamai that a female succeeded a female can only be explicable by the suggestion that it is a survival of a rule of succession peculiar to the matriarchal society which prevailed among the early colonists of Jaffna. The rule of Thesawalamai, that on the death of a dowered sister without issue her property went to the other dowered sisters, is an adaptation of the rule of Marumakattayam Law that if one *tarwad* became extinct the property belonging to such a *tarwad* was inherited by the other *tarwads* that branched off from the parent *tarwad*. The dowry system known to the Jaffna society and the incidents of *chedanam* peculiar to the Thesawalamai are traceable to a system of usages prevalent among the first colonists who were organised on matriarchal lines. The late Mr. Coomaraswamy after stating that the incidents of dowry, known to the Law of Thesawalamai are entirely different from the incidents of *stridhana* known to the Hindu Law, says :<sup>1</sup> "In Jaffna where nature smiles but grudgingly to the toil and moil of the agriculturist, and the economic conditions are less favourable than in Malabar, where individuals and single families have to struggle, each for his or her own existence, it is hardly possible to imagine, that communities or even groups of families condescended to pool their resources together or tolerated the retaining of communal purpose and looked up, for their feeding and clothing to the senior member of the community or group of families, descended from the common ancestor. On the other hand, the tendency would have been to split up into smaller groups or families deriving community of property and

1. Article on Thesawalamai and its Origin. Hindu Organ, 1933, Dec. 31st, page 34.

interest not extending beyond 2 or 3 generations. But the idea of community of property, at least on a small a scale, is clearly discernible in some of the provisions of Thesawalamai as it has come down to us.

I have already pointed out in my exposition of the Malabar system that in the royal household and influential families it was the practice in Malabar for the husband or the father or some member of the *tarwad* to provide separate branch of *tarwad*, known as *tavazhi illam*. This customary mode of holding joint family property as occasion arose, was suitable to the economic conditions of Jaffna. The early settlers from Malabar perhaps adopted this mode of tenure of their self-acquired property as the most practical custom to perpetuate their properties in their families for future generations.

When, therefore, a daughter of the early settlers married, she was according to the customs that prevailed among them in their former place of abode, Malabar, provided with a separate house or a distinct share in the parental house, other landed property, implements of husbandry, household utensils, jewellery, etc., suitable to her station in life. This is the origin of the Jaffna dowry system that is, to use the phraseology of the Malabar Law: "The daughter starts the branching of a *tarwad* (parent's communal property) into *thavazhi illam* with her husband as its *karnavan*. Viewed in this way, each of the dowered daughters in a family may be considered as a separate *thavazhi illam* of the parental *tarwad*."

Many tenures known to the Law of Thesawalamai have their counterpart in the Marumakattayam Law. The form of usufructuary mortgage peculiar to the Law of Thesawalamai known as *otti*, has its counterpart by the same name in Marumakattayam Law. The law of pre-emption, known to the Thesawalamai is a survival of the original Marumakattayam Law brought by the early colonists. Some writers on Thesawalamai are of the opinion that pre-emption was brought by the Mohammedans into Jaffna, and later it was absorbed by the Thesawalamai.<sup>1</sup> It is submitted that this is a fanciful view. If the Mohammedans had brought the law of pre-emption, one would have found it embodied in the Mohammedan Code of 1806. Neither in this Code, nor in the replies sent by the leaders of the Mohammedan community to the queries sent by Sir

1. Kantawala on Thesawalamai page 61.

Alexander Johnstone, are to be found any traces of the Law of pre-emption. The Law of pre-emption is found in many systems of law where joint family property has been recognised. Its purpose is to prevent strangers who belong to other communities from owning shares in the joint family property, and there is no question that such a system of holding joint family property existed among the early settlers of Jaffna.

## CHAPTER XXIII

# The Roman-Dutch Law and the Customary Laws of the Tamils of Ceylon

The Portuguese seldom interfered with the customary laws of the Tamils but when these customary laws came into contact with such a powerful system as the Roman-Dutch Law it is inevitable that some imprint would be left by the latter on the former. The joint ownership of the spouses and the nature of the interest in the acquired property of the spouses are incidents peculiar to the Law of Thesawalamai and are not found either in the Hindu Law or the Marumakattayam Law. The concept of *thediathettam* appears to have been influenced by the law governing community of property known to the Roman-Dutch Law. As Dalton, J., remarked in *Aya Mattyar v. Kanapathipillai* (1928 29 N.L.R. 301 at 307): "Having regard to the auspices under which the collection of the laws and customs of Jaffna and by whom it was composed, it is difficult to think that the provisions of the Roman-Dutch Law did not exercise some influence, and that the idea of partial community goods, as in the case of *thediathettam* may not have been strengthened by, if not derived from the common law of the Dutch Government." It is submitted that the concept of community of property in *thediathettam* is entirely borrowed from the Roman-Dutch Law and perhaps might have been an innovation by the 12 sensible Mudaliars, who were influenced by concepts known to the Roman-Dutch Law. There are other traces of Roman-Dutch Law found in the Law of Thesawalamai, and reference is made to the portions borrowed from the Roman-Dutch Law in the English translation of the Thesawalamai Code found in the early legislative enactments.

It is interesting and instructive to compare the concept of acquired property (*thediatheddham*) in Mukkuwa Law with that of Thesawalamai. In Mukkuwa Law, *theddiatheddham*, and *theddham* were paronymous terms. By *theddham* was meant all properties acquired or earned in any one of the following modes:— occupancy, purchase, prescription, bequest or legacy obtained from strangers, and inheritance by contract.<sup>1</sup> Such property may be acquired

1. Britto on Mukkuwa Law Rule 4.

before or after marriage. Anything purchased with *muthusam* money or obtained in barter for *muthusam* property did not partake of *muthusam* but ranked as *theddham*. The produce of a *muthusam* land became *theddham*.<sup>1</sup>

In Thesawalamai, as stated already, *theddiatheddham* consisted of property acquired for valuable consideration during the subsistence of such marriage: such consideration not forming separate property of either spouse, and the profits arising out of the separate estate of each spouse. Thus, we see that the concept of *theddiatheddham* was entirely different to that known to the Mukkuwa Law. In the other customary laws of the Tamils and the Hindu Law, joint ownership in such acquired property was not given to both the spouses. Hence the roots of the laws of *theddiatheddham* as known to the Thesawalamai will have to be traced to some other system of law, or it maybe, it had an independent origin.

The Thesawalamai came under the influence of the Roman-Dutch Law for well over half a century before it was codified by Claas Izaacs in 1707. The Roman-Dutch Law recognises the community of property between the husband and the wife. In the absence of an ante-nuptial contract there was community of property between the husband and the wife. The property of the husband and the wife were massed together and each became entitled to half of the property subject to the power of the husband as the manager of the common estate to manage it and even alienate it for the purpose of administration. By ante-nuptial contract, it was possible to exclude community in respect of the goods brought into marriage leaving it unimpaired as regards post-nuptial acquisitions; profit and loss and marital power.<sup>2</sup>

As Thesawalamai recognised the separate property of each spouse it was not possible to have applied the whole law of community of property known to the Roman-Dutch Law to the different kinds of property known to the Thesawalamai. But the Thesawalamai applied to an agricultural community in which the husband and wife laboured together in the fields and acquired the *theddiatheddham* through their joint exertions. It was nothing but just and equitable that community of property should be recognised over such property. The Dutch officers who administered the law would have naturally applied the Roman-Dutch Law of community of property to such acquisitions. It is therefore not far-fetched to state that the concept of the *theddiatheddham* was developed by the Roman-Dutch Law.

1. Britto on Mukkuwa Law Rule 20.

2. An Introduction to Roman-Dutch Law, 5th Edition, page 74, by Lee.

There are other traces of the Roman-Dutch Law found in the Law of Thesawalamai. The compiler of the first Legislative Enactments of Ceylon has annotated the Thesawalamai Code and given references to the Roman-Dutch Law authorities whenever a principle stated in the Code tallied with the Roman-Dutch Law. The provision that if a husband's property or if a wife's property is improved, then the husband's heirs or the wife's heirs shall not be at liberty to claim compensation from the estate of the wife or the husband as the case may be, is taken from the Roman-Dutch Law.<sup>1</sup> The provision of the Thesawalamai that when a tree overhangs another's land the fruits of it belong to the neighbour provided they are *fructus naturales* has its counterpart in Roman-Dutch Law. But the greatest influence of the Roman-Dutch Law was felt after the codification by Izaacs, when during the Dutch period, and later during the British regime Roman-Dutch Law was applied whenever the customary usages of the Tamils of Jaffna were silent.<sup>2</sup>

### Pre-emption.

Although the concept of pre-emption was known to the Thesawalamai its development must have been greatly influenced by the Roman-Dutch Law. Therefore in the case of *casus omissus* the principles of Roman-Dutch Law governing *jus retractus* should be applied. In dealing with this aspect Canakeratne, J., said :<sup>3</sup> "With all due respect to the learned judge who decided the case referred to in the judgment I venture to think that one should resort to the Roman-Dutch Law whenever Thesawalamai is silent, because (a) a customary law is a deviation from the general or common law and the common law applies in all cases except where the customary law is in operation, (b) even if there was a rudimentary conception of pre-emption among the inhabitants of Jaffnapatnam before the advent of the Dutch, there can be no doubt that the rules found in the compilation by the Dutch Dissawe had been influenced by the principles of the Roman-Dutch Law and in the course of nearly half a century the forms and principles of Dutch Jurisprudence became gradually introduced." Paviljoen, Commander of Jaffnapatnam, in his Instructions in 1665 states: "The natives are governed according to the customs of the country if these are clear and reasonable, otherwise according to our law."<sup>4</sup> "The laws and customs of Jaffnapatnam were composed by the Dissawe Claas Izaacs after an experience of thirty-five years in that province: it was sent with a letter dated January 30,

1. Van Lecuwan Bk 4c 24 section 13.

2. See Laws and Customs of the Tamils of Jaffna by H. W. Tambiah for a more extensive treatment.

3. Sabapathipillai vs. Sinnethamby 1948, 58 New Law Reports, page 367.

4. Balasingham op cit p 157



1707, to the Governor. The Dutch version was in the same year translated into Tamil.<sup>1</sup> Pre-emption, *jus retractus*, was a recognised right in the Roman-Dutch Law. It rose from convention (*e.g.*, agreement of parties) or from a provision of the law (*i.e.*, independant of contract). In the latter case the right arose under a variety of heads: it was available to co-owners (*sociis*) to adjoining proprietors, to mortgagees of immovable properties to cognates. Thus it may be exercised by a son or a more remote cognate. Section 7 of the Collection<sup>2</sup> contains the provisions relating to pre-emption. It seems that in the Dutch and Tamil versions the right was available to four classes of persons: the heirs of a vendor, a vendor's partners, neighbours whose grounds are adjacent to the vendor's land, mortgages of the land.<sup>3</sup> This bears a close resemblance to the four classes of persons who could exercise the right under the Roman-Dutch Law. The English translation, which is the one in force now, allows the right to the first and the second classes above mentioned and to "neighbours whose grounds are adjacent . . . and who might have the same in pawn." The previous notice "that has to be given by a vendor is referred to in paragraph 1. The intention to sell was made known on three successive Sundays at the Church: a similar practice seems to have been prevalent in some parts of Holland (Grotius Introduction 3-16-6). A sale passed the vendor's title to the purchaser but as the sale was in derogation of the right of the retractor, he can take steps to avoid the sale and have the property transferred to him. The act of the vendor is voidable as against the retractor; the previous sale is not, according to Van Leeuwen, obliterated as though it had never taken place.<sup>4</sup>

Under the Roman-Dutch Law *naasting* was a form of *jus retractus* introduced by implication of law and which is based on local custom. This right was given to heirs, joint owners, and adjacent landowners.<sup>5</sup> But the authorities do not support the dictum of Canekeratne, J. that this right was given to a mortgagee.

