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REPORT

OF THE

Malabar Marriage Commission

WITH

ENCLOSURES AND APPENDICES.

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„ B.—Memorandum by M.R.Ry. Rama Varma Tamburam Avargal.

„ C.—Memorandum by M.R.Ry. O. Chandu Menon Avargal.

„ D.—Memorandum by M.R.Ry. Mundappa Bangera Avargal, B.A., B.L.

APPENDIX I.—Extracts relating to Marumakkathayam Sexual usages Collected from Official Reports and published Works.

„ II.—List of 474 persons to whom Interrogatories were sent.

„ III.—Sixty-four selected answers, with list.

„ IV.—Depositions of 121 witnesses examined *viva voce*, with list.

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„ VI.—Extract from the Diary of the Commission.

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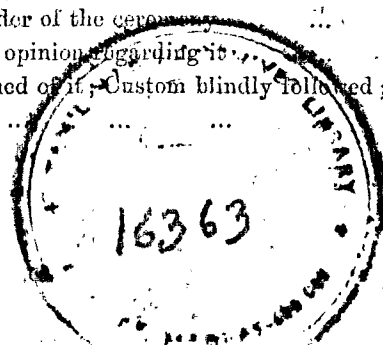
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 „ IV. Evidence of 121 witnesses examined *visâ voce*, with list.
 „ V. Table of Marumakkathâyam castes.
 „ VI. Extracts from Diary of Commission.



To

THE CHIEF SECRETARY TO GOVERNMENT,

Fort St. George, Madras.

SIR,

We, the undersigned Members of the Commission appointed by G.O., dated 4th May 1891, No. 25, Legislative, have the honour to submit the following Report:—

2. It seems unnecessary to recapitulate the circumstances leading to the appointment of the Commission, further than to say that the starting point is the proposal “to provide a form of marriage for Hindus following the Marumak-kathâyam law.”

3. *Object of the Commission.*—The object of the Commission, as defined by the Government of India (G.O., 7th April 1891, No. 13, Legislative), was to provide evidence,

- as to the customs connected with Hindu marriages in Malabar,
- as to whether the proposed changes are desired by the majority of the classes subject to the Marumakkathâyam law,
- or are essential for the protection of the minority:
- Whether legislation is expedient,
- and if so what form it should take:
- Whether the measure would affect the religion, or the religious rites and usages, of the Marumakkathâyam classes.
- What would be its effect upon the people of the neighbouring States of Cochin and Travancore,
- and upon the people governed by the Aliyasantâna law.

4. *Procedure followed by the Commission.*—The procedure followed by the Commission to collect the necessary material for a report is, described below, in the words of the President:—

“It was our anxious desire to render the information which we had to collect, full and comprehensive. With this object a set of questions was framed about one month before the Commission visited Malabar, and replies were invited from representative men, selected by Mr. Winterbotham in communication with his Tasil-dars, from the official and the educated classes, from representatives of influential families or Tarawâds, in the interior, and from the members of the Bar in the District. We also invited representations from the several Kovilakams or families of the ancient rulers of this part of the country, and from Nambutiris whose opinions on matters of caste are considered to be authoritative. Before questions were framed by the Commission, Mr. Winterbotham had invited information from the Dewans of Travancore and Cochin and from several intelligent and educated men in those States through the British Resident. In the result, interrogatories were sent on the whole to 474 persons, of whom 322 sent in replies. (*Vide* Appendix II.)

Another arrangement made in view to obtain comprehensive knowledge and to secure an expression of public opinion throughout the District, consisted in inviting a few leading men from every Taluk to appear before the Commission and to favour it with their views as to the expediency of the proposed legislation and as to the best mode of regulating and improving sexual usages among persons subject to the Marumakkathâyam law. We deemed it advisable to adopt this procedure, *first*, to supplement and elucidate the written answers in cases in which it was desirable to do so, and to obtain a knowledge of special local customs; *secondly*, to enable the Government to see how far local opinions are in favour of the proposed, or any other, form of legislation regarding marriage, and on what points they vary in different parts of the District and among different classes of people. In order to economise our time and prevent public inconvenience, we intended also to hold a Conference wherever a large number of persons attended, and to record the representations which they desired to make in connection with the Bill. For the purpose of enabling the people readily to come forward and to submit their views, it was arranged that the Commission should sit before the outburst of the South-West Monsoon at Cannanore and Tellicherry, and then visit Calicut, Shoranore and Palghât. At the several stations mentioned above, we examined every one who appeared to give evidence in compliance with our request. In none of the stations which the Commission visited, was the attendance so large as to suggest the necessity of substituting a general Conference for individual examination. On the other hand the attendance on some days was so meagre that the examination of witnesses was over early in the afternoon, and that was the case for several days at Cannanore and Tellicherry and on the last day of our sitting at Calicut and Palghât. Another part of our procedure consisted in announcing in the District Gazette our desire to consider and record any representation which organised literary and other Societies, or persons who had not been specially invited, wished to submit for or against the proposed legislation. We received representations from one Society (The Travancore Malayâli Association), and from twelve meetings held in several portions of the District. We also received, through Government or direct, 38 petitions, of which 13, signed by 2,723 persons, were in favour of legislation, and 25, signed by 2,131 persons, were against it. Opportunity was given to such of the Native Commissioners as belong to Malabar to mention to Mr. Winterbotham the names of persons who might in their opinion be specially requested to give evidence. It seemed to me that in an enquiry like the one which the Commission had to institute, it would not be amiss to get an insight, if practicable, into the sentiments of respectable Nayar ladies competent to form and express an opinion regarding the necessity for a marriage-law. It was not, however, practicable to do anything in furtherance of this object in North Malabar where the Nayar women are notably conservative and live in privacy in their homes,—a privacy akin to the close seclusion which is observed by Nambutiri ladies. Though women in South Malabar are allowed greater freedom, and their intercourse with men of respectability is not unduly restricted, yet I understood that it was not in their power to express their opinions otherwise than through their Kâranavans and husbands, and that it was difficult to ascertain their genuine feeling. I may mention that shortly before the Commission was about to dissolve I received four petitions, three signed by 245 ladies, alleging that legislation was necessary, and the fourth, signed by 387 ladies, objecting to any change in the existing usage. They tend to support the view

that the ladies follow more or less the lead of their male relatives. In addition to these sources of information the Commissioners had before them the opinions of several European writers who had resided for sometime amidst the people subject to the Marumakkathâyam usage and made their home-life a subject of special study. Appendix I. contains copious extracts to facilitate reference to those opinions. We had also before us the very interesting and instructive account of the Malayâli races given by Mr. Logan in his Manual on Malabar; and the opportunities which he had of acquiring a knowledge of local usage during his stay in the District for about 20 years, and the keen interest and zeal with which he endeavoured to acquire such knowledge, impart a special value to his description of domestic and social life in Malabar. Further, we had before us the opinions of the Committee, consisting among others of Mr. Logan, Mr. Wigram, Mr. Sankara Nair, and the late Raja Sir T. Madhava Row, the distinguished Minister of Travancore. After recording evidence at the several centres in the District and tabulating the answers to our interrogatories, the Commissioners discussed the Bill in detail and prepared memoranda embodying their opinions and the reasons for the same. The memoranda and the resolutions recorded at the several meetings held at Calicut form the basis of the report which Mr. Winterbotham has kindly undertaken to prepare.

“Having described the procedure which we followed, I shall make a few remarks with reference to the material available to the Commission. As regards the information elicited regarding marriage customs, it is reliable; but it must be accepted with caution so far as it bears on the extent to which polyandry still lingers in parts of South Malabar and influences the relation of the sexes. Testing the recorded evidence by what I have heard outside the Office during my tour, from disinterested local officials and landholders, I think the extent is understated. It was a matter about which it was not possible to subject the witnesses to a searching cross-examination without giving offence to them and to the local community. The procedure of the Commission was throughout so arranged as to be sympathetic and conciliatory and neither aggressive nor offensive. It was suggested to us that the Moplas in Ponnani and Valluvanad would give us a different version, but having regard to the irritation and excitement which the proceeding might occasion, we assumed the responsibility of declining to avail ourselves of this source of information. There is another fact which I must submit for the information of his Excellency in Council. A majority of representative men in the District have not come forward to lay their views before us in spite of every effort to direct their attention to the object of our enquiry. This peculiarity attracted my attention at each of the stations visited, and I endeavoured to ascertain the cause from several Tasildars and District Munsifs and a few influential landholders who happened to see me. I cannot attribute this to mere indifference, for the widest publicity was given to the nature of our enquiry, and there were traces of an impression on the public mind that the proposed legislation would break up the Marumakkathâyam Tarawâds. I find also from the recorded evidence that many witnesses, both educated and uneducated in English, assail the provision regarding the succession of wives and children to self-acquired and separate property as inaugurating a double system of inheritance in one and the same family and closing one important source from which Tarawâd property has hitherto been recruited. The general reluctance to come forward to give evidence appears to me to be a silent protest against any change of the

Marumakkathâyam usage.* It will be remembered that the people were free either to respond or not to respond to our invitation, and that we could only do our best to ascertain the public feeling as it actually exists, and give every one an opportunity of saying what he desired to say."

5. In other words this Commission was under all the disadvantages which generally attach to Commissions as investigating bodies. We had no power to compel the attendance of witnesses, and it was alike impolitic and impracticable to subject the witnesses to any examination as to their own personal experience in matters connected with the softer sex, or with family life. Any attempt to put witnesses through such an ordeal would have operated to prevent any one from coming forward.

Neither was it desirable to examine witnesses from the numerous castes following the ordinary law of inheritance, and living side by side with the Marumakkathâyam people. Any evidence unfavourable to the latter would have exposed a witness to the hostility of his Marumakkathâyam neighbours; and where this apprehension did not prevent disclosure, the result would have been to rouse caste antipathies, and to stir up bad blood.

Thus, in considering the evidence taken by the Commission, it should be borne in mind that the witnesses were not on oath, nor subjected to cross-examination, and that they were under a strong natural bias to suppress unpleasant facts, and to reveal the bright side only of the picture. To supply the shading required for a truthful representation, it would be necessary to hear what their neighbours of other castes had to say; and such an enquiry, as already explained, would have produced far more evil than good.

When we find witnesses (especially those of North Malabar) asserting that the Marumakkathâyam people require no law to curb vicious propensities, and that by both men and women, a standard of chastity and conjugal fidelity is maintained in which there is no room for improvement, we may accept the picture subject to the above reservation, *viz.*, that all the shade is left out.

6. Of the 322 sets of answers sent in, it was obviously impossible, and unnecessary, to print the whole. After careful perusal 64 answers have been printed, as sufficiently illustrating all shades of opinion (Appendix III.). The selection was not an easy matter, but the choice was determined either by the intrinsic merit of the essay, or by the prominence of the writer in respect of rank, position or education.

The Commission examined 121 witnesses *viva voce*, and their evidence, printed in full, forms Appendix IV.

7. In treating of the subject of marriage, a brief description of the Marumakkathâyam classes, and of their caste and family-system, in theory and practice, cannot be omitted, though to all familiar with the subject much of the disquisition may appear tedious and superfluous.

It is unfortunate that the tabulation of the results of this year's Census has not progressed far enough to enable the Commission to avail themselves of the information it would afford.

* NOTE.—We do not concur in this opinion. We attribute the reluctance to a natural dislike to be questioned.

From the Table of Malabar Castes, printed at page 340, Vol IV., of the Census Report of 1881, all those known, or believed, to be Marumakkathâyam have been extracted, and are shown in Appendix V., attached to this Report.

At the Census the particulars of castes were necessarily arrived at by accepting the information given by the people themselves. Each person was entered as belonging to such caste as he affirmed to be his. Persons of the same caste may have described themselves by the general term "Nayar," or as belonging to a particular division, or sub-division, of the Nayars. The numbers in such divisions, or sub-divisions, therefore may not, and in many cases certainly do not, at all represent their true numerical importance. There is also considerable difficulty in identifying some of the names, and it is therefore not possible in all instances to be certain which law of inheritance the caste is under.

From this statement the number of the Marumakkathâyam Hindus in Malabar would appear to be as follows :—

	Males.	Females.
Kshatriyas, Nayars and the allied castes	233,155	237,174
Marumakkathâyam Tiyans (North Malabar)	108,639	111,806
Marumakkathâyam Mukkuvans (ditto)	2,835	2,805
Total	344,629	351,785

8. It is impossible to arrive at anything like an accurate estimate of the number of Marumakkathâyam Tiyans and Mukkuvans. It may be stated broadly that the Tiyans and Mukkuvans of the three Northern Taluks,—Chirakkal, Kottayam and Kurumbranad,—are Marumakkathâyam, and that throughout the rest of the District they are Makkathâyam; but there is a sprinkling of Marumakkathâyam Tiyans sojourning in South Malabar and the Wynad, and of Makkathâyam Tiyans in North Malabar, and the means of correctly ascertaining how many are under each of the two rival systems of inheritance, do not exist.

The number of Tiyans and Mukkuvans in the three Northern Taluks has accordingly been taken as representing the number of Marumakkathâyam Tiyans and Mukkuvans, and no nearer approximation can be arrived at.

9. It may be taken that the total Hindu Marumakkathâyam population in 1881 was about 696,414, of whom 470,329 were Nayars, and 226,085 Tiyans and fishermen. The total population of the District in 1881 was :—

	Males.	Females.
Hindus	821,403	844,868
Mussulmans... ..	327,620	324,578
Christians	22,032	21,164
Others	219	151
Total	1,174,274	1,190,761
Grand Total	2,365,035	

Thus the Marumakkathâyam Hindus were to the remaining population in a minority of 696,414 to 1,668,621, or of forty-two to a hundred,—or rather under 30 per cent.