Under the law of Thesawalamai, as found in the Dutch and the Tamil versions this right was given to, co-owners, co-heirs, adjacent landowners, and persons who had a usufructuary mortgage. It is probable that due to the influence of the Roman-Dutch Law, it was given to the three classes of persons recognised

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1. The appendix to the Translation of Van Leeuwen's Roman-Dutch Law published in England p 741, pp 773-777.
  2. Cap 51 of the Ceylon Legislative Enactments.
  3. Sabapathy vs Sivaprakasam (905) 8 N.L.R. 62 at Page 63.
  4. Censura Forensis 1-4-21-27; but cf. Voet 18-3-27.
  5. Commentaries on Roman-Dutch Law by Simon Van Leeuwen, Kotze's Edition, Bk 4, Chapter 19; Grotius' Jurisprudence of Holland, Bk 3-16-9; R. W. Lee's translation, page 379. Voet: Book 18 Title 3 Paragraph 30; Berwick's translation pages 75-77.

by that system of law. The right of the *otti* mortgagee to ask for pre-emption appears to have been peculiar to the Thesawalamai. Such a person being practically in possession and virtually an owner was perhaps given this right. The practice of giving notice to the pre-emptor, by publishing them in churches appears to have been taken from the Roman-Dutch Law. In Holland and in other places, a similar practice was observed.<sup>1</sup>

The Roman-Dutch Law was also applied to fill in the gaps in the Law of Thesawalamai, and many instances of this may be seen in our case law.<sup>2</sup> There are several other customary laws which have been influenced by the Roman-Dutch Law. The law of inheritance of the Vellalas and Chetties of the coast of the Coromandel were governed by the Roman-Dutch Law.<sup>3</sup> The Roman-Dutch Law of community of property also effected the Customary Laws of the Tamils of Puttalam.<sup>4</sup>

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1. Van Leeuwan Bk 4 Chapter 19 Paragraph 12, Kotze's translation Vol 2, page 155.  
 2. See Laws and Customs of the Tamils of Jaffna by H. W. Tambiah.  
 3. See Co. 54/123 page 231 Johrstone Manuscripts  
 4. Co. 54/123 p. 161.

## CHAPTER XXIV

# KANDYAN LAW AND THE CUSTOMARY LAWS OF THE TAMILS

Kandyan Law is the system of law governing such matters as marriage, guardianship, adoption, inheritance, and land tenures obtaining among a section of the Sinhalese known as the Kandyans. Before the advent of the Portuguese and the Dutch, the customary laws of the Sinhalese did not differ fundamentally from the Kandyan Law. Subject to certain deviations pertaining to land tenure, there was little or no difference between the Sinhalese customary laws and the Kandyan Law.<sup>1</sup>

A comparison of the fundamental concepts of customary laws of the Tamils of Ceylon, and the Kandyan Law, which for all purposes of our inquiry may be regarded as the customary laws of the Sinhalese, reveals that there is a great similarity between these systems. Considering the fact that there had been constant mingling between the Tamils and the Sinhalese, and the adoption of various institutions from the southern part of the neighbouring continent, one is not surprised to find that the Kandyan Law itself has its roots in the customary laws of the Dravidian races. An examination of the concepts of Kandyan Law shows that the original structure of the Sinhalese society was matriarchal and like their Tamil brothers of the northern part of Ceylon, there has been later settlements of the Sinhalese when ideas and concepts peculiar to the patriarchal system have been imposed on a society which was originally based on the matriarchal pattern.

### Matriarchal System Among the Kandyans

The practice of polyandry, and the recognition of associated marriages, and the recognition of the *binna* marriage where the husband remained with the wife in the wife's father's household (*mulgedera*) after marriage are some of the essential features of all matriarchal systems. The *binna* form of marriage was necessarily based upon the goodwill and generosity of the parent to provide a dwelling house, and it was therefore, always, in the father's or wife's power to put an end to it. The *binna* married husband remained in a subordinate and in a somewhat humiliating position and was liable to expulsion at any time by his wife, or her

1. Ceylon Archives 54/124.

parents or brothers. The children belonged to the wife's family and took their mother's family (*gē*) name.<sup>1</sup> The recognition of the right of the *binna* married daughter to share in the inheritance of the parental estate, and the recognition of cross cousin marriages where by the mother's brother who was the manager of the joint family, conserved the property of the sister in his family by giving in marriage his son to the sister's daughter, point to the fact that the original state of the Sinhalese society was matriarchal. In the acquired property of the son who died leaving no children, the better view is that the father had no interest. It was regarded as the property of the mother.<sup>2</sup> This shows, again, that whatever the son acquired was regarded as the property of the mother's family to which he belonged; a feature peculiar to all matriarchal societies. The importance of the mother's brother in the mother's household will again point to the fact that the mother's brother was regarded as the manager of the joint family property of which the mother was the head. We have already seen that some of the features of Kandyan Law set out earlier are found in Marumakattayam Law, the Aliyasantana Law, the Mukkuwa Law\* and other systems of law based on matrilineal descent. It will be interesting to note that the society among the Veddahs of Ceylon was also based on the matriarchal pattern.<sup>3</sup>

Even eminent scholars on Kandyan Law do not deny that the original Kandyan society was based on matriarchal lines. Thus Hayley says :<sup>4</sup> "The Mukkuwas of Batticaloa whose customs in many respects are similar to those of the Sinhalese, the same words even being in some cases employed, trace descent through the female line, their whole law of succession being based upon female relationships.

Dr. Hayley refers to words such as *urime* (inheritance), *paraveni* (hereditary) which words occur both in Mukkuwa Law and Thesawalamai. The use of the word *paraveni* and *urime* clearly indicate that these words are of Tamil origin. When the derivation of these words are so clear, it is surprising that the Commissioners appointed to amend the Kandyan Law should have made a voyage of discovery to trace these words to Pali and Sanskrit origins.<sup>5</sup> Many rules of Kandyan Law and the customary laws of the Tamils may appear disconnected unless one studies them in their proper context.

1. Hayley on Kandyan Law pp. 193 and 194 and 196-197.

2. Hayley on Kandyan Law

3. Seligman on Vaddahs, p. 74.

4. Hayley page 167.

5. Report of Kandyan Law Commission Sessional Paper 24 of 1925 .page 17.

## The Patriarchal System Among the Sinhalese

As stated earlier, due to the advent of colonists such as those who accompanied the Bo-tree<sup>1</sup> the patriarchal system of society was in vogue in Sinhalese society in the later period. The recognition of the form of marriage known as *diga* by which after marriage the wife was conducted to the husband's house and became a member of the husband's family and lost all rights in her own family clearly indicates the patriarchal origin of this institution.<sup>2</sup> As Hayley remarks this is the usual type of alliance in a patriarchal system.<sup>3</sup> The *diga* marriage like the *binna* was not contracted "with a wink and dissolved by a kick."<sup>4</sup> It was more permanent in nature and the wife and the children became members of the husband's household. The various rules of inheritance when the marriage is in *diga* are all based on patrilineal descent, and thus where the marriage is in *diga* and the husband dies the widow was originally regarded as the manageress of his property both inherited and acquired. The institutional writers on Kandyan Law such as Sawyers, Turnour, Armour, and others give conflicting views on the nature of the widow's interest in such property, but the better view seems to be that the Kandyan widow like the widows under the Law of Thesawalamai had the common use of the property of the husband till either she remarried or a partition was effected.<sup>5</sup> But as a result of the decisions of our courts the view is settled now that the widow has only a life interest in the acquired property of the husband, and has no interest in the inherited or *paraveni* property of the husband, except that if she was destitute and remained unmarried, she could claim a right of maintenance out of such property, provided there was no sufficient acquired property.<sup>6</sup>

The incidents of the dowry system among the Kandyans were almost the same as those among the Tamils governed by Thesawalamai. In Sinhalese society the dowry was only given when the marriage was in *diga*. The *binna* married daughter remained in the family of her parents and shared the inheritance with unmarried sisters and therefore required no dowry. When a dowry was provided for a *diga* married daughter, she could not claim any more right to the inheritance of her parental estate. Similarly, under the law of Thesawalamai, a dowered daughter could not claim any more rights in the parental estate when she had brothers and unmarried sisters. Dr. Hayley states that the rules laid down

1. The Mahavansa records that 18 persons from the Royal family—eight Brahmins, eight from a family of traekers of cow herds.
2. Hayley on Kandyan Law 193-194.
3. Hayley page 193.
4. Modder on Kandyan Law XXXVIII.
5. Hayley on Kandyan Law 351 and 352.
6. Hayley, on Kandyan Law 353, 354.

in the Thesawalamai bear a very close resemblance to the unwritten customs of the Sinhalese in this respect.<sup>1</sup>

In Kandyan Law the obligation to provide a dowry was primarily on the father and if the father was not living, then on the mother or the brothers, or those relations in *loco parentis*.<sup>2</sup> A similar obligation was imposed on the mother and brothers and close relations who were in *loco parentis* under the law of Thesawalamai. A similar obligation was imposed on the Parawas, and the Chetties of Colombo and Puttalam.

The family organisation and marriage customs were similar both among the Sinhalese and the Tamils. The chapter on "Social Systems"<sup>3</sup> by Dr. Hayley could be reproduced by any writer on the social system of the Tamils as the concepts are precisely the same. Just as in Sinhalese society the father, the father's brother, and the mother's sister's husband were all called by the same name with suffixes *loku* and *punchi* (big and small) so also in the Tamil family system the word 'appa' which is used to designate the father is used to designate the father's brothers with a suffix *peria* (big) and *sinna* (small) as suffixes. Many of the wedding ceremonies of the Sinhalese<sup>4</sup> are the same as those among the Tamils.

### Fundamental Concepts

Mayne in dealing with the theme that the fundamental concepts of Hindu Law were taken from the customary laws prevalent in India, took the three concepts: namely, adoption, joint family and inheritance to illustrate his view. These three topics may be discussed in Kandyan Law with a view to show that the fundamental concepts of Kandyan Law and the Customary Laws of the Tamils of Ceylon and India are the same.

### Adoption

We have already shown that adoption was an institution found in all the Tamil customary laws and was secular in nature. In Kandyan Law, too, adoption played a great part and was secular in nature. The device of adoption was used to extend the family artificially. Under the Kandyan law no particular ceremony was required; the parties must be of the same caste, and there must be an intention on the part of the adoptor to make the adopted person his child. The decisions of the courts have gone further

1. Hayley 334 and 335.

2. Hayley p. 335, 336.

3. Hayley Chap. 4.

4. Hayley p. 105, App. 7. Modder on Kandyan Law, p. 248 et seq.

and have insisted upon the requirement of an open or formal declaration.<sup>1</sup> In Kandyan Law, as in Thesawalamai, the adopted person may be of either sex. Unlike in Hindu Law, the adopted person need not be a male and there was no religious significance attached to this institution under Kandyan Law or the Customary Laws of the Tamils.

### The Joint Family System

The peculiar rules of Kandyan Law cannot be comprehended unless one remembers that the joint family system prevailed among the Kandyans. When they were in the matriarchal state of society, the joint family consisted of the eldest female member of the family and their daughters and children. The unmarried sons remained, as members of this joint family, and after the death of the mother the eldest surviving son managed the property. The *binna* form of marriage and the rules of inheritance applicable in the case of *binna* marriages, suggest that a joint family system existed, based on a matriarchal pattern, having rules of matrilineal descent.