10. *The Marumakkathâyam Classes.*—Much valuable information regarding the Marumakkathâyam Hindus (Nayars and Tiyans) is contained in the Malabar

District Manual, and in the Article on Malabar in the Imperial Gazetteer. It is undesirable to lengthen this Report by quotations from authorities so well known and readily accessible, and it is only necessary here to point out certain peculiarities which bear on the question of marriage.

11. In the first place all sexual intercourse between the Nayers and Tiyanis is absolutely prohibited.

A Nayar cannot keep a concubine not of the Nayar caste without exposing himself to social excommunication.

12. In the next place it should be noted that the Nayars have split themselves up into scores of sub-castes, some of which by common consent are graded in a settled order of caste-precedence, whilst others dispute their place in the list, each claiming its own caste superiority.

There are amongst the Nayars (in the words of the author quoted at page 12, Appendix I.) "numerous sub-divisions so nice and capricious that the men and women of one caste will not eat meals prepared by the members of another, nor sit for eating together in the same row." Caste precedence amongst these sub-divisions is a burning question, and as there is no authority to settle disputes as to precedence, the first result of such a dispute is that the disputing divisions will not eat together, and this leads to a cessation, and ultimately to a prohibition, of intermarriage.

13. There are many methods of classification adopted by the Nayars which the list of castes in Appendix V. does not exemplify. The higher class of Sudras are called *Kiriyam* Nayars. *Kiriyam* is the (Tadbhavam) corruption of the Sanskrit *Graham* = a house. Thus the *Kiriyam* Nayars are Stewards and other *house*-Nayars, who could cook for all those who followed out-door occupations. Each of the petty Rajahs, who ruled Malabar at the time of Hyder's invasion, had his Nayar adherents (*Chârnavar*), and these were divided into *Agatha* (= inside) and *Puratha* (= outside). The *Agatha* performed all menial functions within the palace. The *Puratha* were the warriors and armed retainers, exempted from menial service. Every Kovilagam in Malabar has still its *Agathachârna* and *Purathachârna* adherents, who in theory should look up to the head of the Kovilagam as supreme in all caste matters. Another large division in South Malabar style themselves *Sudra* Nayars. They are independent of the Kovilagams, and are in theory the servants (or *slaves* as they style themselves) of the great Nambudri landlords. Between the *Chârnavars* and *Sudra* Nayars there is a dispute as to precedence which has resulted in the entire prohibition of intermarriage.

14. Besides the above large divisions there are a number of sub-divisions supposed to follow certain hereditary professions which divide them from the rest and prevent intermarriage.

For example, the *Râvâris* (corruption of *Vyâbâris* = traders) are a numerous division at and near Quilandy, who do not intermarry with other divisions. The *Veuthêdan* (washerman for Brahmans, temples and Nayars), the *Vattêkkadan* (oil-makers), the *Pallichân* (palanquin-bearers of the Rajah and Brahman), the *Andurân* (potters), the *Urâli* (masons), and the *Velakkataravan* (barbers for Brahmans and Nayars) are examples of sub-divisions which usually keep themselves to themselves in the matter of marriage.

15. The *Ambalavâsis* (temple-servants) have originated numerous sub-divisions, the members of which now-a-days may, or may not, discharge their allotted functions. Some of the chief are the *Vâriar* (sweepers), the *Chakkiars* (singers and players), the *Mârâns* (drummers), the *Pushpagans* (who provide flowers and garlands). It is amongst these *Ambalavâsis* engaged in pagoda service, and coming thus into closer contact with the Brahmans, that the alleged commandment to disregard chastity is still held in honour.

16. It would be tedious and unnecessary to pursue this enquiry further. Enough has been said to show that by some perversity of fate the Nayar caste has developed the usual Hindu tendency to split up into scores and hundreds of petty divisions, refusing to eat together, or to intermarry, and totally incapable of any united action.

The vexatious restrictions, dissensions, and rivalry arising from these schisms are deeply deplored by the educated and intelligent class, and it is highly necessary to guard, in any legislation that may be contemplated, against perpetuating restrictions on marriage which, though now customary, are disapproved by the Nayars themselves.

17. The answers to Questions 1 and 2 in Appendix III. exemplify the Nayar custom which allows a man to cohabit with a woman considered to be of a lower caste than himself.

The same custom prohibits the female from exercising a similar liberty. This is called the rule of *Anulômam* and *Pratilômam*. Dr. Gundert derives *Anulômam* from *anu* = with + *lômam* = *rômam* = the hair : going with the hair, or grain. So *pratilômam* means "going against the hair or grain."

According to this usage a Nayar woman consorting with a man of a higher caste follows the hair, purifies the blood and raises the progeny in social estimation. By cohabitation with a man of a lower division or caste, she is guilty of *pratilômam*, and if the difference of caste were admittedly great, she would be turned out of her family to prevent the whole family being boycotted. The Nambudris smile at these disputes as to precedence and regard all Sudras as on the same level. A woman disregarding the rule of *anulômam* is therefore not necessarily excluded from the temple, the temple-tank or any religious privileges. Many of the answers show that the rule of *anulômam* is often disregarded in Native Cochin and some adjacent parts of Malabar. The rule is inconsistent with the institution of marriage inasmuch as (in the words of Mr. Sankariah, Dewan Peishkar of Native Cochin) "often the parties to the Sambandham are so widely different in caste that the man must bathe after contact with the woman, before he can pray or take his food."

It often happens that a father could not touch his children without bathing afterwards to remove the pollution.

18. The answers to Questions 6 to 10 in Appendix III. illustrate a strange geographical restriction, which makes the Kora river (flowing into the sea at Elathur about seven miles north of Calicut) a boundary between North and South Malabar for Marumakkathâyam caste purposes, forbids the Nayar women of North Malabar to cross to the south of the river, and prohibits a Sambandham between them and any Nayar from the south of the District.

Nearly all our informants are agreed that the restriction dates from times when the river formed the boundary between two of the petty kingdoms

which divided Malabar prior to the Mahammadan invasion, but why the restriction should be one-sided, and why it should retain its vitality after a century of British rule, is not so plain. The educated class are alive to the absurdity of the custom. It is already transgressed on various pleas—*e.g.*, the plea of pilgrimage, the plea that the river was not crossed but circumvented, the plea that a woman may follow her husband, &c., and there is little doubt that it will shortly be altogether set at defiance when North Malabar men, holding appointments in South Malabar, have to choose between breaking the rule or leaving their families behind them.

19. *The Nambudri Brahmans.*—A few remarks regarding the Nambudris are here required to explain how their teaching and influence, as priests and landlords, have affected the peculiar sexual usages of the Nayars, and have re-acted upon themselves.

They must not be confounded with the Pattars, or so-called foreign Brahmans. The Pattars differ in no respect from the Brahmans of the East Coast. They, like the Nambudris, are very willing to lend themselves as ‘consorts’ for the ladies of the Nayar aristocracy, but they are never accepted as such except when the services of a Nambudri are not available.

A full description of the Nambudris will be found at page 119 *et seq.* of the Malabar Manual.

Taluk.	No. of Families.	Taluk.	No. of Families.	The number of families as ascertained by Mr. Logan is shown in the margin. The Census of 1881 makes their number to be, Males 5,716, Females 5,313, (<i>Vide</i> Vol. IV., page 4).
Chirakkal	79	Erna-I	120	
Kottayam	30	Walluvanad	277	
Kurumbanad	70	Palghat	289	
Wynad	152	Ponnani	289	
Calicut	152	British Cochin	—	
		Total...	1,017	

20. It is only necessary here to remind the Government that by the tradition devoutly believed in by orthodox opponents of change, the Nambudris were settled in Malabar by Parasu Rama, an incarnation of Vishnu, who divided the land amongst them, and created the Sudras to be their slaves. The Travancore Census Report of 1874, page 191, well sums up the orthodox view of the Nambudri as shown by the language in which he is habitually addressed. “His person is holy, his directions are commands, his movements are processions, his meal is nectar, he is the holiest of human beings, he is the representative of God on earth.”

Except the Nambudri, the Nayar has no other priestly, spiritual or religious instructor; and it is for the gratification of this Bhû-dêvan (Earth-god) that the Sudra woman, if she has any religious instruction at all, is taught that she was created.

21. As regards the effect of this precept on the morality of the Sudra women more will be said later on, but it is desirable here to note the effect of the system on the Nambudris themselves. To keep the family property impartible, and to guard against an inconvenient increase of mouths to be fed, the “Earth-gods” set up a rule that only the eldest son should take a Nambudri wife, and that all the junior members should solace themselves by forming fugitive connections with Sudra girls. The issue of these fugitive unions following Marumakkathâyam, were no burden upon the Nambudri father, but had to be supported by the Kâranavan (senior male) of the girls’ tarawâd. The defect in this ingenious arrangement is that it leaves out of sight the natural law from which “Earth-gods” are not exempt, and which so arranges matters that there are as many Nambudri women as there

are Nambudri men. The consequence is that while the Nambudri bachelors solace themselves with their Sudra loves, the Nambudri spinsters, secluded and vigilantly guarded in the privacy of their houses, must live and die unmarried.

“In consequence of this custom the females often enter into wedlock at a very advanced age or die in a state of celibacy, but so tenacious are they of their observances that the corpse undergoes all the ceremonies of marriage.” (Census Report of Native Cochin, 1875-76, page 35.) “Many Nambudri women necessarily never get a chance of marriage.” “In order to get their daughters married at all, a Nambudri must be rich, for with each of them he has to pay the bridegroom a heavy dowry, and many an illam’s resources have been drained in this way.” (Malabar Manual, pages 127—128.)

“The Nambudri woman, unlike her Brahmin sisters on the other coast, may remain unmarried even after attaining the age of puberty, and there are many among them who die virgins at an advanced age. Numerous daughters are considered a misfortune, as their dowry and other marriage expenses will impoverish any but the wealthiest Nambudris. They do not, however, kill their children on this account,”—a forbearance for which they no doubt deserve due credit. “The women are guarded with more than Moslem jealousy.” (Travancore Census Report, 1874-75, pages 213—214.) An institution which by debauching the women of one class, condemns the women of another to life-long and enforced celibacy, is not one which justice need hesitate to condemn. If the reform movement set on foot by educated Nayars should eventually have the effect of driving the Nambudri bachelor into wedlock with women of his own caste, this indirect consequence of a marriage-law for Nayars, is one which no right-thinking person can deplore. What (some persons ask) is to become in such case of the Nâduvâzhi (chieftain) and other aristocratic families, who have hitherto preferred Nambudri consorts for their females? It can only be suggested in reply that they should follow the example of many of their number and marry in their own caste.

22. On the Nambudri men the effect of the system has likewise been pernicious. Instead of taking the lead in every intellectual pursuit, as do the Brahmans in other parts, the Nambudri has become enervated to such an extent that it would be difficult to find more than a few who have mastered the grammar and syntax of the Sanskrit, which is the vehicle of their sacred texts. Most of them get no further than committing a number of Slôkas to memory. Not only do they refuse altogether to tread the path of knowledge opened up to them by a barbarian Government, but it is rare to find one of them who has studied the literature, such as it is, of his own vernacular. The proposed legislation undeniably threatens what they regard as their sacred privilege, and it is not to be wondered at that their influence should be exerted to the utmost to prevent reform.

23. *The Marumakkathâyam Tiyans.*—For an account of the Tiyans *vide* page 142 of the Malabar Manual. Out of a total of 551,717 Tiyans (and Izhavars) the approximate number following Marumakkathâyam is, as shown above, 220,445, or about 40 per cent. The circumstances which forced, or led the Tiyans of North Malabar to adopt Marumakkathâyam, are buried in obscurity, and nothing is certain except that nothing on the point can be known with certainty. The Mapillas of North Malabar likewise follow Marumakkathâyam, but in their case this can often be directly traced to the fact that their ancestors were Nayars converted to Islam.

In the early days of British rule the Tiyan women incurred no social disgrace by consorting with Europeans, and up to the last generation, if the Sudra girl could boast of her Brahman lover, the Tiyan girl could show more substantial benefits from her alliance with a white man of the ruling race.

Happily the progress of education, and the growth of a wholesome public opinion, have made shameful the position of a European's concubine; and both races have thus been saved from a mode of life equally demoralizing to each.

24. *The Marumakkathâyam System.*—Marumakkathâyam possesses no Code. In Malabar no extant scripture is attributed to Sri Parasu Rama, the traditional founder of the system, whom the orthodox Malayâli regards as an incarnation of Vishnu,—nor is any writing attributed to the sage Sankarâchâriar, who is believed to be the authority for the sixty-four traditional anâcharâms (or heterodox observances) in which the Malabar Nambudris differ from their Brahman brethren of the East Coast. Prior to the advent of the British there were no courts of justice to record case-law, and the Nambudri Brahmans monopolised the study of the Shastras and were the sole recognized repositories of the unwritten custom of the country. The enquiries of the Commission, in so far as they have been of any avail, merely serve to show that the only known work, supposed to embody the divine commandments of Sri Parasu Rama, is the Kêrala Mahâtmyam, upon which the Zamorin and various orthodox Malayâlis rely. The work is composed in Sanskrit verse, and such copies of it as are known to exist are written on palm-leaf in the Malayalam character. The only copy which the Commission were able to obtain was obligingly lent by the Azhuvanjeri Tamburâkkal, a Nambudri dignitary esteemed to be of the highest sanctity, and he informs the Commission that this copy was made 37 years ago from an older grantham (palm-leaf book) which through age was becoming undecipherable, and which is now lost. No information whatever is forthcoming as to the authorship of the poem, or as to its date; and the language and character in which it is written have prevented the Commission, during the short time at their disposal, from submitting it to a critical examination.

The poem is divided into chapters and purports to be a monologue addressed by the Rishi Garga to Yudhishtira, the eldest of the Pandus. Each chapter winds up with a refrain to the effect "Thus ends chapter—of the discourse of Garga to Yudhishtira in the Bhugola Purânam."

A translation of one version of Chapter XLIX., which is referred to by the Zamorin and others, is given in the answers of Mr. K. Krishna Menon; No. 33 of Appendix III. There are probably several versions, but in substance the chapter contains a mythical account of how certain celestial damsels were brought from Indra's world by Parasu Rama to satisfy the sexual cravings of the Kêralam Brahmans, and it recites how Parasu Rama at Vishabhadri (Trichur) pronounced his commandment to the women (not being of the Brahman caste) to satisfy the desires of Brahmans, enjoining upon them to put off chastity and the cloth which covered their breasts, and declaring that promiscuous intercourse with three or four men in common was void of the least taint of sin.

The book would be unworthy of notice were it not relied on as an authority by many champions of Marumakkathâyam, and were it not that it correctly exhibits the religious teaching of the Nambudri priesthood even at the present day. In illustration of this, reference should be made to the evidence of Ashtamurthi Nambudripad, whose answers are printed as No. 8 in Appendix III. This

gentleman is one of the foremost Nambudris in Malabar in respect of wealth, rank, sanctity and learning, and it will probably be allowed that there could be no better, or more candid, exponent of the orthodox doctrine. He says:—"The Smriti says, 'the Sudras' appointed path to heaven is serving the Brahmans.'" "The practice of Brahmans, Kshatriyas and Vaisyas having sexual intercourse with servile (Sudra) women is in accordance with the Sâstras." "If a Brahman wished to have sexual intercourse with a Sudra's wife, the Sudra would be bound to gratify the wish." And again:—"A Sudra cannot be sure of the true parentage of the children born of his wife. Hence the Sudras cannot follow the rule of Makkathâyam."

This exposition has the full support of the highest possible authority from a Marumakkathâyam standpoint. The Zamorin Maharaja Bahadur (Appendix III., No. 1) tells us:—"According to Parasu Rama only the eldest son of a Brahman family is permitted to marry. The other members may keep females of the lower castes, and chastity should not be observed by Non-Brahman females."

So Ettan Tamburân Avargal, a learned Sanskrit Scholar and Senior Anandiravan of the Padinyâré Kovilagam, tells us:—"It has been ordained by Parasu Rama that in Kêrala, Marumakkathâyam women need not be chaste, and that the non-observance of chastity should entail no evil"—(Appendix III., paper 5, answer 11). So the Kolathur Vâriyar, a great landlord well known in connection with Mapilla outrages, says:—"A woman is not forbidden from consorting with more than one man." "For the Marumakkathâyam people, who reckon their descent through the female line, there is no objection to any cohabitation which does not contaminate the female element"—(Paper 9, answers 22 and 23). Sir Madhava Rao takes for granted this rule against female chastity when he claims it as one of the great benefits conferred by Marumakkathâyam that "it has ensured the peaceful operation of the great principle of natural selection." (*Vide* Appendix IV., evidence of witness 119, page 88.) Thus in the supposed commandment "let chastity be far from you: not the least sin attaches to its non-observance," we have admittedly the very foundation and corner stone of the Marumakkathâyam system.

25. *Polyandry.*—As to the origin of polyandry amongst the Nayars, the Commission finds itself unable to throw any fresh light upon the subject. Mr. Wigram's conjecture that the Nayars "entered Malabar from the North and peopled first the Tulu and then the Malayalam country," seems inconsistent with the fact that the Nayars speak the purest Malayalam, and that Malayalam is very much closer akin to Tamil than to either Tulu, or Canarese, spoken in South Canara. If the Nayars entered Malabar from the North they must surely have brought some words with them which would have disclosed their affinity to some Northern people, whereas their language merely discloses a close affinity to Tamil, and raises the presumption that they entered Malabar through the Palghât Gap.

The theory that polyandry was indigenous in Malabar is not easily reconcileable with the fact that the Cherumars, Pulayars, Panayars, Irulars, Kâdars, and numerous other servile and jungle tribes, who are looked upon by every one as the undoubted aborigines, do not follow Marumakkathâyam. The

* NOTE.—He quotes a sloka of which the following is a translation:—

"Among the folk of this land, in this my country, among all castes, among all Sâmantas, and among all other women likewise, let there be no chastity. But as for the wives of Brahmans and *Dwijas* (twice-born classes) let the rule of chastity stand in regard to them. With other residents let there be no rule of chastity. Behold I declare the truth."

theory that the first Nayar immigrants came as an army with very few women, who therefore had to be shared amongst the men, is also a mere conjecture.

26. Questions 23 and 24 in Appendix III. were directed to discover the correctness, or otherwise, of the notions entertained by European writers who, like Mr. Mayne, speak of "polyandry of the Nayar type."

The answers display a healthy and almost unanimous detestation of the practice of polyandry, and nine-tenths of our informants would have it believed that polyandry amongst the Nayars is as extinct as the dodo.

If by polyandry we mean a plurality of *husbands*, publicly acknowledged by society and by each other as sharing between them a woman's favours by mutual agreement,—the legal and regulated possession, publicly acknowledged, of one woman by several men who are all husbands by the same title,—it may be truly said that no such custom is now recognized by the Marumakkathâyam castes in Malabar. If by polyandry we simply mean a usage which permits a female to cohabit with a plurality of lovers, without loss of caste, social degradation, or disgrace, then we apprehend that this usage is distinctly sanctioned by Marumakkathâyam, and that there are localities where, and classes amongst whom, this license is still availed of. Amongst our witnesses an intelligent and candid minority,

most of them men of mark and position, admit the right of the woman to consort with more than one man. To facilitate reference their serial numbers as given in Appendix II. are given in the margin.

27. *Marumakkathâyam "Marriage" Customs.*—We proceed to set forth what we have to say on the first head of our enquiry, *viz.*, as to what are the customs connected with Marumakkathâyam Hindu marriages in Malabar.

The very ground and occasion of our enquiry is the allegation that amongst the Marumakkathâyam castes, there is no such thing as marriage in the eyes of the law, and the phrase "customs connected with marriages" therefore suggests two difficulties.

In the first place it begs the question at issue, and thus suggests an initial difficulty, which is the want of suitable and inoffensive English terms to denote the customary cohabitation of the sexes under the Marumakkathâyam law, and the cohabiting parties.

To start by calling such cohabitation *marriage*, and the customs regulating it, *marriage* customs is a *petitio principii* which is likely to lead to confusion, but which it is not easy to avoid. Some have not scrupled to call the man a "paramour," the woman a "mistress," and the cohabitation "a fugitive connexion." "Consort" may do well for the royal families, but is ridiculous when applied to lower classes. "Concubinage" and "Concubine" (terms sometimes adopted by the High Court) convey reproach. "Lover," "gallant," "partner," are all objectionable.

In this difficulty it has, out of courtesy, become the practice to acquiesce in, and adopt, the use of the term 'marriage' instead of "fugitive connexion," and of the terms "husband" and "wife," instead of "paramour" and "concubine."

28. The Marumakkathâyam Hindus never in Malayalam apply the term "marriage" to the union of man and woman. The abstract Malayalam terms for

"marriage" are *Vivâham* and *Kalyânam*. The former term is never used (or until the last few months was never used) of a Marumakkathâyam union: the latter is used to denote the ceremony of tying on the tâli (or marriage badge) which is now admitted to be merely a mock marriage, as will be explained further on.

Amongst Makkathâyam Malayâlis the common term for "to marry" is *kettuga*, to tie. The husband is "Kettiyavan" = he who is tied to you, and the "wife" is "Kettiyaval" = the woman tied to you.

These expressions are never used by Marumakkathâyam people in speaking of their own sexual relationships.

The general Marumakkathâyam term to denote that a man and woman are "joined together" in a manner socially approved, is *Sambandham*, a Sanskrit word used to express various sorts of connexion. Thus there is *rakta-sambandham* = blood-connexion: *mudal-sambandham* = property-connexion: *pula-sambandham* = connexion by pollution, and between a man, and the woman with whom he avowedly cohabits, the connexion is called *Sambandham* without qualification.

In their interrogatories the Commission have used the term *Sambandham* to denote the customary nuptial union of man and woman, but suitable English terms are still wanting to denote the parties, and eventually the Commission have, for the sake of convenience, and to avoid offence, used the terms "husband," "wife," and "marriage" in inverted commas, the inverted commas being meant to show that the words are used in a Marumakkathâyam sense.

29. The next difficulty is to clear our ideas as to what we mean by marriage, for until this is done it is impossible to say whether Marumakkathâyam does, or does not, possess the institution.

What is the essential difference between a wife and a concubine? Can a connexion which is dissoluble without formality at the will of either party which confers no legal rights and imposes no obligations on the man, amount to marriage?

In this matter we are inclined to agree with the view expressed by Sir FitzJames Stephen in his speech before the Legislative Council reported in the Gazette of India, January 27th, 1872, page 75.

He says:—"Most people regard marriage as a contract and something more; but I never yet heard of any one who denied that it is at all events a contract, and by far the most important of all contracts. It is certainly not regarded in this country, in all cases, as a contract between the persons married, as it is in Europe, but it certainly is regarded as a contract between some persons, the parents of the parties, or the parents of the girl and the husband. Whatever words we may choose to employ, it is clear that all the elements of a contract must, from the nature of the case, be found wherever a marriage occurs. There must be an agreement, there must be a consideration for that agreement, and there must be, as a consequence, a set of correlative rights and duties."

A contract is an agreement enforceable by law (Contract Act IX. of 1872, Sec. 2) and if we can discover such an agreement in the form of nuptial union sanctioned by Marumakkathâyam custom, we shall have ascertained that there is a Marumakkathâyam marriage and not otherwise.

30. Amongst Maruthakkathâyam marriage customs the most peculiar, distinctive and unique is the Tâli-kettu-kalyânam,* which European and Brahman writers have united in describing as the only marriage recognized by the system.

The term Tâli-kettu-kalyânam means 'marriage by tying the tâli.' The tâli is a small golden ornament worn on the neck, as the badge of marriage, by all women of the Dravidian races.

The details of the ceremony differ widely in different parts of Malabar, and it might almost be said that every large Tarawâd has its own way of celebrating it.

The following account is given by M.R.Ry. K. R. Krishna Menon, retired Sub-Judge :—

The Tâli-kettu-kalyânam is somewhat analogous to what a Dêvadâsi (dancing girl attached to pagodas) of other countries undergoes before she begins her profession. Among royal families, and those of certain Edaprabhus, a Kshatriya,—and among the Châina sect, a Nedungâdi,—is invited to the girl's house at an auspicious hour appointed for the purpose, and in the presence of friends and castemen ties tâli round her neck and goes away after receiving a certain fee for his trouble. Among the other sects, the horoscope of the girl is examined along with those of the boys of her Enangan (a reconciled member of one's own clan) families, and the boy whose horoscope is found to agree with her's, is marked out as a fit person to tie the tâli, and a day is fixed for the tâli-tying ceremony by the astrologer, and information given to the Kâranavan of the boy's family. On the appointed day the boy is invited to a house near that of the girl, where he is fed with his friends by the head of the girl's family. The feast is called "Ayani Ûnu," and the boy is thenceforth called "Manavâlan" or "Pillai" (bridegroom). From the house in which the Manavâlan is entertained, a procession is formed preceded by men with sword and shield shouting a kind of war-cry. In the meantime a procession starts from the girl's house, with similar men and cries, and headed by a member of her Tarawâd, to meet the other procession, and after meeting the Manavâlan, he escorts him to the girl's house. After entering the pandal erected for that purpose, he is conducted to a seat of honor and there his feet are washed by the brother of the girl, who receives a pair of cloths on the occasion. The Manavâlan is then taken to the centre of the pandal where bamboo-mats, carpets, and white cloths are spread, and seated there. The brother of

* NOTE.—It is to this ceremony that Buchanan (1801) obviously alludes when he says "The female Nayers, while children, go through the ceremony of marriage both with Nambudris and Nayers; but here, as in the South, the man and wife never cohabit." (Appendix I., page 2.)

So the Rev. Christian Trion, writing on North Malabar, in 1864, says :—

"For a Sudra maiden the marriage ceremony is performed by some Brahman before she attains puberty," (page 5).

The Rev. Mateer, writing of the Travancore Nayers, in 1870, says :—"In early youth the girl goes through the ceremony of marriage by having the tâli, or marriage cord tied round her neck, but this is not followed by cohabitation." Mr. Nagam Iyer, Brahman Dewan Peishkar of Travancore, writing, in 1876, describes the Tâli-kettu ceremony as the marriage; but explains that it confers no right of cohabitation on the bridegroom, and states that "when she (the bride) attains the age of puberty she chooses her husband of her own free accord." Mr. Sankariah, Brahman Dewan Peishkar of Native Cochin, writing, in 1876, says :—"The (Nayar) women pass through the religious rites of marriage in the same way as all other Hindus, but they are united then to a symbolical husband and not to a particular individual."

The anonymous Nayar author, quoted at page 11, Appendix I., adopts without comment or protest, the description given in the Travancore Census Report of the Tâli-kettu as constituting a Nayar girl's marriage. He adds on his own authority "The Tâli-tier in some cases becomes her husband. If not, when she attains puberty her parents, or uncle, choose for her a husband and she accepts him."

"Every Nayar girl," says Mr. Logan, "is married in one sense at a very early age." "The strange thing about it all is that the girl is not really married to the man who performs the tâli-tying ceremony."

Herr Starké (page 13, Appendix I.) says :—"It is impossible not to regard the ceremony by which a girl is dedicated to what is according to our ideas an unchaste life, as a wedding ceremony which has been degraded into a mere formality."