When the patriarchal system of society was imposed, a compromise was effected, just as in the case of Tamils governed by the Thesawalamai, and both institutions were allowed to exist side by side, with rules peculiar to each of them. The institution of the *diga* marriage and the rules based on it clearly show that a patriarchal system of society existed when the joint family system prevailed. Thus, on the death of the husband, according to the original view of the Kandyan Law, the widow remained in possession of the joint family property consisting of her husband's inherited and acquired property and her own property, and managed the same for the benefit of her children.<sup>2</sup> In the Law of Thesawalamai too, after the death of the husband, the joint family consisted of the mother and her children till she got remarried or died. The property remained in the possession of the mother who had the right to dowry her daughters and if anything was left over her sons shared the same, after the death of the mother, or on her remarriage. The joint family system among the Sinhalese was also identical, the joint family consisted of the father, and the mother and the children, in the case of *diga* marriage.

The father was the manager of the joint family and on his death the mother became the manageress, and on her death, the joint family came to an end, and the property got divided among the sons and unmarried daughters. The peculiar rules

1. Hayley p. 203 et seq.

2. Hayley on Kandyan Law pp 351 and 352.

of the joint family system known to the Hindu Law find no counterpart in Kandyan Law, and as Mayne remarked, appeared to be a further development by Sanskrit writers on concepts which were borrowed from the customary laws obtaining in India.

### Inheritance

In dealing with the rules of Inheritance under the Kandyan Law, a distinction must be drawn between *diga* and *binna* marriages. The rules governing a *diga* marriage were based on the patrilineal descent, the dowered daughter was excluded from the inheritance and after the death of the parents, the sons and the unmarried daughters divided the inheritance of the parents. In the case of *binna* marriages the *binna* married daughter shared the inheritance with her sons and other unmarried daughters after the death of the parents. Under the Kandyan Law a *diga* married daughter when she returned during her father's lifetime and was allowed to settle in *binna* acquired all the rights of a *binna* married daughter. If she returned after the father's death, she could not succeed to the father's estate unless the other heirs either give her in *binna* marriage or expressly consented to her marriage with either her former husband or a new husband being considered as a *binna* marriage.<sup>1</sup>

Thus, it is clear that the fundamental concepts of Kandyan Law are the same as those of the Tamil customary laws, and the influence of Hindu Law is almost negligible in the development of Kandyan Law.

### Land Tenures

The land tenures among the Sinhalese in the Kandyan provinces, and the Maritime provinces, differed slightly from the land tenures in the Tamil districts.<sup>2</sup> The inscription in an island north of the Jaffna Peninsula called Nainativu shows that Jaffna was under the sovereignty of Parakrama Bahu I., in the early part of the 10th century.<sup>3</sup> From this Codrington concludes that the original land system in these districts was not substantially different from that prevalent in the rest of the Island.

There appears to be no reliable documentary evidence prior to Portuguese occupation shedding light on the land tenures system among the kings of Jaffna. Even the Dutch documents do not give much information. According to Codrington, some Dutch documents reproduce the old Jaffna system in its essentials. The Tamil kings granted lands on a form of grant known as *utaram*,

1. Hayley 389 and 390.

2. See Codrington Land Tenures chap. 7. for a description of the land tenures among the Tamils.

3. Codrington Land Tenures, pp. 53 and 54



which meant a generous present; the grant was for a limited time at most for one's life, as a reward for services rendered. On the death of the grantee the relatives of the grantee applied to the king for leave to succeed, which usually was given on payment of half the value. This was known as the *marala*.<sup>1</sup> Similar custom existed among the Sinhalese monarchs and was known by the same name as *marala* in the case of royal lands which were given at will.<sup>2</sup>

There were five ways of acquiring property during the Dutch period, namely, purchase, grant, dowry, and donation, usufructuary mortgage (*otti*), and *paraweni adsi* or hereditary succession.<sup>3</sup> The tenures discussed in the Law of Thesawalamai by which a person cultivates another's land and receives a share of the produce as its counterpart in Sinhalese districts known by the name of *ande*.

The land tenures of the Mannar Island and the neighbouring seaboard were the same as in Jaffna.<sup>4</sup> Those in Batticaloa and Trincomalee districts were the same as those in the Sinhalese districts.<sup>5</sup>

### Caste System

In dealing with the Sinhalese social system caste plays a very important part. Caste was presumably present in Ceylon from early days. It is essentially a Hindu and not a Buddhist concept. Buddhism which recognised fraternity and equality was inimical to the development of caste. The earliest reference to caste systems is found in the Mahavamsa.<sup>6</sup> A thousand families of 18 guilds with Princes from the Pandyan country in Madura came in response to the demands for Princesses for Vijaya and his companions. The Chandalas settled in separate villages; in those early days. There is evidence that the organisation of society was on a totemistic basis.<sup>7</sup>

Apart from references from Sinhalese literature and lyric records caste is referred to in the Ganavamsa, a sociological chronicle reputed to be written by Maha Thera Sri Buddha Rakhita of the Maha Vihara succession. According to Neville<sup>8</sup> this work was written after the reign of Vijaya Bahu the third (1213-1236 A.D.). The names of the castes given there are similar to some of the castes known to the Tamils.

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1. Codrington p. 55.
  2. Hayley p. 231.
  3. Codrington p. 57.
  4. Codrington p. 57.
  5. Codrington pp. 57 and 58.
  6. Chapter 7—57.
  7. Raghavan Spolia Zeylanica Vol. 27 Part 1 page 199.  
Neville H. Taprobanien Volume 1 (1886) page 85.

According to Raghavan it was really during the Malabar dynasty, that the caste system and the elaborate system of Rajakariya or service tenures was introduced and developed in Ceylon. Raghavan says<sup>1</sup> : “ An institution more analogous to the Indian caste system in its social aspect is hard to conceive. Despite this parallelism the differences are also profound. The Kandyan system had the authority of the king behind it, which cannot be said of the Indian system, based on varied traditions and founded on religious dogma. The former was centered on indigenous institution of the Island, service tenures, each function of the castes, even including the Rodiyas, having had its own assignment of land for its services. The phenomenon therefore of the social system while it had its own parallelism in the Hindu caste, was yet inspired by the co-ordination, of the system of the service tenures and social services which has had a long service of antiquity.

New light has been thrown on the subject of caste system by the publication of third book of the Portuguese Thombo.<sup>2</sup> This gives an account of the social system of the coastal people who occupied the western coast of Ceylon from Puttalam to Dondra. Some of the castes mentioned are the Vellalas, the Chaleas, the Careas, the Chetty, the Kauruppu, the washerman, the potter, the blacksmiths, the goldsmiths, the chunam burners, the barber, etc. The names and the castes and their personal names point to South Indian origin illustrating how Ceylon's geographical position has been a deciding factor in a social system.<sup>3</sup>

Thus a comparison of the customs, institutions and laws of the Sinhalese and the Tamils show that the Tamils and the Sinhalese of Ceylon have a number of cultural traits in common. The History of Ceylon again shows that the majority of the people who settled down in Ceylon are from South India.

1. *Ibid* 203.

2. Paul E. Peris 1949 *The Ceylon Littoral* 1593.

3. See Raghavan's article 'The Sinhalese Social System—*Spolia Zeylanica*—Vol. 27 Part 1 page 204. For an account of the Sinhalese caste system see an article on the Sinhalese Caste System of Central and Southern Ceylon by William H. Gilbert—*Ceylon Historical Journal* Volume 2 Nos. 3 and 4 pages 295-347. Also *Caste System among the Sinhalese*—By Ryhan.

## CHAPTER XXV

# The Organisation of the Tamil Society and the Nature of the Customary Laws of the Tamils of Ceylon

We have discussed so far, the customary laws of the Tamils of Ceylon and compared them, with other customary laws, such as the Marumakattayam Laws, the Aliyasantana Laws, the Hindu Law and the Kandyan Law. The customary laws of the Tamils of Ceylon fall under three categories : laws based on the matrilineal system, laws based on the patrilineal system, Laws based on a system where rules peculiar to both are present.

The laws and usages of the Mukkuwas of Batticaloa, Trincomalee, and Calpenty, and even the Wannians, are based on matrilineal descent. The laws of the Chetties, the Vellalas of Colombo and Puttalam are based on the patrilineal system, and the Thesawalamai, as a result of historical accidents, have rules peculiar to both systems. The Kandyan Law too contains rules peculiar to both systems.

### Tribal Organisation Among the Tamils

As Maine remarked 'the most recent researches into the primitive history of societies point to the conclusion that the earliest tie which knitted men together in communities was consanguinity or kinship.'<sup>1</sup> Ancient society did not consist of a collection of individuals but an aggregate of families.<sup>2</sup> The tribal organisation was based on the aggregation of families. According to Westrop the House Community was a community of work and property, and a system of law in common. The family was not like the race a geneological concept but primarily an association of blood relations. It was an association of housemates (a household).<sup>3</sup> Sir Henry Maine remarks : 'There was no brotherhood recognised by our savage forefathers except actual consanguinity regarded as a fact.'<sup>4</sup>

1. Maine: Early History of Institutions. 6th edition (1893) page 64.
2. Maine: Ancient Law, 1930 Edition p. 142.
3. Westrop: Introduction to Early Roman Law, Vol. 2 p. 16.
4. Maine: Village Communities p. 65.

With the alteration in the social conditions resulting from economic development, and the evolution of trade and industry, greater liberty was given to the individual. When the grown-up sons married and attained maturity they formed their own material existence and their own households. Thus, from the joint undivided family the ultimate concept of a legal independent family evolved.<sup>1</sup> The process of the splitting up of undivided families into individual families could be observed by the study of Roman Law. Thus, in Rome the joint undivided family was split up into individual families comprising of the parents and their children.<sup>2</sup> A similar process could be observed if one studies the Law of Thesawalamai. Although the joint family as known to the Thesawalamai, was originally indivisible it did not survive beyond the life of both parents; and on the death of the parents, the family split up into individual families, each consisting of a son, his wife and his children. Among the Chetties and Vellalas of Puttalam, and Calpentyn, the undivided family was continued even after the death of the parents.

### The Mukkuwa Law

Sir Henry Maine says: 'The effect of the evidence derived from comparative jurisprudence is to establish that view of the primeval condition of the human race which is known as the Patriarchal Theory.'<sup>3</sup> When we examine the Mukkuwa Law it is clear that the dictum of Sir Henry Maine cited above is not universally true. There are some societies based on the matriarchal system and others based on the patriarchal system. The Mukkuwas were originally organised on a purely matriarchal pattern.

In the Mukkuwa Law one sees the evolution of the patrilineal system out of a society based on matrilineal descent. Thus, although the ancestral property of a Mukkuwa male, namely, the maternal *muthusom* remained in the family of his mother and among those who claimed relationship through the female line, he was allowed to give his acquired property to his own wife and children and to provide them with a different household. The theory that the original state of society of mankind was matriarchal and that the patriarchal systems arose out of this in later times has not been found to be universally true. But there are cases where evolution had taken place and one finds an example of this in Mukkuwa Law.

The Mukkuwas originally had tribal organisations.<sup>4</sup> The mother was regarded as the head of the unit of the family known

1. Westrop : Introduction to Roman Law, pp. 21-23.

2. *Ibid.*

3. Ancient Law, 1909, edition by Pollock p. 131.

4. See Spolia Zeylonica Vol. 27 Pt. 1. No. 7. Article on a Kalvettu on the Seerpaddam of the Eastern Province by M. D. Raghavan.

as the *kudi*. Due to the freedom of the eldest brother of the mother to give his acquired property to his own wife and children, different family units, like the *thavazi illams* found among the Nairs, governed by the Marumakattayam Law, came into existence in Mukkuwa society.