Mon. Elie Reclus, in describing the Malabar marriage, is of opinion that "the nuptials are here interposed only to emancipate the woman and introduce her into the world." "Provided she wears her tâli round her neck, she is free from conjugal bonds."

the girl then carries her from inside of the house, and after going round the pandal three times, places her at the left side of the Manavâlan, and the father of the girl then presents new cloth tied in a kambli to the pair, and with this new cloth (technically called "Manthravadi") they change their dress. The wife of the Kâranavan of the girl's Tarawâd, if she be of the same caste, then decorates the girl by putting anklets, &c. The Purôhit, called "Elayath," (a low class of Brahmans) then gives the tâli to the Manavâlan, and the family astrologer shouts "Muhârtham" (auspicious hour) and the Manavâlan, putting his sword on the lap, ties tâli round the girl's neck, who is then required to hold an arrow and a looking-glass in her hand. In rich families a Brahmini sings certain songs intended to bless the couple. In ordinary families who cannot procure her presence, a certain Nayar who is versed in songs performs the office. The boy and the girl are then carried by Enangans to a decorated apartment in the inner part of the house where they are required to remain under a sort of pollution for three days. On the fourth day they bathe in some neighbouring tank or river, holding each other's hands. After changing cloths, they come home preceded by a procession which varies in importance according to the wealth of the girl's family. Tom-toms and elephants usually form part of the procession, and saffron water is sprinkled. When they come home the doors of the house are all shut, which the Manavâlan is required to force open. He then enters the house and takes his seat in the northern wing thereof. The aunt and other female friends of the girl then approach and give sweetmeats to the couple. The girl then serves food to the boy, and after taking their meals together from the same leaf, they proceed to the pandal, where a cloth is severed into two parts and each part given to the Manavâlan and girl separately in the presence of Enangans and other friends. The severing of the cloth is supposed to constitute a divorce." (Vide Appendix III., no answer.)

The 2nd witness (Appendix IV.) gives an account of how the Tâli-kettu is performed in North Malabar, and numerous other versions will be found in the answers to Question 11 in Appendix III.

31. We deem it due to M.R.Ry. C. Karunagara Menon, B.A., (Sub-Editor of "The Hindû"), one of the most active and enthusiastic defenders of existing usage, to quote his explanation of the ceremonial. He writes :—

"The Tâli-kettu-kalyânam does not differ in any essential respect from the marriage ceremony among the Hindus. All available evidence unmistakably points to the conclusion that the Kettu-kalyânam is in intention, if not in effect, the actual marriage ceremony as among other Hindus. With one exception, there is little difference in the ceremonies, that exception being that, while Brahmans recite the Vedas and Mantrams, we are compelled to substitute for them what is called Brahmini pâttu (song by Brahmini). In singing her songs, the Brahmini must regulate her voice so as to make it harmonise with the time in which the Rig Vêda is recited; or, in other words, she should sing her songs in Rig Vêda swaram. The Brahmans alone being privileged to recite Vedas and Mantras, it was ruled that for other classes, the Kshatriyas and Sudras, the Brahmini pâttu sung in Vêda swaram, would be a sufficient substitute. From the time when Kettu-kalyânam came into existence in Kêralam, the Brahmini pâttu has also been in existence. The following are some of the verses recited on the occasion of Kettu-kalyânam; and they will show that the Kettu-kalyânam is not such a meaningless ceremony as has been vulgarly supposed :—

"The weaver has spun the white and red threads, and in the wedding pandal the Vêda Brahmini has twisted them into cords. She has bound them as an armlet on the right hand of the virgin (saying) 'May the thread be your constant light and may you live a hundred years in the enjoyment of a married life. May the possession of husband and happy children be yours. May you have children as numerous as paddy counted, and life for years as numerous as rice counted.'"

2. "The pandal has been six months in building and the kettle drums announce (the festival). There is a banqueting hall, and a bed chamber. The Mala is put around the neck of the sweet-voiced damsel, and as they lived there happily as husband and wife, so let these live here long in the enjoyment of happiness."*

* NOTE.—Translated by the Commission.

The above lines all speak of the preparations for marriage, the union of the bride and bridegroom, their happy married life and so forth. The concluding lines in the first express the wish that the bride may long enjoy conjugal happiness, that a number of children be born to her and that she may live long. Those in the second are to the effect that as Râma and Sitha (in Râmâyanam) lived happy there after their marriage, so may this couple here live long and happy. It must be noted that among all higher caste Hindus, the marriage ceremony is divided into two parts, viz., (1) that in which the religious ceremonials form the chief feature, and which is known as betrothal, and (2) that which is popularly known as consummation. As among other Hindus, so among Marumakkathâyam followers, the first part which is more important from a religious point of view than the second, must be performed before the girl shows the first signs of menstruation, since in default the girl becomes subject to excommunication; and no girl can be married before the performance of this ceremony. The second or the consummation ceremony among Hindus in general may take place either on the fourth day after the religious ceremony, or on any other auspicious day selected afterwards. The same is the case among the Marumakkathâyam followers. It will hence be seen that the only difference between Marumakkathâyam men and other Hindus in respect of the marriage ceremony is that while the latter perform the ceremony after selecting a husband, and postpone the union of the couple for a future date, i.e., when the girl attains puberty, the former perform the ceremony first and select the husband (in the large majority of cases) only on the second occasion, i.e., when the girl is fit to be united to her husband. The Manavâlan in the Tâli-kettu ceremony merely performs a vicarious part for the future husband. But when a husband is ready to hand, it is not unusual for the girl to be actually married on the occasion of the Tâli-kettu. The reason for this departure from the ordinary Hindu custom, seems to me to be, that our early law-givers in view of the scarcity of men and the consequent difficulty of securing a husband for every girl before puberty and the danger of girls being outcasted in default, devised this happy plan,—to allow every girl to be married, in a sense, with the necessary religious ceremony, and to enable her to remain unmarried for life without being subjected to excommunication from caste. This view receives much support from the fact that the Nayers were, till the British advent towards the close of the last century, a great fighting race, and that they often lost lives in their frequent wars with the neighbouring principalities and tribes. Nor is this the only Hindu custom in regard to which the letter of the law has been closely followed without a corresponding adherence to its spirit. Among the Nambudris who are admittedly the holiest and purest of Indian Brahmans, the women are allowed to remain unmarried for life without being excommunicated, and as if to make tardy retribution to women who die unmarried, the corpse cannot be buried till a *Tâli* string is tied round the neck of the corpse, while lying on the funeral pile by a competent relative. (*Vide Logan's Manual*, page 127.) Similarly in other Hindu customs also it will be found that while the letter of the law is strictly adhered to, the spirit is sometimes lost sight of or is not observed." (*Vide Appendix III.*, no answer.)

Thus the best that can be said of the ceremony by one of its most intelligent supporters is that the sham betrothal of a girl to a vicarious husband is her actual marriage ceremony, in which religious ceremonials form the chief feature; and that it 'is a happy plan' devised in order to allow every girl to be married, 'in a sense,' although she has no husband.

We do not think that this view differs widely from that of the European writers who have supposed that Marumakkathâyam usage intends the Tâli-kettu to be the only ceremony which a girl approaching womanhood needs to fit her for cohabitation with one or more men of her own or higher caste.

32. Of our other Malayâli informants some think it is a marriage: some think it is not. Some call it a mock marriage, a formal marriage, a sham marriage, a religious marriage, a fictitious marriage, a marriage sacrament, the preliminary

part of marriage, a meaningless ceremony, an empty form, a ridiculous farce, an incongruous custom, a pretence, a waste of money, and a device for becoming involved in debt.*

* NOTE.—The Erâlpâd Raja (Zamorin's next heir, and head of the Kottakkal Kovilagam) says:—

"The Kalyânam is not a *vivâham* (marriage) which entitles the man who ties the *tâli* to lordship over her. It merely entitles the girl to a right to cohabit with a man." He tells us (answer 20) that in parts of South Malabar no formalities are observed in forming 'Sambandham,' beyond obtaining the consent of the relatives; whilst in other parts, when the man and the woman are of the same division, the Brahmans are feasted and some charity is also given. He admits the right of the woman to a plurality of 'husbands' provided she has the consent of the first Sambandhakâran, and quotes chapter 49 of the Kêrâla Mahatmyam as the authority.

The Valia Tamburan of the Western Kovilagam tells us that the performance of the Tâli-kettu indicates that the girl has attained marriageable age and that it consists in tying of the *tâli*, at the auspicious moment, with marriage rites and adorations to the deity. He states that the ceremony creates neither the right nor the disability to form Sambandham; and does not attempt to explain what 'marriage rites' mean.

The Chirakkal Rajah, in common with other North Malabar authorities, tells us that this is a ceremony which girls between 9 and 11 years of age have to undergo, and that the occasion is celebrated with feasting and much splendour. He leaves us in the dark as to its meaning.

The Rajah of Kadathanâd tells us that "it is a preliminary rite to marriage," but is silent as to its object.

It is to the *Tâli-kettu-kalyânam* that Mr. Fankuriah, the learned Brahman Iwan Peishkar of Native Cochín, (who has nearly 30 years' acquaintance with Marumakkathâyam usages, alludes in para. 4 of his Memo. as the girl's "marriage sacrament," and the term 'Sambandham' he tells us "denotes sexual attachment as distinguished from religious marriage, or conjugal rights."

The Manjêri Kâranampâd, (a Sthâni, and large landed Proprietor in Ernad) tells us that the *Tâli-kettu* takes the place of the rite of marriage (*Vivâham*) among the Brahmans. To the question whether it confers on the *Tâli-tier* the right of cohabitation with the girl, he returns an answer in the affirmative; and to the question whether any further formalities are requisite to form Sambandham, he replies "ceremonies are required if the man is not the one who tied the *tâli*."

Atchudan Somayâjipâd (Nambûri landlord and Vaidicân) says:—*Tâli-kettu-kalyânam* is the way by which marriage (*Mangalyam*) is effected among people following the Marumakkathâyam law. He says that no further formalities are necessary to entitle the woman to connect with as many men as she pleases.

Mr. Chathu Nambiyar, District Munsiff, says:—"Tâli-kettu-kalyânam is the formal, or preliminary part of the marriage," "after the Tâli-kettu ceremony is over the girl attains the rank of woman and becomes eligible for marriage proper."

Mr. T. Kunhi Raman Nayar (Judge of the High Court Travancore) says:—

"Tâli-kettu-kalyânam is the investiture of a girl with *tâli* (marriage badge) in token of the girl having attained a marriageable age, and been betrothed to some one." "There is in my view no valid reason why the tier of the *tâli*, or Manavâlan, should not have the right to cohabit with the girl, when the proper time for consummation of a marriage arrives and it is to be devoutly wished that some system by which the original intention involved in the celebration of Tâli-kettu ceremony can be fully carried out, could be devised."

Mr. E. K. Krishnan (Sub-Judge):—"A regular marriage ceremony except that the person selected to tie the *tâli* is not necessarily the husband of the girl." Mr. T. Gopalan Nayar (Deputy Collector):—"The ceremony is an exact representation of marriage, and the *tâli* is the recognized emblem of married life." "The original and borrowed signification of the ceremony is lost and Kalyânam now remains an unmeaning and superfluous formality." Mr. V. Chappian Menon (Deputy Collector):—"The *Tâli-kettu-kalyânam* is practically a marriage without being followed by consummation, and the songs sung on the auspicious (?) occasion denote that it is intended as a wedding."

Mr. P. K. Kelappa Kurup (High Court Vakeel):—"What the real significance of the Kettu-kalyânam is, is not very clear."

Mr. U. Achudan Nayar (District Munsiff):—"Every girl must undergo this ceremony. In this respect we follow the other Hindus, but it is deprived of its solemn and binding character by the subsequent procedure sanctioned by custom."

Mr. Kotieth Ramunni (1st grade Pleader):—"The Tâli-kettu-kalyânam is the substitute for the Brahman Vivâham (marriage)."

Mr. P. Kunhambu (2nd grade Pleader):—"A sham imitation of Brahminical ceremony of performing marriage."

Mr. M. Gopala Menon (1st grade Pleader):—"Tâli-kettu-kalyânam is, I should think, from the customs even now observed, the ceremony intended as the real marriage."

Mr. C. Gopalan Nayar (Tahsildar):—"To satisfy the Sudras, the Brahmans, who had then the upper hand in every thing, invented an apology for marriage with which the Sudras were to be content."

Mr. Onden Raman (Taluk Sheristadar):—"An imitation of the marriage ceremony of the Brahmans."

Mr. Ambu Nayar (Sub Registrar, Ponnani):—"Tâli-kettu is considered among Nayars to be the formal marriage of girls."

Mr. Kolâdi Krishna Menon (Veliyangode Amsam, Ponnani Taluk, Janmi):—"It is a pretence of a man making a woman his wife, and a device for becoming involved in debt."

Mr. Kuthâmballi Krishnan Nambiyar (Guruvayur Amsam, Ponnani Taluk, Janmi and District Board Member):—"It is nominally a marriage."

While a small minority of strict conservatives still maintain that the Tāli-kettu is a real marriage intended to confer on the bridegroom a right to cohabit with the bride, an immense majority describe it as a fictitious marriage, the origin and meaning of which they are at a loss to explain; and another large section tender the explanation accepted by our President, *viz.*, that in some way or other it is "an essential caste observance preliminary to the formation of sexual relation."

33. Whatever the origin of the ceremony, and whatever its significance in times past, the evidence we have collected demonstrates that the present generation

Mr. T. M. Appu Nedungudi, B.A., B.L., (1st grade Pleader, Calicut):—"It is a mock marriage."

Mr. C. P. Govinda Tarakan (2nd grade Pleader, Angadipuram):—"It is a mock marriage."

Mr. B. Kamara Menon (2nd grade Pleader, Calicut):—"It has been converted into a mockery, sham, and apology for a marriage."