Although Mukkuwa society is fast disintegrating there is still some evidence of their tribal and family organisations and the distribution of the arable land to the members of the family. Sir Henry Maine has shown that the theory that all land belongs to the Sovereign was never prevalent in ancient societies. Referring to the applicability of this theory in India, Maine says, 'The assumption which the English first made was one which they inherited from their Mohammedan predecessors. It was that all soil belonged in absolute property to the Sovereign and that all private property existed by his sufferance.'<sup>1</sup>

After examining the Western Village Community, in particular Slavonic society, he comes to the conclusion that the cultivable portions of land which he calls the 'Arable Mark' belonged to the Village Community consisting of families. The Arable Mark itself was cut out of the Common Mark and in this 'a universally recognised severance of the Arable Mark from the Common Mark, we come very close upon the beginning of separate or individual property.'<sup>2</sup>

Continuing his theory Sir Henry Maine says, 'The evidence appears to me to establish that the Arable Mark of the Teutonic village community was occasionally shifted from one part of the general domain to another. It seems also to show that the original distribution of the arable land was always into exactly equal portions corresponding to the number of free families in the township. Nor can it be seriously doubted upon the evidence that the proprietary equality of the families composing the group was at first still secured by a periodical redistribution of the several assignments. The point is one of importance. One stage in the transition from collective to individual property was reached when part of the domain under cultivation was allotted among the Teutonic races to several families of the township. Another was reached when the system of 'shifting severalties' came to an end, and each family was confirmed for perpetuity in the enjoyment of its several lots of land. But there appears to be no country inhabited by an Aryan race in which traces do not remain of the ancient periodical redistribution. It has continued to our own day in the Russian villages.

1. Maine : Village Communities in the East and West, 5th edition, p. 104.

2. *Ibid* p. 79.

Among the Hindu villages there was widely extending traditions of the practice,'<sup>1</sup>

Evidence of similar usages are still found among a community of people who occupy the Eastern Province of Ceylon known as the Seerpaddam.<sup>2</sup> The recent researches by M. D. Raghavan show that in the Eastern Province there is a tribe known as the Seerpaddam community consisting of 4,000 people, who still cultivate the lands in common. They are divided into thirteen clans or *kudis* and each bear a separate name. Of these he says that seven are the earliest, the rest having evolved in later days. Each clan or *kudi* had a head, called the *kudi muhammakara* or *adappan* who regulated the social life of the clan.

The land consisting of 300 acres was allocated annually to members of these families by a committee of eight, elected by the thirteen clans, and the rest found other occupations. Marriage is matrilineal, and the husband took his residence at his wife's house, in a house bestowed on her by her father as *chedenam* or dowry. This further illustrates our theory that the original unit of society consisting of the mother and female descendants with the mother's brother as manager of that family later disintegrated into separate families by the mother's eldest brother providing a separate household for his wife and children out of the acquired property. By this process many of these clans or *kudis* lost their matriarchal origin.

When one examines the organisation of the Chetties and Velalals of Puttalam and Colombo, one finds that they too are based on a tribal organisation. Thus each Chetty family had its head known as the *Chetty Talamai*. The family property was held as joint undivided property.

The Wannians were also based on a tribal organisation. As they were a warrior race, they did not believe in a permanency of the marriage and the result was that they contracted loose unions and morality was at its lowest ebb. The Tamils of Jaffna were also organised on a tribal basis. The earlier settlers who came from the Malabar coast had their matriarchal institutions. The recent researches of Raghavan on the Folk Songs of the people of Nagercoil, a village situated a few miles from Point Pedro, show the close affinity between the people who settled in the coastal areas of Ceylon and the Malabar coast of India.<sup>3</sup> The immigrants also had a tribal organisation based

1. *Ibid* 81, 82

2. *Spolia Zeylanica* Vol. 27 Part L No 7: A Kalvettu of the Seerpaddam of the Eastern Province by M.D. Raghavan.

3. *Spolia Zeylanica* Vol. 27 Pt 1. No. 6 : Traditions and Legends of Nagercoil by Raghavan.

on the patriarchal pattern, and thus the Vaipavamalai and the Kailayamalai speak of certain Vellala families of South India settling down in Jaffna and forming tribal groups.

### The Five Regions According to Ancient Tamil Works and the Evolution of Caste

The ancient Tamils divided the habitable parts of the earth's surface into five natural regions, (each region was called a *tinai* which etymologically meant a stretch of land). The five regions were called: (1) *kurinchi*, the hilly country, (2) *pallai*, a dry waterless region, (3) The *mullai*, the wooded land between the highland and the lowlands, (4) *marudam*, the lower courses of the river, (5) *naydal*, the littoral tract which skirts the sea.

The hilly tract was occupied by people who subsisted on fruits and took up to hunting. The Tamil tribes known as the Vedars and the Kuravars occupied this region. The *pallai* or the desert region was occupied by the nomadic tribes known as Maravar, and Kalvar: bands of brigands who lived by pillage and plunder. Life in these regions must have accentuated the matriarchal organisation of tribal life. While they were roving through the desert in search of adventure and booty, the women and children were thrown together to enjoy whatever domestic amenities that were available. The mother became the centre of the family, and was the undoubted relation the children could look up to. In such a system of society the matriarchal system naturally flourished. When the *mullai* or forest land was occupied man took a further step in his cultural progress. He began to breed cattle or other domesticated animals, and the Idayar or herdsman of Tamil society came into existence. The Tamil literary works show that among the Idayar there was a form of marriage known as *kalavu*, where lovers met together, and without any formal ceremony, lived as husband and wife. Later a form of marriage was evolved known as *karpu*, which was contracted by the presentation of a *tali* and garment of strung leaves. The remnants of this custom are still found in all Tamil societies among whom a marriage is not complete unless a *tali* and a piece of cloth known as *kurai* are given. It is the institution of the formal type of marriage which led to the development of the patriarchal system of society.<sup>1</sup> The *neydal*, or seaboard was occupied by fisher folk and other seafaring people as the Mukkuwas and Paravas, and the Karayars. The *marudam* or low lying plains were occupied by the ploughman or the ulavar. The Vellalar or Lords of the floods were first engaged in leading water from the rivers to the fields and soon obtained an

1. P. T. Srinivasa Iyengar : History of Tamils p. 10.

ascendancy over the rest of Tamil society which mainly became agricultural.

Various kinds of craftsmen were attached to the village such as the blacksmith, goldsmith, etc. As Maine states: "There are in central and southern India certain villages to which a class of persons is peremptorily attached in such a manner as to show most unmistakably that they form no part of a natural or organic aggregate to which the bulk of the village belong, these persons are looked upon as essentially impure. They never enter the village or only enter reserved portions of it; and their touch is avoided as contaminated."<sup>1</sup> Though they are not included in the village they are an appendage . . . they have definite village duties one of which is the settlement of boundaries on which their authority is allowed to be conclusive. They evidently represent a population of alien blood, whose lands have been occupied by the colonists or invaders forming the community.<sup>2</sup> This is the origin of a number of depressed or lower classes among the Tamils of Ceylon and South India.<sup>3</sup>

### The Functional Approach to the Customary Laws of The Tamils

It is important to bear in mind that the Tamils are a racial group comprising various tribes, who had different ethnological sociological origins. Thus the Wanniaris, the Tamils of Jaffna, the Mukkuwas, and the Chetties and the other castes of Calpentin and Puttalam, have only one common link, namely, the language. In the ancient Tamil kingdoms known as the Chera, Chola, and Pandya kingdoms, various tribes had come and settled down, and they were all ultimately regarded as Tamils. Each tribe or caste followed certain vocations. According to the functional theory as developed by Malinowski, 'It is the satisfaction of the organic and basic needs of a man and a race, which is the minimum set of conditions imposed on each culture the problems set by man's reproductive and hygienic needs must be solved.'<sup>4</sup>

In every community there must exist arrangements for the sanctioning of customs, ethics and law. To satisfy all needs of his organism a man has to create arrangements and carry out activities for feeding, clothing, and housing, etc. Viewed from this standpoint, the customary law of the Tamils of Ceylon deals with conditions that occur in an agricultural society. There

1. Maine: Village Communities—p. 128.

2. *Ibid* pp. 127 and 128.

3. *Vide* Caste in India, by Hutton, Cambridge University Press 1946.

4. Malinowski: Crime and Custom in Savage Society and a Scientific Theory of Culture and other essays p. 37.



were certain institutions which were found in all Tamil communities, such as marriage and adoption, and the existence of the joint family system in one form or the other. The Law of Thesawalamai dealt with mainly an agricultural and pastoral people, and if one is to classify them they will come under the third class of agricultural people as defined by Diamond in his book on Primitive Law.<sup>1</sup> They were agriculturally advanced and used animals and scientific implements in their pursuits. The Mukkuwas, although they were seafarers in their origin, had also become an agricultural people in some stage of their evolution. Originally property must have been owned by the community such as one finds in the usages of the Seerpaddam people, of the Eastern Province. Later, however, joint family ownership of property was recognised. The Chetties of Colombo and Puttalam were a commercial people and their system of loan as found in their customary laws, shows that every encouragement was given to the development of commerce.

### Sanction of Customary Laws

The question may be asked how these usages and customs were enforced in daily life. The Austinian theory, that there must be a sovereign and a subject, and that the Law is in the nature of a command issued by the former to the latter, is now discarded. It has been shown by the writers of the historical and functional schools, and modern sociologists, such as Malinowski that in ancient societies, custom had a binding force equal to that of law, as a result of the pressure of public opinion and reciprocity of obligations.<sup>2</sup> The same may be said of these customary laws. The obligations between the master and his slave are based not on the commands of any sovereign but on the mutual obligations of one to the other. The powers and obligations of the manager of a family towards the members of his family are again not based on the commands of a sovereign, but on the theory of reciprocity of obligations. There can be no doubt that in ancient times, civil disputes between parties were never settled by kings or courts set up by the sovereign authority but were left to the arbitration of domestic tribunals consisting of the heads of each family.

### The subjects dealt with in Customary Law

These customary laws chiefly dealt with such topics as marriage, adoption, joint family, inheritance and contractual obligations that arise out of barter sale. Other transactions which would occur in an agricultural community are also dealt with. There is a marked absence of the law of torts in these

1. *Vide*: Diamond on Primitive Law.  
2. Malinowski: Crime and Custom p. 67.

customary usages. Maine's theory that in all primitive communities, the law of tort is well developed, has since then been exploded. 'A clan system makes no provision for the wrongs inflicted by one member of the clan upon another. The clan cannot pursue a member of its own body with vengeance.'<sup>1</sup> It is therefore clear that in ancient societies the law of torts as we understand it today will not be fully developed. We have already stated that the Tamil society, just as the Sinhalese society, is based on the clan system.

The Law of Contracts is not well developed. Whatever might have been the stage of commerce among the Tamils of India, when we deal with the settlements in the various parts of Ceylon, we do not find highly developed commercial practices. The settlers were engaged mainly in agricultural pursuits, and a few commercial transactions such as sale of land and cattle that were of daily occurrence in an agricultural society, are governed by the customary law.

There is a total absence of penal law in the collection of these customary laws. But this does not mean that there were no penal laws administered by the tribal kings or by the heads of the families. When these laws were collected during the Dutch and early British period, the Dutch penal laws had made inroads into the customary laws, and therefore customary laws on the subject were not collected.