Mr. Kannan Unni Nayar (2nd grade Pleader, Palghat):—"It is nothing but a meaningless ceremony."

Mr. B. Ramunni Menon (1st grade Pleader, Calicut):—"It is a mockery for marriage."

Mr. V. M. Govinda Menon (1st grade Pleader, Palghat):—"It is a ceremony of freeing the girl from Gods who are supposed to lay claim to every virgin."

Mr. N. K. Chamu Menon (Sub-Registrar, Perintalmanna):—"It is a mock marriage attended with ridiculous travesty of much of the formalities of a Shastraic Hindu wedding, probably devised by the Nambudri law-giver for his slave."

Mr. K. Damodera Panikkar (Sub-Registrar, Chevayur):—"It is an imitation of Brahman marriage without the religious force." "Grand feast lasts for 4 days to the utter ruin of the tarawads."

Mr. Kizhur Edathil Kunhi Raman Vāzhunnavar (Veliyambra, Kottayam, Sthāni and Janmi):—"It is a ceremony performed in place of marriage. It partakes of the nature of a wedding, but the ceremony is devoid of meaning."

Mr. C. M. Krishnan Nayar (1st grade Pleader, Palghat):—"The authors of this ridiculous farce must have had motives of their own why the tāli-tying man should not have any such right (of cohabitation)."

Mr. K. Ramunni Kurup (Sub-Registrar, Panar):—"Tāli-kettu kalyānam is a form of mock marriage whereby the followers of Marumakkathiyam observe the marriage customs laid down in the Hindu Shastras, that a girl loses her caste if she is not married before she attains puberty."

Mr. P. Ramunni Menon (Sub-Registrar, Malapuram):—"It is a ceremony in which much money is also wasted, but the whole affair becomes a sham and mockery when it is remembered that the position assigned to the bridegroom is little better than that of a day labourer who is dismissed with his wages when the day's work is over."

Mr. M. Krishnan, B.A., (Malayalam Munshi, Presidency College):—"Tāli-kettu is in many respects analogous to what takes place in connection with real marriages in other places in India. Though the people of Malabar were persuaded to accustom themselves to the 'anāchāram' arbitrarily introduced into this country, they could not help keeping up at least the empty form."

Mr. P. Govinda Menon (Sub-Registrar, Audathode):—"The ceremony is nothing but a farce wherein the bride after having gone through several trivial formalities is given in marriage by her uncle to her presumed bridegroom."

Mr. M. C. Kannan Nambiyar, B.A., (Head-master, Municipal High School):—"As practised at present it is nothing but a farce blindly observed simply for the reason that the ancestors did it."

Mr. M. Ittinikanda Panikkar, B.A., (Translator, High Court):—"It is a mock ceremony conferring no real right whatever."

Mr. K. Raman (Police Inspector, Cannanore):—"It is an incongruous custom, fit for nothing but ridicule." "As far as I understand it, the ceremony from beginning to end declares that in the space of four days the girl has bathed after menstruation, has received a husband, that they have enjoyed each other as man and wife, and that they have undertaken household duties as father and mother." "Altogether it may be said to resemble the nuptials in a dramatic entertainment."

Mr. T. Madhava Menon (Revenue Inspector, Palghat Taluk):—"It is a fictitious marriage ceremony among Hindus under the Marumakkathiyam system."

Mr. K. Gopala Menon (Sheristadar, Wynad Taluk):—"The bridegroom is like any other man to the bride afterwards. It is mere waste of money and will be a great boon to society if it is done away with altogether."

Mr. P. Gopala Menon (Vernacular Record Keeper, Huzur):—"Tāli-kettu kalyānam is a mere formality. It is one of the greatest and all-engrossing ceremonies among the Nairs of Malabar, which often exhausts the earnings of a life-long labour."

Mr. K. Govinda Menon, B.A., (Head Clerk, Head Assistant Collector's Office):—"Formerly among Nairs Tāli-tying ceremony was the actual marriage, but Nambudris for their own reasons did not relish the custom, and through their influence the Nayars were compelled to do away with the spirit, and retain the form."

Mr. C. Krishnan Nayar (Revenue Inspector, Walluvanad):—"It does not give a right to cohabit with the girl, because the Nambudris want her to be kept as their concubine."

Mr. Valia Raman Adiyodi, Kottayam:—"The Tāli-kettu is a *Samskāram* (atonement?) appointed for Dāsīs (handmaids?) to remove the dōsham (evil) which would otherwise attach to Brahmans, arising from the necessity of their cohabiting with Dāsīs, because only the eldest son can marry."

for the most part blindly follow what they believe to be the custom, without in the least understanding what they are doing. The variety of ways in which the ceremony is now-a-days performed need not bewilder or mystify us, when we find the most intelligent Malayālis admitting that the ceremony has entirely lost all meaning.

In parts of Calicut, Ernad, Walluvanad, Palghat and Ponnani, the Tāli-kettu is still celebrated with every formality of a real marriage. A bridegroom is selected after consultation of horoscopes. He is seated by the bride in the marriage pandal. He invests the bride with the badge of marriage. The bride eats from the same leaf as the bridegroom. They are placed together in the sleeping chamber to go through the fiction (it is only a fiction) of cohabitation, and on the fourth day the bridegroom severs his connection with the girl by the symbol of cutting into two pieces the cloth with which she is covered. Yet notwithstanding this 'divorce,' custom obliges the girl to observe pollution when her bridegroom (Manavālan) dies, and the Nambudris for some purposes regard her as a widow.

34. In North Malabar (as Mr. Chathu Nambiyar tells us, App. III., No. 18, answer 12) the tāli is tied 'by a respectable, holy, learned, and elderly Brahman.' The champions and defenders of North Malabar usage would make believe that there is some stain, or impurity, attaching to a maiden (Kanyaga) which the Tāli-kettu ceremony is designed to remove. By going through a fiction of betrothal, and by having the badge of marriage tied round her neck, a maiden becomes purified, and fit to go through the further ceremonies which should attend 'Sambandham.'

The English Commissioner thinks that most Europeans will probably find this explanation of the ceremony unintelligible, and that they will persist in regarding the Brahman tāli-tier as a relic of the time when the Earth-gods were entitled to the first-fruits, and when it was considered the high privilege of every Sudra maid to be introduced by them to womanhood.

35. In North Malabar (and elsewhere) a woman of the Nambisan caste is engaged to sing nuptial songs, and plays an important part in the Tāli-kettu ceremony. It is noticeable that she is called the 'Brahman lady' (Brahmini) though she is not of the Brahman caste. Possibly by a fiction she is imagined to represent the female relatives of the Brahman bridegroom, who would otherwise be conspicuous by their absence. It is not easy to account for her title of Brahmini in any other way.

36. Some divisions of Nayars prefer to have the marriage-badge tied on by a Kshatriya, or Sāmanthan; and there is, in such cases, no objection to one man tying the tāli on any number of girls at the same time and place. Some of the witnesses explain that this is by virtue of the Kshatriya's royal descent, which makes him a licensed, or privileged, polygamist. Others show that if this be the explanation, it is now lost sight of inasmuch as one man may tie the tāli on mother and daughter, or on several sisters, which if he were husband would be incest.

37. Others tell us that where the family is poor, a bridegroom is sometimes altogether dispensed with. The girl's mother makes an idol of clay, adorns it with flowers, and invests her daughter with the Tāli in the presence of the idol.

This would seem to be an almost exact counterpart of the consecration of the East Coast Déva-Dâsi (God's handmaiden) to her profession as a temple prostitute.

38. The Marumakkathâyam Tiyans in this, as in other respects, have copied the higher castes, with such variations as were pleasing to themselves. Amongst the Tiyans the girl is invested with the tâli either by her mother (in which case the ceremony is meaningless), or by the man to whom she is really betrothed and who afterwards becomes her husband. This latter practice is becoming the fashion, and where it is followed we have a true marriage ceremony, with this rather important exception that the union is dissoluble without formality at the will of either party, and that it confers no legal rights on the 'wife,' and imposes no marital, or paternal, obligations on the man.

39. The demands of society, *first* that the ceremony should be performed before a girl attains puberty, and *second* that it should be the occasion of a mighty feast, when the voice of thrift and prudence should be silenced, have so worked that a custom is now growing of regarding the Tâli-kettu as a Tarawâd ceremony to be performed at intervals of ten years, like a sort of gaol-delivery, upon all the girls of the family at one time, from the infant at the breast to the girl (who in the native view) is on the threshold of womanhood.

This is the occasion which (as the Travancore Census Report, page 266, tells us) "oftentimes exhausts the earnings of a lifelong labour." The Commission were asked at Palghât whether they could not manage to bring in a section to restrain society from driving Tarawâds to ruin by aiding and abetting a wasteful outlay on Tâli-kettu festivities! 'One touch of nature makes the whole world kin,' and this desire for legislative interference will wake a chord of sympathy in the breast of many a slave to fashion.

40. From one point of view the Tâli-kettu, as now celebrated, may be regarded as a valuable device for avoiding the evils of child-marriage. When the baby in arms has gone through the Tâli-kettu and been invested with her 'marriage badge,' society permits her to grow-up and remain a virgin till a suitable match is found for her.

On the other hand there are manifest symptoms that as a preventive of child-marriage it is inefficacious. According to recent practice, wherever two families think it desirable that an alliance should be arranged between a boy of the one family and a girl of the other, a Sambandham is forthwith celebrated with the usual festivities, without regard to the maturity of the girl, and in many instances the girl is forthwith sent to the husband's house. The object of this is to make sure by an actual betrothal that a good match may not be lost; but if uncontrolled this fashion would soon ripen into a regular custom of child-marriage.

41. There is another suggestion which the Malayâlis for the last two or three years have been warmly discussing, and that is whether there is any real objection to postponing the Tâli-kettu until the girl is marriageable, and then permitting her real husband to invest her with the marriage-badge.*

* NOTE.—In a novel called "Minākshi," printed in Malayalam last year, the Nayar author discusses the *pros* and *cons* of this question in a chapter which is well worth perusal. The following extract is part of a conversation between the relatives of the heroine (a school girl) in a debate as to how the Tâli-kettu should be performed upon her:—

A. "Is there any objection to letting the Sambandham and Tâli-kettu take place at the same time? Would it not be more honorable and better to get the tâli tied by the husband in the wedding booth?"

In this matter it would be supposed that the Nayars have merely to follow the example of the "Earth-gods," their Nambudri priests, whom they have taken for their pattern and guide in all things spiritual and temporal. The Nambudris, as already explained, follow an anâchâram which permits their women to remain virgins without loss of caste. The Nayars may well imitate them in good customs as well as in bad. Two high Nambudris examined as witnesses at Shoranur (Nos. 92 and 93) were asked whether the Nayars would incur any social penalty if the Nambudri example in this respect was followed, and both replied in the negative. If the leading Nayars would agree to convert the Tâli-kettu from a sham into a reality, by performing the ceremony when the girl becomes marriageable, and when a suitable husband has been found for her, a great reproach and disgrace (as the best of them admit the present mock-marriage to be) would be wiped away.

42. Opinions differ as to whether, after Tâli-kettu has been performed, any further formalities are necessary when the girl takes a consort.

Many respectable witnesses* tell us (an undoubted fact) that no formality, religious or secular, need attach to Sambandham, and that in very many cases the consent of the girl and of her guardian is all that is thought necessary. But it is also an undoubted fact that recent usage (especially in North Malabar) tends to surround the occasion of first cohabitation with a more or less elaborate ceremonial. We cannot do better than accept the description given by our colleague, Mr. Chandu Menon, of the ceremonies which he, and those who think with him, regard as constituting 'marriage' amongst the Nayars. He says:—

Sambandham is the principal Malayalam word for marriage as Vivâham is in Sanskrit. Whatever may be the basis of the Sambandhams of the Marumakkathâyam Nayars, there can be no doubt that the idea which the word conveys to a Malayâli is the same as the

B. "That is an impossible thing. In some big Tarawâds with many members it may sometimes happen that fully 25 girls have to be tied at the same time. Never in this life would it be possible to find a Sambandhakâran to tie the tâli for each, one by one. You can't buy a Sambandhakâran along with the bazaar things required for the wedding expenses, can you? If that were possible it might be done. What is the use of talking idly about a thing which is impossible to bring about."

A. "It might be managed, even in this life, if the determination to marry all the girls in a Tarawâd on the same day were given up. It would suffice to marry only the girls for whom there were Sambandhakârans. Let it be settled to marry the rest as Sambandhakârans become available. If this be done there is no difficulty and then it would be the husband who tied the tâli."

B. "There would be no end of difficulty and bother if it were determined to catch the Sambandhakârans and cause them to tie the tâli one at a time. If you want to celebrate a tolerably decent *Kalyânam*, not a cash less than Rs. 500 will cover the expense. Supposing there are ten girls to a Tarawâd that would mean an outlay of Rs. 5,000 for their marriage. If the Tarawâd is not a prosperous one you need not fear that they can borrow a cash without mortgaging land on Kânam or usufructuary mortgage. This being so, nothing more would be wanted to ruin the Marumakkathâyam Tarawâds by making them pluck-up and sell even the very foundation stones of their dwellings."

A. "If there exists the smallest shame at needless waste of money, or if there is any regard for the family, no Tarawâd need be ruined by marriage expenses. It is sufficient if it recognized that the expense should be suited to the means. At a cost of about Rs. 40 the marriage could be very decently and honorably performed. No folly and stupidity can equal that of borrowing and falling into debt for the sake of incurring wasteful expense on the ceremony for no fruit but dishonour. It is because no limit is placed on expenditure that most Tarawâds have sunk into debt and ruin. This Malabar is not the only country in the world where girls have to be married one after the other."

The ultimate conclusion arrived at is that the Tâli-kettu is a shameful mockery which ought to be reformed, but that the notion that the marriage law of "highly civilized Europeans" can be at once introduced into Malabar, is an idle one. Such a reform (they agree) can only become possible when civilization and female education have in course of time made the people ripe for such a change.

* Vide Appendix IV., witnesses 75 and 115. Appendix II, Nos. 140, 156, 157, 173, 180, 187, 193, 202, 207, 212, 213, 215, 218, 226, 230, 231, 232, 235, 236, 237, 240, 248, 252, 258, 262, 266, 269, 274, 275, 277, 279, 283, 285, 286, 288, 295, 302, 304, 312, 321. The above list is not exhaustive.

word Vivāham. The generic term Sambandham, which in South Malabar, between Calicut and Nedunganad and in Ponnani, Cochin and parts of Travancore, is the only word to denote marriage, includes,

1. Guna Dōsham as used in South and North Malabar.
2. The Pudamuri, or its Sanskrit synonyme 'Vastradānam' used in North Malabar.
3. Uzhamporukka, and Vidāram Kairuga, of North Malabar.
4. The Kidakkora Kalyānam of Palghāt and parts of Nedunganad.

The Pudamuri, Vastradānam, Uzhamporukkuga, Vidāram Kairuga, &c., are local expressions hardly understood beyond the localities in which they are used, but there would be hardly a Malayāli who would not readily understand what is meant by *Sambandham Tudanguga* (to begin Sambandham). The meaning of this phrase which means "to marry" is understood throughout Kēralam in the same way, and there can be no ambiguity or mistake about it.

It is thus found that Sambandham is the principal word denoting marriage among Marumakkathāyam Nayars. It will also be found on a close and careful examination of facts, that the principal features of this Sambandham ceremony all over the Kēralam, are in the main, the same. As there are different local names denoting marriage, so there may be found local variations in the performance of the ceremony. But the general features are more or less the same. For instance, the examination, prior to the betrothal, of the horoscopes of the bride and the bridegroom to ascertain whether their stars agree astrologically: the appointment of an auspicious day for the celebration of the ceremony: the usual hours at which the ceremony takes place: the presentation of the *Dānam* (gifts) to the Brahmans: the sumptuous banquet: the meeting of the bride and the bridegroom in the central room of the house: the sprinkling of the rice on the heads of the bride and the bridegroom,—are features which are invariably found in all well-conducted Sambandhams in all parts of Kēralam alike. But here I would beg to state that I should not be understood as saying that each and every one of the formalities above referred to, are gone through at every Sambandham. I would only say that most of them are generally gone through at all Sambandhams among respectable Nayars, and I would further say that they ought to be gone through at every Sambandham, if the parties wish to marry according to the customs of the country. I would now briefly refer to the local variations to be found in the ceremony of the Sambandham, and also the particular incidents attached to certain forms of Sambandham in South Malabar. I shall describe the Pudamuri, or Vastradānam, as celebrated in North Malabar, and then show how the other forms of Sambandham differ from it. Of all the forms of Sambandham I consider the *Pudamuri* form the most solemn and the most fashionable in North Malabar. Of course my description will be borne out by the evidence that is before us. The preliminary ceremony, in every Pudamuri, is the examination of the horoscopes of the bride and the bridegroom by an astrologer. This takes place in the house of the bride, in the presence of the relations of the bride and bridegroom. The astrologer after examination, writes down the results of his calculations on a piece of palmyra leaf, with his opinion as to the fitness or otherwise of the match, and hands it over to the bridegroom's relations. If the horoscopes agree, a day is then and there fixed for the celebration of the marriage. This date is also written down on two pieces of cadjan, one of which is handed over to the bride's Kāranavan, and the other to the bridegroom's relations. The astrologer and the bridegroom's party are then feasted in the bride's house and the former also receives presents in the shape of money or cloth, and this preliminary ceremony which is invariably performed at all Pudamuris in North Malabar, is called "Pudamuri Kurikkal," but is unknown in South Malabar.

Some three or four days prior to the date fixed for the celebration of the Pudamuri, the bridegroom visits his Kāranavans and elders in caste to obtain formal leave to marry. The bridegroom on such occasion presents his elders with betel and nut and obtains their formal sanction to the wedding. On the day appointed the bridegroom proceeds, after sunset, to the house of the bride accompanied by a number of his friends. He goes in procession and is received at the gate of the house by the bride's party and is conducted with his friends, to

seats provided in the Tekkini, or Southern Hall of the house. There the bridegroom distributes presents (*Dānam*) or money gifts to the Brahmans assembled. After this the whole party is treated to a sumptuous banquet. It is now time for the astrologer to appear and announce the auspicious hour fixed. He does it accordingly and receives his dues. The bridegroom is then taken by one of his friends to the *Padinhātta*, or principal room of the house. The bridegroom's party has, of course, brought with them a quantity of new cloths and betel leaves and nut. The cloths are placed in the western room of the house called *Padinhātta* which all religious and other important household ceremonies are usually performed. The room will be decorated and turned into a bed-room for the occasion. There will be placed in the room a number of lighted lamps, and *Ashtamanguliam* which consists of eight articles symbolical of *manguliam* or marriage. These are rice, paddy, the tender leaves of the cocoanut trees, an arrow, a looking-glass, a well-washed cloth, burning fire, and a small round wooden box called "Cheppu" made in a particular fashion. These will be found placed on the floor of the room aforesaid as the bridegroom enters it. The bridegroom with his groom's-men enters the room through the eastern door. The bride dressed in rich cloths and bedecked with jewels, enters the room through the western door accompanied by her aunt or some other elderly lady of her family. The bride stands facing east with the *Ashtamanguliam* and lit-up lamps in front of her. The groom'sman then hands over to the bridegroom a few pieces of new cloth, and the bridegroom puts them into the hands of the bride. This being done the elderly lady who accompanied the bride, sprinkles rice over the lit-up lamps and the head and shoulders of the bride and the bridegroom, and the bridegroom immediately leaves the room, as he has to perform another duty. At the Tekkini or Southern Hall, he now presents his elders and friends with cakes, and betel leaf and nut. Betel and nut are also given to all the persons assembled at the place. After the departure of the guests the bridegroom retires to the bed-room with the bride.

This is an unvarnished account of a "Pudamuri." Next morning the *Vettillakettu* or *Salkāram* ceremony follows, and the bridegroom's female relations take the bride to the husband's house, where there is a feasting, &c., in honor of the occasion.

Uzhamporukkuga, or Vidāram Kairal is a peculiar form of marriage in North Malabar. It will be seen from the description given above that the Pudamuri is necessarily a costly ceremony, and many people find it difficult to celebrate it in due form for want of money. Such people generally resort to the less costly ceremony of Uzhamporukkuga or Vidāram Kairal. The features of this ceremony are to a certain extent the same as Pudamuri; but it is celebrated on a smaller scale. There is no cloth-giving ceremony. The feasting is confined to the relations of the married couple. The particular incident attached to this form of marriage is that the husband should visit the wife in her house, and is not permitted to take her to his house, unless and until he celebrates the regular Pudamuri ceremony. This rule is strictly adhered to in North Malabar, and instances in which the husband and wife joined by Uzhamporukkuga or Vidāram Kairal ceremony, and with grown-up children being the issue of such marriage, undergoing the Pudamuri ceremony some 15 or 20 years after Uzhamporukkuga, in order to enable the husband to take the wife to his house, are known to me personally.

The Sambandham of South Malabar and the Kidakkora-kalyānam of Palghāt have all or most of the incidents of Pudamuri, except the presenting of the cloths. Here money is substituted for cloths, and the other ceremonies are more or less the same. There is also *Salkāram* ceremony wanting in South Malabar as the wives are not at once taken to the husband's house after marriage.

43. Accepting the above account of the so-called marriage ceremonies, we have next to consider whether any or all of them constitute a valid marriage.

"Of all the forms of Sambandham (says Mr. Chandu Menon) I consider the Pudamuri form the most solemn and the most fashionable." It is an essential part of the Pudamuri ceremony that there should be a gift of cloth by the bride-

groom to the bride, and of no other form of Sambandham can it be said that any formality is of its essence. If the Pudamuri is not a valid marriage, neither are the other less formal varieties of Sambandham.

In enumerating the reasons for holding that the Pudamuri ceremony is not a marriage, we may begin with a quotation from a competent Brahman witness from North Malabar (Appendix IV., witness 25, page 17): "Nambudris consort with Nayar females by *Pudamuri*, and exactly the same ceremony is gone through whether the husband is a Nambudri or a Nayar. The Nambudiris don't look on it as marriage." In their answers to Question 21, seventy-four of the North Malabar witnesses (out of the first 134 in Appendix II.) corroborate this statement by declaring that whether the husband be a Nayar or a Brahman, the formalities of the wedding are exactly the same. Others, with more accuracy, point out that where a Brahman is the bridegroom he can't eat with his Sudra 'wife,' and therefore is unable to join in the wedding feast; and also that there is no comparison of horoscopes, but admit that there is no essential difference.

The Brahman has not the least objection to go through any formalities required by the scruples of the woman and her family, but he does not regard the connexion as a marriage, and no Court of law would so regard it. If certain formalities do not constitute a legal marriage when the bridegroom is a Brahman, how can precisely the same formalities constitute a legal marriage when the bridegroom is a Nayar?

44. We would quote next from the Memorandum of our President, certain facts and arguments adduced by him, which tend to show that the institution of marriage is foreign to Marumakkathâyam:—

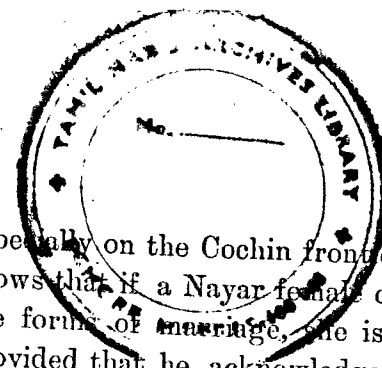
"The relation of husband and wife, or of father and child, is not inherent in the conception of a Marumakkathâyam family."

"The person that begot a child on a Marumakkathâyam female was originally regarded as a casual visitor, and the sexual relation depended for its continuance on mutual consent."

"It is pretty certain from the usage obtaining in Kovilagams, or the families of ancient rulers and petty chieftains, that in former times there was no marriage in Malabar. There, the ladies cohabit with Nambutiri Brahmans without any formality, and are at liberty to change them at their pleasure, with the consent of the senior Rajahs. It may be that the aristocracy of a country adhere to an ancient usage more tenaciously than the middle and the lower classes, but it is anything but probable that the institution of marriage originally existed among the latter whilst it did not exist among the former."

"In North Malabar, especially at Kadathanâd, there is a form of marriage called *Uzhamporukka*, and its etymology suggests that one had to wait for one's turn.

Another form of marriage which is in vogue in North Malabar, and often resorted to by those who are poor, in order to avoid the expense consequent on Pudamuri, or giving cloth, which is the approved form of marriage, is called *Vidâram Kairuga*, or coming to the house. A girl married in this form is not to this day taken into the husband's house unless and until Pudamuri is performed. This indicates, again, that in former times the husband was a casual visitor at the wife's house." "Apart from negative and symbolic evidence, there is positive evidence to show that polyandry still lingers in the Ponnani and Valluvanad Taluks,



especially on the Cochin frontier of the former Taluk." Lastly, "the evidence shows that if a Nayar female consorts with a male without going through any of the forms of marriage, she is not put out of caste even in respectable families, provided that he acknowledges the intimacy and is of equal or superior caste. This sort of union, though not common, has not yet disappeared, nor is it treated as prostitution as is the case on the other coast."

45. Next let us hear the High Court than which we cannot expect a higher authority.

It will be admitted by all experts that the Aliyasantâna people in South Canara have advanced further towards the paternal family than have the Marumakkathâyam people in Malabar. The formalities attending the first cohabitation are better defined, and more generally observed, and the woman is, as a rule, taken to the husband's house. It is as certain as anything can be that any ruling which holds that there is no marriage known to the Aliyasantâna law must *a fortiori* apply to Marumakkathâyam also. Under the Aliyasantâna system the union of man and woman (says the High Court) "is in truth not marriage, but a state of concubinage into which the woman enters of her own choice and is at liberty to change when and as often as she pleases." (Mad. H. C. Rep., Vol. IV., 203.)

It (the system) founds upon the cohabitation no right of property or inheritance. It is a casual relation which either party may terminate for any or no reason. Neither father nor mother is legal guardian of the offspring. The senior male for the time being in the mother's family, though under no personal obligation to support the offspring, is constituted their only legal guardian, both during their mother's life-time and after her death, and the father has by positive law not the smallest right to their custody. (VII Mad. H. C. Rep. 179.)

The cohabitation does not constitute such a marriage as those intended in those sections of the Penal Code which provide for the punishment of offences against the marriage right (I. L. R., Vol. VI., 379) and thus conduct which under the ordinary law would be punishable as bigamy, adultery, or enticing away a married woman, escapes with impunity.

46. Hear next the aristocracy of the District, the Rajahs who are admittedly the heads of the Nayar caste, and the Nambudris who are the priests and expounders of religion. The Zamorin Maharajah Bahadur, some of the most learned representatives of the various branches of his royal family, and divers other respectable witnesses, agree that by a divine ordinance—partly handed down by immemorial tradition, and partly recorded in sacred granthams—it is forbidden to the Nayar women to be chaste, and slokâs are quoted to prove that to the Nayar women, what is usually called promiscuous cohabitation is honorable in all things and the bed undefiled.