In this connection the remarks of Sir Henry Maine on the codified or written laws of the Hindus may be cited. He says: "The codified law of the Hindus, then assumed to include their whole law, consisted of a large body of law regulating the relations of classes, especially in the matter of inter-marriage; of a great body of family law and a correspondingly extensive law of succession; and a vast number of rules regulating the tenure of property by joint families, the effects on proprietary right of the division of those families, and the power of holding property independently of the family. There was some law of contract and some law of crime, but large departments of law were scantily represented, or not at all, and there was in particular a singular scarcity of rules relating specially to the tenure of land, and to the mutual rights of the various classes engaged in its cultivation."<sup>2</sup> Sir Henry Maine's comments apply equally to the laws and customs of the Tamils of Ceylon.

### **The Fate of the Customary Laws of the Tamils of Ceylon**

Excepting the Law of the Thesawalamai, all the customary laws of the Tamils of Ceylon are obsolete. Even the Thesawalamai

1. Hartland's: Primitive Law (1924) p. 35 v. 36.

2. Village Communities by Maine 1887, 5th Edition p. 51.

has undergone a number of changes, as a result of precedent and legislation.

The customary laws of the Mukkuwas were not interfered with either by the Dutch or the early British Government. In *Chinnatamby v. Minny*<sup>1</sup> the Court in the course of its judgment said : "By Ordinance 5 of 1835, the Proclamation of Sept. 23, 1799 is declared to be in force in so far as the administration of justice within the Maritime provinces should be exercised by all courts according to the laws and institutions that subsisted under the ancient government of the United Provinces, and these Laws and Institutions are by the said Ordinance to continue in force subject, etc. The Supreme Court has every reason to believe that the laws and customs of persons residing at Batticaloa regarding the rights of succession to property were never interfered with by the courts of Judicature under the Dutch Government ; and the special customs of the Mukkuwas and Vanniars were recognised in a case at the last sessions held at Jaffna without its even been contended that they were abrogated."

The Matrimonial Rights and Inheritance Ordinance (15 of 1876) was enacted to provide for the Law of Intestate Succession in Ceylon. It exempted from its operation only persons subject to Kandyan Law, the Thesawalamai and the Mohammedan Law. By necessary implication all other persons who are domiciled in Ceylon are governed by this Ordinance. As the customary laws chiefly dealt with the laws of Intestate Succession this Ordinance abrogated all the customary laws, except those excepted by the Ordinance itself. Thus, apart from the Law of Thesawalamai, the Kandyan and the Mohammedan Law, all the other customary laws ceased to have any effect after this ordinance came into operation. Even before this Ordinance came into operation, there is evidence that during the early British regime, some of these customary laws had become obsolete.<sup>2</sup>

Although some of them are obsolete, a comparative study of all the laws and customs of the Tamils of Ceylon will give the sociologist, the student of legal history, and students of social sciences an insight into the fundamental concepts found in these various customary laws. Without a study of these principles, as a learned judge stated when he was dealing with the Law of Thesawalamai, the principles of this Law "would appear to be a bewildering group of single instances." The customary laws of the Tamils are fast falling into disuse and in this work an attempt has been made to collect them so that they may be preserved for posterity.

1. Conderlag and Prince Reports, pages 381 and 382.  
2. *Vyramuttu v Muttutamby* 23 N.L.R.I.

# APPENDIX I

## THE CHANGING CONCEPT OF THEDIATETTAM

### The Original Concept

Property was divided under the Law of Thesawalamai into :—

- (a) *mudusam*, i.e., Hereditary property brought in by the husband,
- (b) *chedanam*, i.e., Dowry property brought in by the wife,
- (c) *thediatettam*, i.e., Property acquired during the marriage.

If the hereditary property of the husband was regarded as his own, and the dowry property was considered as that of the wife, there was, nevertheless, a community of interest, both of the husband and of the wife in *thediatettam*. Each spouse had a title to one half of the *thediatettam*, though, of course, the husband as manager, possessed the powers necessary for his management for example, that of alienation without the consent of the wife ; while the wife was subject to certain restrictions in this regard, being unable, for example, to alienate her share without the consent of her husband.

The Courts, when called upon to demarcate the nature of the relationship or community of the spouses, in this regard, have propounded views, which to put it at the least, are difficult to reconcile. In an early case, however, a statement of the law in clear words illustrated both the nature of the interest of the spouses in *thediatettam* and what *thediatettam* was composed of. In *Waliamma v Sandrasegar Modliar Sooper M209*—The learned judge said :

“ The English and Roman-Dutch Law certainly recognise a community of goods between man and wife, but the Thesawalamai or country law, clearly recognises a distinct and separate interest—the husband in the property inherited from his father, and the wife in her dowry and inheritance. The only property in which both have a mutual interest and is in common, is the profits arising from each of these respective properties, or what is acquired by their own exertions, during the marriage.”

Again we have a similar statement on the ingredients of *thediatettam*, in *Jivaratnam v Murukesu et al* 1895 I.N.L.R. 251, in which Withers, J., said :

“..... The separate property of spouses is that which either party brings to the marriage or acquires during marriage by inheritance, or donation made to him or her, particularly, while common property is restricted to the rents, revenue and income of their separate estate and what is acquired by the exertion of the spouses.”

The Thesawalamai Code speaks of the joint or common ownership of the spouses over *thediatettam*.<sup>1</sup> On the death of either spouse what remained of the *thediatettam* was divided equally between the surviving spouse and the heirs of the deceased.<sup>2</sup>

What appears to have been of primary importance, in the test of what was and what was not *thediatettam*, was the time during which there was a living together of the spouses. Hence where, even in the absence of a divorce or for that matter a separation by decree of court, the parties had in fact lived separately, then it appeared to follow that property acquired by either spouse during that period of time was not considered as *thediatettam*, and not stamped with the restrictions which confined such property. (*Chellapah v Walliamma* 1 T.L.R. 276-277, and M. 1.8.1—*Nagatta v Nagappa and Kander*).

Conversion of one's property from one form into another, for example, from money belonging to one's separate estate into immovable property during the marriage, did not rob such money of its original character. For example, where a husband would buy an immovable property with moneys saved before the marriage then such property would not cease being his separate property. Similarly, in the case of *Nalliah v Ponamma* 22 N.L.R. 198, where a husband had invested on mortgage money which he had saved before marriage, it was held that such investment still preserved its original nature.

One might mention that the judgment of Drieberg, J., in 31 N.L.R. case of *Thamotheram v Nagalingam* at page 257, endeavoured to make inroads on the clear line of *thediatettam*, upon grounds which were incorrect. The question arose in the form of whether the salary of a husband was *thediatettam*, and therefore whether it could be seized by the creditor of his wife.

1. T. 1.5.

2. T. 1.11; 1.12; 1.15; 1.50.

Drieberg, J., held: "I do not think these expressions (*thediattettam*) are applicable to the salary of the appellant in this case. It is just sufficient for his needs and is exhausted in fulfilling the natural and legal obligations he is under, of supporting his wife and children." It is submitted with deep respect that it is difficult to imagine how the duties and liabilities of the husband in another field of law, could have affected the rules of definition or division in the law of property. Factually it seems reasonably clear that immediately the right a person has to his salary vests in him, then *ipso facto* it falls into a certain division of property, and is subject to the restrictions which the law has imposed on it.

It seems hardly necessary to add, however, that as society progresses, the physical characteristics of the property which the spouses acquire during the subsistence of the marriage necessarily change, while the rule of law which places the properties into a certain division of law and consequently subjects such properties to certain duties, would not necessarily change.

### The Interest of Either Spouse in Thediattettam

Though in fact property was held in the name of only one spouse, nevertheless in law, if such property fell within what was called *thediattettam* property, then each spouse owned half of such *thediattettam*. The husband, as explained earlier, had in addition certain extra powers which were necessary for the exercise of his function of management. The question arises what would be the nature of the wife's interest where the *thediattettam* was acquired by the husband. In the case of *Seelachy v Visvanathan*, 23 N.L.R., Bertram, C.J., at page 11 attempted to fit in this peculiar interest of the wife into a place in the Law of Trusts, a procedure which was neither necessary nor strictly correct. He says :

"In other words, I hold, that when the plaintiff's husband purchased the property, under consideration, he acquired it in consequence of his wife, and that his wife was entitled to sue him for a formal conveyance of her interest, or as Voet puts it subject to a *necessitas communicandi*. But the right so acquired by the wife could not prejudice any *bona fide* purchaser claiming from the donee of her husband even though the gift to his donee was a breach of the constructive trust . . . The property was in fact constructively, an equitably partnership property."

Another view that was taken was that *thediathettam* property, when bought, had the effect of vesting one half in each spouse.<sup>1</sup>

1. *Ponnachi v Vallipuram*, 25 N.L.R. 151; also, *Iyamattayar v Kanapathi Pulle*, 29 N.L.R. 301.

### The *thediatettam* Under Ordinance 1 of 1911—The Matrimonial Rights and Inheritance Ordinance (Jaffna)

Ordinance 1 of 1911 which affected the rights of parties married after 17th July, 1911, made a number of changes of significance. The terms *mudusam* and *chedanam* were not employed, but the Ordinance proceeded to define the separate property of each spouse. Broadly, any property to which a spouse was entitled to at the time of, and would become entitled to after her marriage fell into this division of property. Any property however which would fall under the separate definition of *thediatettam* was expressly excluded from the separate property. The wife could not, without the written consent of her husband, dispose of her separate property during coverture. Section 9 recognised gifts between spouses.

*The diatettam* was defined as :

- (a) property acquired for valuable consideration by either spouse and during the subsistence of the marriage.
- (b) profits arising, during the marriage, from the property of either spouse.

There has been some little difficulty in the application of clause (a) of this definition. One would remember that the old view, which was stated in *Nalliah v Ponamma* 22 N.L.R. 198 was to the effect that separate property of one physical type, when converted, during the marriage, into some other physical type, did not lose its original character of being 'separate.' The law seemed, however burdened with a substantial degree of vagueness and therefore the Divisional Bench was formed in order to dispose of the question. Garvin, J., in the course of his judgment reported in the 35 N.L.R. 313, *Avichy Chetty v Rasamma* interpreted this section in a manner incompatible to the earlier view. He said : "The meaning of the words used is clear and there is no reason to suppose, that the legislature did not intend that these words should not be interpreted in their plain and ordinary sense. Indeed it is quite impossible to find any justification for expanding the section by the addition or words, which would exclude from the subjects of property which appear to be caught up by the section all property acquired by either spouse for consideration provided by him or her from a separate estate. In the case before us, the premises were acquired for valuable consideration during the subsistence of the marriage and therefore falls within the definition '*thediatettam*.' This statement of the law has been followed as an authoritative pronouncement in a later

case.<sup>1</sup> In this case a husband had appropriated Rs. 1,000 of the separate property of his wife. Under pressure he transferred a property belonging to him to his wife. Following the principles laid down in the earlier case, he was held to be entitled to half the property which he sold to his wife.

It is submitted with profound respect that the rules laid down by the Divisional Bench was contrary to the concept of the *The-sawalamai*. The Divisional Bench seems to have avowed the principle that conversion of property is a form of acquisition. It is further a well known canon of construction that when a literal construction leads to an untenable conclusion or an absurdity, then that construction should not be considered to have been envisaged by the legislature.<sup>2</sup> It seems reasonable to suppose that a Legislature which had before it the two conceptions of 'what is separate' and 'what is not,' would have dealt with the situation of one such property changing into the other. In view of the rules before 1 of 1911, it seems tenable to contend that such an omission by the legislature meant in fact, that the Legislature would not countenance such a change.

This decision was never reviewed by a Full Court, and there was public agitation against it, as a result of which a Commission was appointed to devise a formula by which the earlier conception could be restored. The report of the Commissioners in Sessional Paper 3 of 1930 (page 3) advocated that there should be no community in *thediatettam*, and if *thediatettam* should be considered as the profits accruing from separate property, the profits should also be considered separate property. They also suggested that if a spouse should die leaving *thediatettam*, the half share of such property should devolve on the survivor. After a lapse of about 17 years, Ordinance 58 of 1947 was enacted which seems to have left matters in even greater uncertainty, instead of implementing in clear words, the suggestions of the Commissioners.