47. Hear next the voice of the three hundred and twenty witnesses (all of them men of weight by virtue of rank, position, or education) who have sent in answers to the interrogatories. One hundred and ninety-seven admit the undoubted fact that either party to the union may terminate it at any time from wantonness, caprice, or any other reason. If the couple, joined together by Pudamuri, are satisfied with one night of hymeneal bliss, there is no legal impediment to prevent their separating without any formality on the following morning. Ninety-one other witnesses do indeed allege some formality to be necessary,

but in general their only assertion is that the parties should not separate without the approval of their Kâranavans, or of their relatives, or of their caste people. This is a mere counsel of perfection, which it is not pretended can be in any way enforced. Twenty-one would altogether deny to the woman the right of divorce which they accord to the man, assigning as their reason that under the Hindu Law no woman can be independent. This minority would, if they could, deprive Marumakkathâyam of its one great merit, *viz.*, that in sexual matters it places the man and the woman on terms of equality, according equal freedom to both. With practical unanimity all admit (what is also an unquestionable fact) that at any moment the man may turn away the woman, and that under Marumakkathâyam law he is in no way responsible for the maintenance of the children whom he has begotten upon her.

48. Applying the test proposed in para. 29 the Commission are thus forced to the opinion that the principles of the Marumakkathâyam law do not recognize the institution of marriage. If Marumakkathâyam is to be their guide, it permits its followers to copulate *more ferarum* with no other restriction than that the man shall be of equal or higher caste than the woman. They are all, or nearly all of them, better than their Custom, and the majority (as we are told and believe) cleave to one woman for life. But continued cohabitation does not, under any law which concerns us, raise the woman to the status of wife; and the parties, however long they cohabit, acquire under their own system no rights or duties which the law can recognize.

49. We may next conveniently consider the question as to whether the cohabitation of the sexes, according to Marumakkathâyam custom in any way connects itself with the religious observances of the people.

The Nambudri Brahmans are the priests, and religious instructors, of the Nayars, and their answer to this is that Malayalam sacred writ and immemorial tradition decree that the Sudra woman was specially created for Nambudri bachelors to play with, and that any departure from this usage in the direction of chastity, must bring down upon the offenders the divine curse. The Nayars will not submit to this teaching much longer. Apart from this religious objection we do not think it can be shown that the introduction of a marriage-law would offend in any way the religious convictions of the Marumakkathâyam Hindus.

Of the witnesses examined, only one (No. 119, Appendix IV.) has ventured to assert that the formalities which optionally attend *Sambandham* make it a religious ceremony; whereas a *number of witnesses—fair representatives of the classes who oppose legislation—admit that there is no religious element in it.

How can it be contended that the formalities are of a religious nature, when any or all of them may be dispensed with, without making the alliance illicit or improper? A marriage can scarcely be religious, when the marriage relation can be at any time arbitrarily repudiated. The Nambudris, as already shown, para. 43, deny that the formalities constitute a marriage, and, as our President well says, "there is no officiating priest in attendance, there is no formula to be repeated, there is no Vedic or Puranic, or religious chant or exhortation and there is no formal benediction." The parties do not plight their troth and do not call God to witness their union.

* Vide Appendix IV., Nos. 7, 25, 27, 34, 35.

The comparison of horoscopes to ascertain the luck of the pair can hardly be deemed a religious ceremony, when it is remembered that this formality is often observed before taking a partner in trade, or engaging the services of a Kâriasthan, or bailiff.

The distribution of money to Brahmans is one of the prescribed forms of charity which it is the custom to display on all festival occasions, and does not in itself convert a feast into a religious rite. The lighted lamp is no doubt indispensable, seeing that the festivities take place by night, but no one has been able to show us that it has any religious significance.

50. Having thus reached the conclusion that Marumakkathâyam was, and still is, destitute of the institution of marriage, we deem it necessary to describe briefly how this system, which ignores the relation of husband and wife and of father and child, actually works in every-day life. If the system works smoothly in practice, and if its followers are united and prosperous, the fact would doubtless be a strong argument for leaving well alone.

The truth must be told in plain words, even at the risk of giving pain and offence to many upon whose good opinion we set a high value; but the impeachment of a system should not be misconstrued as betokening a want of appreciation of the many virtues and good qualities of the people born under it.

51. *The Marumakkathâyam Family.*—The Tarawâd, or Marumakkathâyam family, consists in theory of all persons who can trace their descent in the female line from a single ancestress. No descendant of a male can belong to the Tarawâd. The senior male for the time being is the head and manager, and is called the Kâranavan.

Lovers of the system depict the Tarawâd as a group of males and females, bound together by the sacred tie of common descent from one great-great-great grandmother. The females have only to follow their natural instinct to be fruitful and multiply; while the males (free from all sordid care for their own progeny) labour like the honey-bee for the common good of the Tarawâd hive, and pour their earnings into the lap of the venerable Kâranavan, who in the exercise of an absolute and wise discretion, administers the income equally for the benefit of all.

Secured by the impartibility of the estate, refreshed by the acquisitions of the junior members, and under the beneficent sway of the senior male, the Tarawâd should wax great and endure throughout all generations.

52. *The Kâranavan.*—The senior male in this happy family is entitled to possession of the Tarawâd property, and is absolute in its management. The junior members have only a right to residence and maintenance in the family house. They cannot call for an account, except as incident to a prayer for the removal of the manager for misconduct, nor claim any specific share of the income, nor even require that their maintenance should be in proportion to the income. An absolute discretion in this respect is vested in the manager. (*Vide* Mayne's Hindu Law, Sec. 268.)

The Kâranavan is the legal guardian of every member of the Tarawâd. His position in this respect is defined by the High Court (Morgan, C.J., and Holloway, J.) as follows:—

"In the present case, by the principles of the law of Malabar, the mother herself while alive and her children too were under the guardianship of the head

of the family, the Kâranavan. Their position was precisely analogous to that of the members of a Roman family under *patria potestas*. The Kâranavan is as much the guardian and representative for all purposes of property, of every member within the *Tarawâd*, as the Roman father or grandfather. Moreover, the relation of husband and wife does not in Malabar disturb their condition. These children have no claim whatever upon the property of their father, but their rights are entirely in that of their Kâranavan's family. There is no doubt at all that he was during the mother's lifetime, and continues to be after her death, the legitimate guardian of the children, and that the father has by positive law not the smallest right to their custody." (VII. Madras H. C. Rep. 179.)

But it may be noted here that a Kâranavan is under no personal obligation to support any member of his *Tarawâd* by his own labour, or from his self-acquisitions. He is only responsible if the family possesses ancestral property and to the extent of that property.

In Marumakkathâyam it seems to be taken for granted that every *Tarawâd* must have an ancestral estate upon which to subsist. This is of course far from being the case.

"He (the Kâranavan) is not accountable to any member of the *Tarawâd* in respect of the income of it; nor can a suit be maintained for an account of the *Tarawâd* property in the absence of fraud on his part." "His management may not be as prudent or beneficial as that of another manager would be, but unless he acts *mala fide*, or with recklessness, or with incompetency, he cannot be removed from such management. Almost the only restraint on him in such management is that he cannot alienate the lands of the *Tarawâd* except with the consent of the senior Anandaravan, or, in certain circumstances of other of the Anandaravans." (I. L. R. II. Mad. 328.)

Where one Kâranavan has allotted *Tarawâd* lands amongst the various branches of the family for their support, his successor in office may cancel the arrangement and make a redistribution.

The High Court (Innes and Muthusami Aiyar, J.J., in S. A. 450 of 1881) held that "the numerical increase of the *Tarawâd* must from time to time necessitate a new distribution, and a Kâranavan is competent to call in property allotted in maintenance, and redistribute it, or make arrangement at his discretion for the maintenance of the members."

In S. A. 359 and 401 of 1870 the High Court (Scotland, C.J., and Holloway, J.) observed:—

"With so peculiar a condition of property as that of Malabar, it is most essential for the avoiding of complete anarchy and consequent ruin, to maintain the distinct rule as to the Kâranavan's powers."

In the matter of removing a Kâranavan for mismanagement the High Court (Morgan, C.J., and Holloway, J.) remarked:—

"In such a state of property and family relations as that of Malabar there must be" to a man in the position of Kâranavan "a constant conflict of interest with duty," but they held that the Kâranavan "should certainly not be removed from his situation except on the most cogent grounds." "The state of families and property in Malabar will always create difficulties. Their solution will not be

assisted by bringing in the anarchy and insecurity which will always follow upon any attempt to weaken the natural (*sic*) authority of the Kâranavan." (I. L. R. I. Mad. 153.)

Self-acquisitions.—The self-acquisitions of each member of a *Tarawâd* are at his absolute disposal during his life-time, but lapse to the *Tarawâd* on his death. (II. Madras H. C. Rep. 162.)

Creditors of the deceased can however follow up the property after it has so lapsed. (I. L. R. IV. Mad. 150.)

53. This brief recital of a few of the correlative rights and duties of the Kâranavan and his *Tarawâd* may suffice to attract attention to certain obviously strange features in the system.

How does a system work which selects the eldest male, by mere virtue of his senility, and puts him in the place of a father to rule over all the descendants in the female line of a single ancestress as if they were his children? In any large *Tarawâd*, if the Kâranavan reaches the ordinary span of human life, the chances are that his successor (the next senior male) has already one foot in the grave. It is a common thing at Jamabandi to find two feeble, white-headed old men, belonging to different branches, each alleging himself to be older than the other, and each contending for the Kâranavanship. The natural operation of the rule is that the Kâranavan, when he succeeds to office, is already in his dotage and has but a few years to live; and from this follows the result that most *Tarawâds* are afflicted by a change of Kâranavan at frequent and brief intervals. The chances are that where an old man succeeds to the office he is already physically and mentally incapable of contending with a score of men and women younger than he, and bound to him by no natural tie of affection. He becomes a puppet in the hands of one or more of them, and the *Tarawâd* suffers the usual consequences of puppet-rule.

As one Kâranavan follows another in rapid succession, each is placed under the strongest temptation to use his brief opportunity to provide for those he loves at the expense of those whom he does not love. When his power to raise money by lease and mortgage, and his non-liability to account for it, are considered, it is indeed wonderful that any Kâranavan should be honest. As the High Court observe "a Kâranavan's duty is in habitual conflict with his private affections and interests." (III. Madras H. C. Rep. 294.) The temptations that assail him are not of recent growth. In Appeal Suits Nos. 172 and 173 of 1858, Mr. Holloway remarked:—

"The rule of descent (Marumakkathâyam) exists, and the effort of the Court should be in accordance with the law to prevent *the gross acts of spoliation constantly carried on by heads of families*, which have reduced some of the most respectable families in Malabar to beggary." The italics are ours.

54. It is needless to dwell on the importance of home education for children. How, under such a system, can there be any wholesome home influences?

Their father is a stranger, who is not their guardian. The mother is not mistress of her house, but is only one of many junior members dependent on the Kâranavan. "All the females and junior members" (says Mr. Othena Menon) "pass their lives in constant discontent and misery." It is often difficult enough for a

father to educate half-a-dozen or so of sons; but what is the Kâranavan to do whose family may number two or three score of boys? The tendency is to educate none of them, on the plea that he cannot make invidious distinctions.

"I know hardly any instance," says Mr. Rozario (witness 46) "of a Kâranavan educating a junior member. It is almost always the father who educates," and this may be accepted as correctly laying down the rule.

55. The next point for remark is the theory that the Tarawâd is "an indissoluble unit," that its property is impartible and that all the members should live together.

Our Courts have done their best to compel the people to act up to the theory, and it is wonderful what a number of persons, when all are entitled to be fed without working, can live "huddled together" (as one of the witnesses, Mr. Kamaran Nayar, expresses it) "in a huge camp." "Not a day passes," he tells us, "without some fight or other." But disintegration is inevitable. At a certain point the mere increase of numbers renders it intolerable for the members to remain crowded together under one roof, and when this stage is reached the Tarawâd splits up into *Tâvazhis*, (branches) each headed by a female of the Tarawâd and her children. Other circumstances often favour such disintegration. Generally the Tarawâd lands are scattered in patches, often at a great distance from the family-house and from each other. For instance the estate of the Kavalapâra Nayar (which has long been under the Court of Wards) lies scattered throughout twenty amsams (parishes) of the Walluvanad and Palghât Taluks. The estates of all the Kovilagams lie scattered in the same way, and it may be laid down as a rule that no considerable Tarawâd estate lies in a compact block. The scattered lands are managed by erecting a number of kalams (or outlying granaries) where grain rents may be received and stored, and these must either be placed in charge of bailiffs, or of younger members of the Tarawâd. To secure breathing room in the Tarawâd house the junior members, male and female, move off to these kalams, and if the family is on good terms with the Kâranavan, an amicable arrangement is made whereby the various Tâvazhis (branches) cultivate and subsist upon certain lands set apart for each.

The distribution, once acquiesced in, creates a new condition of things to which the *Tâvazhis* accommodate themselves, and all may go on peaceably for years. But the *Tâvazhis* do not all increase at the same rate. Some branches become numerous and cannot subsist upon the lands assigned to them. Other branches dwindle and have more than they want. Then comes a change of Kâranavan, and the new man belongs perhaps to a Tâvazhi with many members. He sees that his branch is worse off than the rest. The law declares his right to make a redistribution, and the attempt to exercise the right at once plunges the Tarawâd into discord and litigation.

Witness 104 (Appendix IV.) is opposed to a marriage-law, and is therefore not likely to exaggerate the evils of the existing system. Speaking of his own locality he says:—"The Kâranavans and Anandaravans in all the important Tarawâds are in a state of hatred and dissension. The Kâranavan treats the joint property as if it was his own property. He will be the head of his own branch and will have no affection for the members of other branches. He will want to benefit his own wife and children."

Witness 105:—"There is dissension in every respectable Tarawâd in my locality. When our Anandaravans grow up and form Sambandham they complain that the Kâranavan does not supply their wants. They refuse to work for the Tarawâd."

Witness 102:—"In almost all the Tarawâds the Kâranavans and Anandaravans are fighting."