Ordinance 1 of 1911 declared, regarding the interests of the two spouses in *thediatettam*, that the *thediatettam* of each spouse was the property of both spouses.<sup>3</sup> This is the same as the position before 1911. Section 20 made this position quite clear, by enacting in its sub-section 2, that on death intestate of either spouse one half of the joint property remained as the property of the survivor, the other half vesting in the heir of deceased.

1. *Alvan v Ponny*, 41 N.L.R. 105.

2. *Maxwell Interpretation of Statutes* 9th Edition, page 20 et seq.

3. Section 20 Chap. 48.



### Application of the Thesawalamai

Ordinance 1 of 1911 referred to its applicability in express language and stated that it would apply to the Tamils governed by the Thesawalamai.

The amending Ordinance 58 of 1947 retained the same principle of applicability, but added a clause which was designed to end any doubt as to whether Thesawalamai applied to property situated not only in the Northern Province of Ceylon but elsewhere. This doubt had been voiced by Bertram, C.J., in *Seelathi v Visvanathan Chetty* 23 N.L.R. 97, who, though he did not express a final opinion in the case, nevertheless seemed to incline to the view which he stated had been held by many witnesses before the Commission, namely, that the Thesawalamai was both 'a local and personal law, applicable to the Tamils of the Province of Jaffna and to property in Jaffna.' The Commissioners in their Report<sup>1</sup> point out that in the case above, Bertram, C.J., seems to have thought that as far as the matrimonial rights of husband and wife were concerned, 'the Thesawalamai might affect property outside the sphere of its application,' but that he did not express a view as to matters of inheritance. The Commissioners said, 'The question should not be left in uncertainty, as we have agreed that such property as regards matrimonial rights and inheritance be governed by the Thesawalamai.' This proposal was implemented with the language in Section 2 of the Amending Ordinance 58 of 1947 'and it shall apply in respect of their immovable and movable property, wherever situated.'

A further question which arises from the language employed, is whether, the rules set out in the Ordinance would affect property situated outside Ceylon and owned by persons governed by the Thesawalamai. In the absence of any case law on the point, the argument on principle would seem to indicate, that the general rule is that a Sovereign cannot legislate outside his territory, and that such legislation would be without extra-territorial effect. But this is, of course, subject to the exception, that where the rules of Private International Law in the foreign country concerned, enable its courts to recognise legislation of a foreign Sovereign, which by express terms has an extra-territorial effect, then such legislation would be enforced in foreign courts, subject, of course, always to the 'distinctive public policy' of the *lex fori*.<sup>2</sup>

1. Sessional Paper 3 of 1930 at page 3.

2. Cheshire p. 178 et seq.

## The Concept of Thediathettam under the Jaffna Matrimonial Rights and Inheritance Ordinance 58 of 1947

The section of Ordinance 58 of 1947 in regard to the separate property and the *thediathettam* of spouses presents difficulties of interpretation.

Section 6 of the principal Ordinance as amended reads as follows :

“All movable or immovable property, to which any woman married after the commencement of this Ordinance may be entitled to at the time of her marriage, or which she may during the subsistence of the marriage acquire or become entitled to, by way of gift or inheritance or by conversion of any property to which she may have been so entitled or which she may so acquire or become entitled to shall . . . belong to the woman for her separate estate . . .”

There is a similar definition of the separate property of the husband.

Sections 19 and 20 of the principal Ordinance are repealed and the following section is substituted :

“No property other than the following shall be deemed to be the *thediathettam* of a spouse :

- (a) Property acquired by that spouse during the subsistence of the marriage for valuable consideration, such consideration not forming or representing any part of the separate estate of that spouse.
- (b) Profits arising during the subsistence of the marriage from the separate estate of that spouse.

The following section was substituted for section 20 which was repealed :

“On the death of either spouse one half of the *thediathettam* which belonged to the deceased spouse, and has not been disposed of by last will or otherwise, shall devolve on the surviving spouse and the other half shall devolve on the heirs of the deceased spouse.”

It was, as has been seen, the avowed intention of the Commissioners that legislation should be effected in order to make the *thediathettam* of each spouse his or her separate property. It seems, therefore, reasonably clear that the repeal of the earlier word ‘any’ and the enactment in its place of the phrase, ‘all

property' indicates the intention of the legislature to include within the definition of separate property even *thediathettam*. Further, the earlier Ordinance specifically excluded *thediathettam* from its definition of separate property by employing the clause 'except by way of *thediathettam*.' The later Ordinance does not, however, have this excluding clause, showing that *thediathettam* was to be considered separate property.

Again the new Section 20 states that 'one half of the *thediathettam* belonging to a spouse, and which has not been disposed of by last will or otherwise devolves on the other spouse.' Although it is doubtful whether the clause 'belonging to a spouse' is an adjectival clause intended to qualify the word 'half' or the word '*thediathettam*'; nevertheless on a reasonable grammatical construction it would seem that what 'belongs' is the whole of the *thediathettam*. That the intention of the Legislature was not to regard *thediathettam* as joint property, seem to have been indicated by the repeal of the old section 20 which was to that effect.

With the definition in the new Ordinance of *thediathettam*, the question arose, as it should, as to why, if *thediathettam* was included within the concept of separate property, why should there be any reason at all for a definition of *thediathettam* alone. The reasons for this are the following :

- (a) With respect to debts contracted during the subsistence of the marriage by either spouse, *thediathettam* property stood in entirely a different position to that of the separate property.
- (b) In accordance with the old law and the law as it stood under Ordinance 1 of 1911 a spouse was not an heir of either the *thediathettam* or the separate property of the other. But it was the intention of the Amending Ordinance to make them such heirs, in respect of the *thediathettam* belonging to each other.

There is a further argument which is advanced in support of the proposition that even under the Amending Ordinance *thediathettam* was joint property. The argument proceeds thus: in defining *thediathettam* the Ordinance uses the phrase '*thediathettam* of a spouse'; but when dealing with the subject of devolution it uses the phrase '*thediathettam* belonging to a spouse,' and following from this it is suggested that the whole of the *thediathettam* of a spouse need not belong to him or her. The answer to this would be firstly in defining *thediathettam* the correct preposition would be 'of', and it would be ungrammatical to use 'belong'; secondly when the Legislature intended to denote how

much of *thediathettam* was owned by one spouse, it used the word 'belong.' Thirdly it is a well known principle of construction that in cases of doubt, the object and reasons of the enactment, and the debates in parliament may be taken into account. And a perusal of the Report of the Commissioners leaves no doubt at all, that this result was intended. In Sessional Paper of 1937, the Legal Draftsman in his report states that legislation was enacted, in order, to implement the suggestions of the Commissioners on this point.

*Thediathettam* was defined anew, largely to undo the resulting position of *Avitchy Chetty's case*, but there is a reservation in the Amending Ordinance to the effect that the rights of parties as dependent upon Supreme Court decisions (prior to the Amending Ordinance) which followed *Avitchy Chetty's case*, would remain unaffected.

### The Applicability of Ordinance 58 of 1947

The last clause (Section 7) of the Jaffna Matrimonial Rights and Inheritance, Amendment Ordinance 58 of 1947, has given rise to a lively controversy as to whether this Ordinance has a retrospective effect or not. In this connection it is best to remember the vital distinction that exists between the Interpretation Ordinance of Ceylon and the corresponding English Interpretation Act.

Section 38 of The English Interpretation Act 1889 (52 and 53 Vict; Sect. 38 sub-sec. 2) states: "Where this Act or any Act passed after the commencement of this Act repeals any other enactment then, unless the contrary intention appears, the repeal shall not affect any right, privilege, obligation, or liability acquired, accrued or incurred under any enactment so repealed. Interpreting this provision the English courts have held in a series of cases, that it is a fundamental rule of English law that no statute should be construed to have retrospective operation unless such a construction appears very clearly in terms of the Act or arises by necessary or distinct implication.<sup>1</sup> Therefore in England if an Ordinance is to have retrospective effect affecting vested rights it must expressly state so or by necessary implication the court must come to the view that is the only possible interpretation to be placed on the provisions of the statute.

With the provisions of the English Act must be contrasted those of our Interpretation Ordinance (Chap. 2.) Sec. 6 sub-sec. 3 of this Ordinance states: "Whenever any written law repeals either in whole or in part a former written law, such repeal shall in the

1. See Maxwell on Interpretation of Statutes 9th Edition, page 221 et seq.

absence of any express provision to that effect, or deemed have to affected—any offence committed, any right, liberty, or penalty acquired, or incurred under the repealed written law.” Thus it is clear that under the law of Ceylon, if a statute repeals another statute vested rights conferred by the repealed statute cannot be taken away unless the repealing statute expressly makes provision therefor. The wording of the English statute on this matter is different. In England even by necessary implication if the courts come to the view that it was the intention of the Legislature to take away vested rights, such implication could be given effect to. In Ceylon there is no room for implying that vested rights have been taken away, in the absence of an express provision to that effect. This vital distinction must be remembered in constructing Ceylon statutes on this matter.”

The Supreme Court, however, in a series of cases took the view that this Ordinance was retrospective in view of the provisions of Section 7, of the Interpretation Ord. Section 7 reads as follows : “The amendments made by this Ordinance shall not be deemed to affect the mutual rights of parties in the case of *Avitchy Chetty v Rasamma*, D.C. Kurunegala No. 13636, 35 N.L.R. 313, or in any other case decided in accordance with the decisions of the Supreme Court in the first mentioned case at any time prior to the commencement of the Ordinance.”

In the case of *Sachchithananthan v Sivaguru*, 50 N.L.R. 293 it was held that “this Ordinance was retrospective.” The facts of the case were : a wife governed by the Law of Thesawalamai bought the property in her own name, the husband transferred this property to the plaintiffs, the defendants contended that Ordinance 58 of 1947 was retrospective and under the Ordinance, the *thediathettam* of a spouse could only be alienated by such spouse and in view of the repeal of Section 20 of Ordinance 1 of 1911, even the half share that vested in the husband was taken away from him by the operation of the amending Ordinance. The plaintiff, however, argued that Sec. 20 of Ord. 1 of 1911 had already vested the half share in the husband and unless his rights were taken away by express provisions in the amending act, the husband had the right to alienate it. It was held in this case that the Ordinance had retrospective effect and the plaintiffs could have derived no title from the husband. Nagalingam, J., with whom Windham, J., agreed : ‘I am referring to the second line of argument of counsel that under the Interpretation Ordinance of Ceylon, that express provision must be made in new statute to take away vested rights conferred by the repealed statute, I think there is great force in his argument, because though some implied provision may be inferred from the terms of Section 7 of the amending Ordinance no express provision is to be found therein whereby it could be said that any rights that have accrued were intended to be affected. To uphold this contention, however,

would be to ignore the clearly expressed intention of the Legislature that it intended to alter the law as it was expressed in the case of *Avitchy Chetty v Rasamma*. But I do not think that Section 6 of the Interpretation Ordinance can be said to make inroads into the well understood canon of construing statute law that where the dominant intention of the enacting statute is clear the fact that the construction based on such intention takes away vested rights is no ground for construing the statute in a different sense although the consequences may appear unjust and harsh.' It is submitted with great respect that the amending Ordinance nowhere expressly states, that the Legislature intend to alter the law as was expressed in the case of *Avitchy Chetty v Rasamma* with retrospective effect. Even it has said so to take away vested rights by a statute, namely, 1 of 1911, express provisions to that effect must be contained in the amending Ordinance. Nowhere in the amending Ordinance are such provisions found.

In view of what has been stated earlier, that the provisions of the English statute is different from the Ceylon Ordinance the English canon of construction that even by necessary implication a later statute can repeal an earlier statute has no application.

The next case where this matter was considered is the case of 52 N.L.R. 62 *Kadirithamby v Subramaniam*. In this case, the defendant, a Jaffna Tamil, governed by the Thesawalamai, purchased a land by deed of 1934, during the subsistence of the marriage. He was married to plaintiff's sister in 1931 and the wife died in 1940 the plaintiff contended that in view of sections 20 and 21 of 1 of 1911 the half share of the rights bought under that deed had vested in his sister, and had devolved on him in the year 1940 as an heir of the sister. The Supreme Court, however, held that the amending Ordinance was retrospective and the plaintiff got no rights. In this case Justice Nagalingam sitting alone stated that he could not differ from the view that had earlier been laid down, among other reasons. In the course of the argument reference was made to the *Sothinagaratnam v Aki-landanayaki* S.C. 53 D.C. Jaffna, 3092, S.C. minutes of 3-11-48 where a similar case was argued and a contrary view taken by 2 judges. His Lordship, however, refused to regard it as binding, as the appeal was dismissed without a judgment.

The question was considered again in *Chellapah v Sinnadorai* 53 N.L.R. 121 (1951) by three judges. In this case Nagalingam, J. and Swan, J., held, Basnayake, J., dissenting held that Ordinance 58 of 1947, had a retrospective operation. This matter was ultimately referred to a Divisional Court consisting of five

judges, which overruled the decisions stated earlier, and held that where a spouse who was governed by Jaffna Matrimonial Rights and Inheritance Ordinance died before Ord. 58 of 1947 came into operation, leaving acquired property, then the question of what is acquired property and how it would devolve should be determined by the provisions of Ord. 1 of 1911, and not by resorting to the provisions of 58 of 1947. *Akilandanayaki v. Sothinagaratnam*, 53 N. 385, (Full Court, Nagalingam, J., dissentient). 46 C.L.W. 104, *Kandavanam v Nagamma*.

In 120 Intly 1953, D. C. Jaffna 999 S. C. Minutes 26-11-53, the question of the applicability of Ord. 58 of 1947, was considered, when the property was acquired before this Ordinance came into operation, but the spouse who acquired it died after the date when this Ordinance came into operation. It was held that the Ordinance had no retrospective effect and that half of such acquired property vested in each spouse. It is submitted that in view of section 20 of Ord. 1 of 1911, the moment a person governed by 1 of 1911, the title to half vested in his spouse, and as Ordinance 58 of 1947 is not retrospective such vested rights cannot be taken away, the resulting position would be that on his death, only the half of the acquired property that belonged to him devolved according to the rules of section set out in Ordinance 58 of 1947. So that the wife had 3/4ths of the acquired property and the other quarter devolved on the husband's heirs. It is true, no doubt, that the draftsman never intended this consequence but this should be the only view on the proper construction of the relevant provisions of Ords. 58 of 1947 and 1 of 1911. In all probability the draftsman never contemplated the case of a spouse, who acquired property before the operation of 58 of 1947 and who died after that Ordinance came into force.

The case, however, of a spouse who acquired property and died after Ordinance 58 of 1947 came into force should also be considered. In such a case sections 20 and 21 of 1 of 1911 would have no application. Sec. 5 of 58 of 1947 which amends section 19 of the principal Ordinance, states that no property other than the following shall be deemed to be the *thediathettam* of a spouse. (a) property acquired by the spouse during the subsistence of the marriage for valuable consideration, such consideration not forming or representing any part of the separate estate of that spouse. (b) profits arising during the subsistence of the marriage from the separate estate of that spouse.

Section 6 of 58 of 1947, which repealed section 20 of the principal Ordinance substituted in place of the repealed section the following words: 'On the death of either spouse, one half of the *thediathettam* which belongs to the deceased spouse and has not been disposed of by last will or otherwise shall devolve on the surviving spouse, and the other half shall devolve on the heirs of

the deceased spouse.' This is an ill-drafted provision, which is so ambiguous and difficult to interpret, that one would be justified in looking at the objects and reasons of the legislature for enacting this Ordinance<sup>1</sup> or here it is stated that there should be no community of property between the spouses in the acquired property and that it should be regarded as the property of the spouse in whose name it was acquired and after the death of the spouse half of such property should devolve on the surviving spouse. The abolition of sections 20 and 21 of 1 of 1911 and the language used in the new amending Ordinance 58 of 1947 leads one to the conclusion that if a person governed by the Law of Thesawalamai acquired property after the operation of that Ordinance and then died, the whole of it belonged to that spouse which he or she could have disposed of it by last will, but half of whatever that was left of such property devolved on the surviving spouse, and the other half devolved on his heirs.

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<sup>1</sup> Ceylon Government Gazette of 22



## APPENDIX II

# NOTES ON SOME RECENT DECISIONS ON THESAWALAMAI

In this article we propose to discuss some of the recent decisions on Thesawalamai.

### Applicability of Thesawalamai

In the case of *Kandiah v Saraswathi* 1951, 54 N. 137 : "The question was considered whether there is any presumption of law that a Tamil who happens to reside in Jaffna is governed by the Law of Thesawalamai. The Thesawalamai only applied to Tamils having a Ceylon domicile and a Jaffna inhabitancy."<sup>1</sup> The applicability of Thesawalamai being in derogation of the Common Law, the burden of proving that Thesawalamai applies is on those who assert it. This view has been stated in earlier cases.<sup>2</sup> In the case of *Kandiah v Saraswathi*, Dias, S.P.J., in a dictum stated that there is no presumption of law by which a court can say without proof that the Thesawalamai applies to a particular Tamil who happens to reside in the Jaffna peninsula. In the absence of such a presumption the burden of proof is on the party who contends that a special law displaced the general law in a given case, to prove the applicability of such special law. It is submitted with respect that this view is correct on principle and supported by authority.<sup>3</sup> The principle that when Thesawalamai is silent the principles of Roman-Dutch Law should be followed, was adopted in *Sabapathipillai vs Sinnetamby* 1948, 50 N. 367 (a pre-emption case).

### Marital Rights

Under the Law of Thesawalamai a married woman had to be assisted by her husband in a court of law, and therefore she could not bring an action nor can an action be brought against her alone. In *Piragasm v Mariamma* 1952 55 N.L.R. 114, a married woman governed by Thesawalamai instituted an action and her application for sanction of court to sue alone, unassisted by her

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1. The Law of Thesawalamai by H. W. Tambiah, p. 57.  
2. *Somaunsderampillai v Charavanmattu*, 1942 44 N.L.R. 1.  
3. The Law of Thesawalamai by H. W. Tambiah, page 67.

husband, was made with the presentation of the plaint but the order of the court granting dispensation to sue alone was granted at a later date. It was held that the action was in order, on the principle that a plaint takes effect from the date it is filed. The further question was considered whether moneys brought by the husband to the credit of the wife in a maintenance case could be seized by a creditor and this was answered in the affirmative.

Special statutory provisions have been provided by the Jaffna Matrimonial Rights and Inheritance Ordinance Chap. 48, to settle disputes arising between any husband and wife, with regard to the separate property of the wife by adopting the summary procedure in civil courts. For the adoption of this procedure it is necessary to maintain the status of a wife, both at the time of the filing of the action and also till the termination of the proceedings. In *Thangavadivelu v Inthiravathy*, 53 N. 369. (1950) proceedings by way of summary procedure under section 10, of the Jaffna Matrimonial Rights and Inheritance Ordinance was instituted by the wife against the husband for the return of certain jewellery, but while inquiry was proceeding, a decree was entered in a divorce case dissolving the marriage between the spouses. It was held that as the plaintiff had ceased to be the wife of the defendant during the pendency of the inquiry she lost her status to continue the proceedings. The general rule that the claims of a litigant are to be ascertained at the commencement of the action was held not to be applicable to this case.

An interesting question arose in a case of as to whether a husband governed by the law of Thesawalamai could bring an action against a person to whom the wife had donated the property for a declaration that the transfer was null and void on the ground that his written consent was not obtained. He had no proprietary rights over the property, neither did he join the wife in this act. The Supreme Court held that he could bring such an action although the wife was not a party.<sup>1</sup>

### Dowry

In *Candappa v Veeragathy*, 53 N.L.R. 119, the question arose as to whether a gift given after marriage could be regarded as dowry, which made the recipient of the gift, to forfeit a right to the inheritance of the parents, in accordance with the well known rule of Thesawalamai that a dowered daughter was prevented from claiming inheritance from her parents, as the law stood before, 1 of 1911 was enacted. It was held that a dowry cannot be given after marriage and that dowry could only be given by a

1. Tambiah. p. 131, etc.

*doti ola* executed at or before the marriage. The expression dowry as used in Thesawalamai excluded gifts made after the marriage. But a subsequent judgment<sup>1</sup> dissented from this view and held, that the true principle underlying the question whether a subsequent gift by a parent to a married daughter operated and was intended to operate as a donation *simpliciter*, or as a postponed fulfilment of the earlier obligation to provide her with a dowry was essentially a question of fact. If the gift was intended as dowry then it did not matter whether it was given at the time of marriage or after marriage. It is submitted with respect that the later decision correctly sets out the principles of Thesawalamai.<sup>2</sup>

### The diathettam

In *Velupillai v Manonmany* 1951, 53 N.L.R. 247, the question arose whether a wife who was subject to Thesawalamai and who was married before 1911, could claim the property acquired by the husband after her separation, as acquired property. She had eloped with another man, and was living in separation when this property was acquired. It was held that such property was the separate property of the husband. The principle laid down in this case is in accord with previous decisions.<sup>3</sup> The decision might have been otherwise if the parties were married after 1 of 1911 and before Ord. 58 of 1947 came into operation. In such cases the wording of Sec. 19 of the Jaffna Matrimonial Rights and Inheritance makes it quite clear that any property acquired for valuable consideration during the subsistence of the marriage is *thediathettam*. It is only death and divorce that would terminate the status of married existence. After Ord. 58 of 1947 came into force, we have already expressed the view, that the *thediathettam* of each spouse belongs to the spouse in whose name it is so acquired. But on a similar set of facts under the later Ordinance such property would be acquired property provided it came within the definition of section 5 of 58 of 1947.

In the case of *Sooramma v Amirnatherpillai*, 950 (53 N.L.R. 334) the Supreme Court interpreted the meaning of the words 'profits arising during the subsistence of the marriage from the property of any husband or wife,' which occur as the second limb of section 19 Chapter 48 defining *thediathettam*.

The facts were that out of the dowry money of the wife 52 shares were bought in a company in the name of the husband. The nominal capital of the company was subsequently raised and consequently an additional number of 5 shares were allotted

1. *Thesidar v Ganesalingam* 1952, 55 N 14.

2. *Tambiah*,: Laws and Customs p. 170, 4 *Thambyah Reports* p. 176, *Murugesar*, *Dictum of Grenier*, J.

3. *Chellapah et el v Waliamma et el* 1923, 1 T L.R. 276, *Muthukrishna on Thesawalamai* p. 161

to the husband without the payment of any consideration. But the 45 shares did not represent any part of the profits of the company. It was held that the additional 45 shares were the sole property of the wife and were impressed with a trust in her favour.

But where the profits are used for the purpose of buying the shares then the issue would have been different.

### Inheritance

In *Annam v Kadiruvelupillai*, 1948, 50 N.L.R. 49 an interesting question arose. Where a woman subject to Thesawalamai died leaving a mother and cousins on the father's side, the property derived from the father's side devolved on the cousins or on the mother. Ordinance 1 of 1911 divided property into property derived from the father's side and property derived from the mother's side for purposes of inheritance. It set out detailed rules regarding the devolution of property derived from the father's side. It was held that the cousins on the paternal side inherited property to the exclusion of the mother. It is submitted that this decision is in accordance with sections 27 and 30 of 1 of 1911.

### Pre-emption

In the case of *Saravanamuttu v Vallipuram* 50 N.L.R. 280, it was held that a person who takes a transfer of a share from a co-owner, subject to the right of *jus retractus* in favour of such co-owner, is himself a co-owner within the meaning of the Thesawalamai Code to enable him to bring a pre-emption action.

In 51 N.L.R. 500 *Thangammah v Kanagasabai* the Supreme Court considered the meaning of the term cause of action, in pre-emption cases. They held that cause of action in a pre-emption action is the execution of the deed of sale in violation of the right of the pre-emptor and hence there was no misjoinder of parties and causes of action, when two of the pre-emptors who were jointly entitled to a quarter share of the land, brought one action against the transferors and transferees claiming pre-emption.

As pre-emption cases are land cases the doctrine of *lis pendens* applies to such cases. Hence, in *Saravanamuttu v Murugesu* 1949, 52 N.L.R. 474, it was held that the doctrine of *lis pendens* applied to pre-emption cases in respect of decrees entered in two competing pre-emption suits. In *Velupullai v Palendra* 53 N.L.R. 472, 1951 the Supreme Court took the view that in pre-emption cases the pre-emptor should establish by positive proof that had he in fact received the requisite notice that he would and could

have purchased the property himself within a reasonable time rather than permit it to be sold to a stranger. This view was followed in *Ramalingam v Mangaleswary* 1952 55 N.L.R. 133. This rule is an extension of the existing law of pre-emption. It is submitted that this rule is both equitable and sound. It is futile for a person who wants to sell his share to give notice to persons who are not prepared to buy it or who do not have the means to provide the consideration for such a transfer.



# INDEX

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## Adoption

- Cuttacolam Pattu, 74
- Chetties of Colombo, 115
- Cottiar Pattu, 71
- Hindu Law, 144
- Tambulgamam Pattu, 44
- Thesawalame, 44

## Barter, 54

## Batticaloa

- Customary Laws, 21, 89-92
- Customary Laws of Mukkuwas  
89-92
- Customary Laws of Vellalas, 89

## Bellale—See Castes

## Brahmins—See Caste System

## Barbers—See Caste System

## Calpenty

- Customary Laws of, 106
- Marriage Customs of the Tamils  
of, 101-105

## Caste System

- Evolution of, 153
- Jaffna, 56-61
- Kandyan, 147
- Mannar, 56-61
- Mukkuwa, 78
- Puttalam, 96-99

## Castes

- Agampodian, 61
- Barbers, 58
- Bellales, 97
- Brahmins, 56, 98
- Chandas, 60, 97
- Chetties, 60, 96
- Chiviars, 58
- Fisher, 58
- Idayar, 61
- Kaddeyars, 97
- Kaikular, 61
- Kammalar, 59
- Koviars, 59

## Kusavar, 58

## Madapallis, 57

## Maravars, 61

## Nallavars, 59, 97

## Odder, 61

## Pallas, 60

## Parayars, 60

## Parruas, 97

## Seniyan, 61

## Shatriyas, 98

## Sutras, 99

## Thanakarars, 59

## Turumbars, 60

## Vaddaikattar, 61

## Vaisiyas, 98

## Vaniyar, 61

## Vellalas, 57

## Wagayas, 97

## Wanniar, 61

## Washermen, 58, 97

## Cattle

### Hire, 49

### Mortgage, 49

### Sale, 50

## Chandas—See Castes

## Cheedanam—See Dowry

## Chetties

### Colombo, 109, 112, 118

### Puttalam, 93, 96, 109

### Contracts of, 49

### Coromandel Coast, 95

### Cottiar Pattu, 70-71

### Customary Laws of, 19-21, 70-109

### Hindu Law compared with, 121-127

### Kandyan Law compared with, 141-147

### Marumakattayam Law com- pared with, 129-132

## Chiviar—See Castes

## Cholas, Invasion by, 4

- Colonisation of Jaffna, 7-10
- Customary Laws  
 Province of Jaffna, 19  
 Puttalam, 19  
 Batticaloa, 21  
 Trincomalie, 20
- Division of Property, 36ff
- Divorce, 94
- Dowry  
 Cuttacolam Pattu, 70  
 Cottiar Pattu, 70  
 Tambulgamam Pattu, 71  
 Thesawalamai, 37-38  
 Recent Decisions, 172
- Gifts  
 Cuttacolam Pattu, 73  
 Cottiar Pattu, 70-71  
 Tambulgamam Pattu, 72  
 Thesawalame 92
- Guardianship  
 Thesawalamai, 43
- Idayar—See Castes
- Hire  
 Cottiar Pattu, 71  
 Tambulgamam Pattu, 72  
 Thesawalamai, 49
- History  
 of Tamils of Ceylon, 1-5  
 „ Kingdom of Jaffna, 6
- Inheritance  
 Cuttacolam Pattu, 74  
 Chetties, 114  
 Cottiar Pattu, 70  
 Hindu Law compared with, 123  
 Kandyan Law compared with, 146  
 Marumakattayam Law compared with,  
 Mukkuwa, 47, 83-85  
 Parawa, 118  
 Puttalam, 95  
 Slaves, 51  
 Tambulgamam Pattu, 71  
 Thesawalamai, 39ff  
 Recent Decisions, 174
- Jaffna  
 Colonisation of, 7-19  
 Kingdom, 6-15
- Kings, 10ff  
 Laws of, 19  
 Province of, 19ff
- Jaffna Matrimonial Rights  
 Inheritance Ordinance No. 58  
 of 1947, 164, 166.
- Johnstone Manuscripts, 92
- Joint Family System,  
 Chetties of Colombo, 112  
 Hindu Law, 122, 127  
 Kandyan Law, 145  
 Thesawalamai, 38, 39
- Kalinga invasion, 5
- Kandyan Law,  
 Adoption, 144  
 Caste System 147  
 Customary Law of the Tamils  
 and Kandyan Law, 141  
 Fundamental Concept, 144  
 Joint Family System, 145  
 Inheritance, 146  
 Land Tenure, 147
- Kammalars—See Castes
- Kings of Jaffna, 10-15
- Kingdom of Jaffna, 6-15
- Koviars—See Castes
- Kusavar—See Castes
- Land Tenure,  
 Cuttacolam Pattu, 73  
 Kandyan, 146  
 Tambulgamam Pattu, 27  
 Trincomalee, 68  
 Leases, 54
- Leases  
 Cottiar Pattu, 71  
 Thesawalame, 54  
 Tambulgamam Pattu, 72
- Loans  
 Cuttacolam Pattu, 74  
 Cottiyar Pattu, 71  
 Parawas, 119  
 Tambulgamam Pattu, 72  
 Thesawalamai, 54
- Maddapallis—See Castes
- Malaimanam, 104



- Manuscripts of Johnstone, 92
- Marriage
- Calpenty, 101ff
  - Cuttacolam Pattu, 72-73
  - Chetties, 114
  - Cottiar Pattu, 90
  - Mukkuwas, 77, 86
  - Parawas, 119
  - Karayars, 104
  - Kammalar, 104
  - Puttalam, 93, 101ff
  - Slaves, 51
  - Tambulgamam Pattu, 71
  - Thesawalamai, 54
  - Recent Decisions, 171
  - Vellales 101ff
- Marumakattayam Law
- Marumakattayam Law, 129
  - Marumakattayam Law & Mukkuwa Law, 129
  - Marumakattayam Law & Thesawalamai, 132
- Matrimonial Rights and Inheritance Ordinance 1 of 1911, 161
- Maternal Muthusom—See Mukkuwa Law
- Mortgage
- Thesawalamai, 47ff
  - Cottiar Pattu, 71
  - Redemption, 48
- Mukkuwas
- Calpenty, 80
  - Caste System, 78
  - History of the Makkuwas of Puttalam & Batticaloa, 75
  - Dress of, 77
  - Marriage Ceremonies of, 77
  - Succession, 78
  - Tribal organisation, 77, 150
  - Tribunals of, 76
- Mukkuwa Law
- Evolution of, 150ff
  - Johnstone Manuscripts, 92
  - Maternal Muthusom, 81, 83
  - Muthusom, 80
  - Origin of, 90
  - Paternal Muthusom, 81
  - Succession, 80, 83-88
  - Sources of, 91
  - Theddam, 80
- Mullativu, 30
- Muthusom—See Mukkuwa Law Thesawalamai
- Nagel—Administration by, 65
- Orders—The Seventy-six of the Dutch, 32
- Otty
- Laws & Customs of Cottiar Pattu, Tambulgamam & Cuttacolam Pattu, 71
  - Thesawalamai, 47
- Paddy
- Cuttacolam, 74
  - Cottiar Pattu, 71
  - Tambulgamam Pattu, 72
  - Pandyan influence, 3
- Pallas—See Castes
- Parawas
- History of, 116, 117
  - Loans of Money, 119
  - Marriage Customs of, 119
  - Slavery among, 119
- Parayas—See Castes
- Pawn
- Thesawalamai, 49
- Planters' rights, 46
- Polygamy, 94
- Pre-emption Animals, 50
- Cuttacolam Pattu, 72
  - Decisions, 174
  - Roman-Dutch Law, 138
  - Tambulgamam Pattu, 71
  - Thesawalamai, 49
- Province of Jaffna, 19, 22ff
- Purchase—See Sale
- Puttalam
- Castes, 98ff
  - Chetties, 109
  - Custom, 19, 93
  - Laws of, 19, 93
  - Marriage, 101ff
  - Mukkuwas, 75, 95ff
  - Thesavalame influence, 30

- Redemption—See Mortgage
- Roman-Dutch Law  
 Influence on Customary Law of Tamils, 136ff  
 Jus-Retraetus, 138, 139  
 Pre-emption, 138
- Sale  
 Cuttacolam Pattu, 73  
 Cottiyar Pattu, 71  
 Tambulgamam Pattu, 72  
 Thesawalamai, 49-50
- Shatriyas—See Castes
- Slavery  
 Cuttacolam Pattu, 74  
 Emancipation of, 52, 53  
 Parawas, 119  
 Tambulgamam Pattu  
 Thesawalamai, 50-52
- Society  
 Organisation of the Tamils of Ceylon, 149ff
- Suretyship, 53
- Taxes, 48
- Thediathettam, 158-166  
 See also Thesawalamai
- Trincomalee  
 Cuttacolam Pattu, 70  
 History, 67  
 Land Tenure, 68
- Lands & Customs, 70ff  
 Tambulgamam Pattu, 71
- Thesawalamai  
 Adoption, 44  
 Applicability, 27-30  
 Barter, 54  
 Code, 36ff  
 History of, 22-27, 30-31  
 Dowry, 37  
 Guardianship, 43  
 Joint Family, 38  
 Hire, 49  
 Pawn, 49  
 Partition, 38  
 Planters' rights, 46  
 Mortgages, 47  
 Redemption of Mortgage, 47-48  
 Sale, 49  
 Slavery, 50ff  
 Succession, 39ff
- Tribal organisation of Tamils, 149ff
- Trincomalee  
 Cuttacolam Pattu, 70  
 History, 67  
 Land Tenures, 68  
 Laws & Customs of, 70ff
- Vanniar District  
 Administration by Nagel, 65  
 History, 67  
 Laws & Customs, 66
- Vellala—See Castes