Witness 107:—"Kâranavans misappropriate the Tarawâd property, and alienate it in favour of their wives and children. The Anandaravans misbehave, are disobedient and will not work. This state of things is common throughout all Malabar."

Witness 65:—"In my time, strife and litigation between Kâranavans and Anandaravans were even more frequent in North than in South Malabar. As soon as a man becomes Kâranavan his thought is how he can benefit his wife and children at the expense of the Tarawâd."

A house divided against itself cannot stand, and most Tarawâds in Malabar are in this condition.

The Tâvazhis indeed admit descent from a common ancestress, but allege that they have become separated in interest. In this position the Courts (with some apparent inconsistency) incline to forsake the Kâranavan. The proper method of dealing with such cases is thus laid down by the High Court:—"In Malabar, as elsewhere, the inconvenience of this state of things (*i.e.*, living together as an indissoluble unit) has made itself felt, and families becoming very numerous, have split into various branches, have in fact become new families." "In one sense of the word people so related are still of the same Tarawâd. In the only sense with which Courts of Justice are concerned, they are not. Where there are several houses bearing the same original Tarawâd name but with an addition, and there is no evidence of the passing of a member of one house to another, there is the strongest possible ground for concluding that separation has taken place." (IV. Mad. H. C. Rep. 411.)

Kâranavans are now alive to the danger of allowing junior members to establish a *Tâvazhi* at outlying kalams (granaries), and the practice now is either to employ a Kâriastan (bailiff) or to insist upon the Anandaravan executing a formal lease.

The above is another great defect in the system, *viz.*, that it does not contemplate or provide for the time when the young birds must be crowded out of the nest.

There comes a point when the Courts will say that community of interest has ceased between branches of admittedly one family, but it is left to the uncertain opinion of the Judge to decide when this point is reached, and a fine field for litigation is thus opened up.

The so-called-disruption of Tarawâds is bound to go on; and a system which ignores and forbids the multiplication of families, so far as it is not altogether futile, is purely mischievous. A division of the land which may have suited the community a century ago when the whole population was estimated at under half a million (*vide* Imperial Gazetteer, Vol. IX., 224) will be suitable no longer when the population has multiplied to five times that number.

56. The Marumakkathâyam classes include no doubt nearly all the aristocracy of the District, but nothing can be more erroneous and unfounded than the notion that every Tarawâd has estates of indefinite dimensions capable of feeding an indefinite number of mouths. The great majority of Kâranavans—probably nine-tenths—are small tenant-farmers cultivating a few acres, on a precarious tenure, at a rack-rent, and a law which requires such a man from the produce of his farm to feed and provide for all the descendants of all his female relatives from birth to death, whether they work or not, is one of those laws which only continue to be law because they are habitually disregarded.

“If any will not work neither let him eat” is a law of Nature, which must make itself felt, sooner or later, even in the few Nayar Tarawâds which still have large estates; and the families which ignore it are doomed to poverty and extinction.

Mr. Logan, at page 138 of the Malabar Manual, concludes his remarks about the Nayars, in the following mournful and suggestive words:—“With a large increase in their numbers and with comparative poverty for the large body of them, the race is fast degenerating.”

57. The final result of the impartibility of Tarawâd property, is that it is mortgaged, re-mortgaged, and encumbered in every possible way, until not another rupee can be raised on it. Deputy Collector Mr. Chappan Menon, a very competent, experienced witness, tells us (Appendix IV., witness 66) that there are probably not fifty Tarawâds in the whole District that are not heavily involved in debt, and this is simply another way of expressing the same fact.

58. *The Marumakkathâyam Family in North Malabar.*—We witness in North Malabar a curious spectacle—the patriarchal system in conflict with, and slowly overcoming, the matriarchal—while the *corpus vile*, in which the struggle is going on, believes itself to be in perfect health, and is totally unconscious of the symptoms indicating the impending change.

In Marumakkathâyam law, no proposition can be clearer than that the Tarawâd estate is held in trust for the support of the females, and of their descendants in the female line. The theory of the system supposes that the females should live together in the Tarawâd house, and should there be visited by their consorts; and this is still the rule in South Malabar. But in North Malabar it has become the general recognized custom for the women to leave their Tarawâd house on “marriage” and to reside with their “husbands.”

In the present condition of society, it is the exception and not the rule for the “husband” to be able to set-up house and support his “wife” by his own exertions. The normal condition of a Tarawâd is to have one head, and many junior males looking to him for support, and thus in the great majority of cases the “husband” will be a junior member without either the wish or the means to earn his own living. It is strange that in this state of things the custom should have grown-up of allowing the junior males to bring their “wives” into the Tarawâd house.

But so well established is the custom that the High Court has held that the maintenance of the “wives” and children of the junior members (residing with their “husbands” in the husband’s Tarawâd) is a charge which the Kâranavan of the junior members is bound to meet. (I. L. R. VI. Madras 341.) The High Court allows that the Ruling “would seem inconsistent with the principles of the

Marumakkathâyam law,” but the answers to the interrogatories and the evidence taken by the Commission show that the ruling is really and truly in complete accordance with existing usage.

In North Malabar every girl quits the Tarawâd house as soon as a mate can be found for her, while all the males,—uncles, brothers, nephews, cousins, and second cousins,—remain, and bring their “wives” to live with them. The wives and children of all the males generally share the same kitchen and cook their rice in the same pot. Thus in North Malabar the Tarawâd income is consumed by the males, their “wives” and their descendants, while to the females, their Tarawâd becomes an ultimate place of refuge into which they and their families are unwillingly received when their husbands die or discard them. The unhappy Kâranavan is not only bound in law to maintain all the females of the Tarawâd, who may have been widowed or discarded, together with all their offspring, but must also find bed and board for all the “wives” of the males, and for all their offspring during continuance of the connexion.

The obligation to find food for all the Tarawâd mouths, including those of the wives and children of all the junior members, gives the Kâranavan, in theory, a right to veto an Anandaravan’s “marriage,” but the veto cannot be so used as to keep junior males in a state of celibacy, and though the Kâranavan may have some voice in the selection of the juniors’ wives, he has no control over the rate at which they breed. The Kâranavan though he is the legal guardian of the junior males, is not in the same position as regards their wives and children. These latter remain in law under the guardianship of the Kâranavans of the Tarawâds to which the “wives” belong, and the husbands have not in law the smallest authority over them.

How such a family system can work at all is a mystery! We can well credit the witness who tells us “not a day passes without some fight or other.” (Appendix III., No. 37.) The practice is a travesty of Marumakkathâyam, and is in fact a deformed growth—the product of a natural unconscious effort to shake off the matriarchal system, which effort has been nipped in the bud and rendered abortive (as pointed out by Mr. Mayne*) through the action of our Courts in preventing the disruption of Tarawâds by partition. Strange to state the great majority of the people thus chained to ancient custom by foreign agency, seem perfectly satisfied that their social condition admits of no improvement.

“Their cage

They make their quire, as doth the prison’d bird,
And sing their bondage freely.”

59. *Are the proposed changes desired by a majority of the classes subject to the Marumakkathâyam law?*—Maine, in his “Ancient Law,” tells us that “much the greatest part of mankind have never shown a particle of desire that its civil institutions should be improved.” (Sixth Ed., p. 22.) “Instead of civilization expanding the law, the law has limited civilization.” “The stationary condition of the human race is the rule, the progressive is the exception.” “Over the larger part of the world, the perfection of law has always been considered as consisting in adherence to the ground plan, supposed to have been marked out by the original legislator” (p. 78).

All these remarks apply with full force to Malabar.

* NOTE.—Vide Appendix I., last page.

The great bulk of Nayers and Tiyanas are tenants of small holdings, paying rack-rents, and earning a scanty living by agriculture. They are totally uninstructed on the subject of the proposed legislation, and can form no opinion as to its desirability.

The landlord and agricultural classes, as a whole, have little education, in the English sense of the term, and have that horror of innovation, which characterises most Orientals.

We therefore do not dispute the view that the proposed legislation is not at present desired by a majority, but we also believe that the uninstructed majority will rapidly follow the lead of the enlightened classes, and that there need be no apprehension that if the law be framed it will remain a dead letter.

Many of the strongest opponents of the proposed legislation have expressed a lively dread of its speedy acceptance by a large proportion of the people.

Thus witness No. 56 (one of the great Janmis) in urging his objections to the Bill, says:—"Seven-eighths of the Anandaravans will give their earnings to their wives and children, and thus Tarawâds will be ruined if the proposed Act is passed. My opinion is that if the proposed Act is passed, a majority of Anandaravans will follow it, and the Tarawâd system will be ruined. I think both educated and uneducated Anandaravans will marry under the Act." The Dewan of Cochin, in stating unofficially his objections to the Bill, says:—

"If once the Bill is passed it will become almost compulsory. Some of the English-educated Malayâli gentlemen, who hold respectable posts under Government, or who occupy other respectable positions, will register their marriages, and then non-English-educated gentlemen too will follow them, though they do not know whether the measure is good or bad. They will consider that it must be good as it is accepted by those whom they regard as their superiors in every respect. Malayâli ladies will begin to consider that marriage registration is the only proper thing to be done, and they will not accept husbands who are not willing so to register, and proclaim to the world that they are married.

Thus in the course of a few (say ten) years, almost all Malabar marriages will become registered, or, in other words, the people will become Makkathâyees." (Appendix III., paper 10.)

Mr. C. Karunagara Menon, B.A., Sub-Editor of "The Hindu," in his pamphlet against the Bill, takes the same view:—

"When the example is set by men like Mr. * * * every stray youth in the community, even though he be poor and penniless, will borrow Rs. 10, step into the Registrar's Office, and have his marriage registered."

"Though the Act in contemplation is a permissive one," says the Valia Tamburân of the Padinyârê Kovilagam, "yet many are likely to conform to the provisions of it," and he goes on to point out what he thinks to be the evils which will ensue. Our colleague, Mr. Chandu Menon, thinks that there will be no Marumakkathâyam Hindus 15 or 20 years after the Bill becomes law!

All the above opinions are based on the supposition that legislation would take the form of the Hon. Mr. Sankaran Nayar's Bill, and as we deem them well-founded, we are not prepared to concur in our President's view that the number of persons who would accept the Bill as it stands, is too small to render legislation on its lines, expedient.

Out of the 121 witnesses examined by us, only 10 are content with the existing law under which self-acquisitions lapse to the Tarawâd in case of intestacy.

Thirty-one think that such self-acquisitions should be divided between the Tarawâd and the children. Thirty-three would cut out the Tarawâd altogether. Eight would give the whole to the widow and children, and twenty-three would divide the property between these and the Tâvazhi. Two would have it go to the Tâvazhi alone. Seven would divide it between the Tarawâd, Tâvazhi and children. Seventy-nine of the 121 are in favour of marriage legislation—four would wish it to be compulsory; two would not desire legislation unless it were compulsory.

Of the 322 persons who sent in answers to interrogatories, 178 are in favour of marriage legislation, and no less than 105 would desire that the whole of a man's intestate self-acquisitions should go to his widow and children.

Of these 105, thirty-one persons were examined before the Commission, and eighteen then modified their former opinion in favour of the Tâvazhi (mother, brother and sisters), or Tarawâd, being admitted to a share. Seven adhered to their opinion, and six were not questioned on the subject.

We would draw attention here to the opinion of a disinterested and exceptionally qualified witness. (Appendix IV., witness 46.) Mr. Rozario, B.A., B.L., High Court Vakil, and for many years leader of the Tellicherry Bar, says:—

"The majority of the people of North Malabar do not desire a law to regulate their marriage. They believe they have already a legal marriage. I believe a great many or almost all the educated Marumakkathâyam Hindus would wish that their self-acquisitions should go to their wives and children. I can't say that a majority of the uneducated are in favour of this. All I have spoken to admit that the proposed change would be very small inasmuch as even now most of them settle their acquisitions on their wives and children by gift *inter-vivos*. I have spoken to 20 or 25 uneducated men who are persons of position. The majority leave no part of their acquisitions to the Tarawâd. I should say that the only cases in which a man allows a part of his acquisitions to go to anyone but his wife and children are those in which his own immediate female relatives are poor. I find a majority of the people in favour of their marriage being in some way legally recognized. I have discussed the proposed legislation with persons from all parts of North Malabar. There is a growing tendency among the educated to get the Marumakkathâyam law changed in its entirety."

If the evidence collected by the Commission be accepted as fairly representative of the more intelligent section of the community (and we think it may be) then the great majority desire either a modification of the Succession law in favor of wife and children, or a marriage-law, or both.

60. On the question whether the proposed legislation is essential in the interests of the minority and is expedient, we heartily adopt the arguments recorded by our President:—

(1) Though the minority that desires legislation is small, it is a growing and an educated minority, and every year will add to its strength and influence.

(2) The right to contract a legal marriage is personal to every one of Her Majesty's subjects and the demand for a permissive law is but reasonable.

Sir Henry (then Mr.) Maine said in 1868:—"It is not the policy of the Queen's Government in India to refuse the power of marriage to any of Her Majesty's subjects."

(3) It is a demand which will be repeated year after year until it is conceded.

(4) A marriage-law is an important aid to national progress and good morals.

(5) As a permissive law it will not force a legal marriage on those who are unwilling to contract it.

61. With the advance of education Marumakkathâyam is becoming hopelessly unworkable. It offends against every principle of political economy, and of healthy family life. It is based on the doctrine that there is no merit in female virtue, and no sin in unchastity, and of this doctrine the very defenders of the system are heartily ashamed. By freeing a man from the obligation of maintaining his wife and offspring, it sanctions the reckless propagation of the species,—destroys all motive for prudence and forethought,—and forces up the population to the point where it must be kept down by actual want of the means of subsistence.

It “huddles together” as a family a number of distant relatives not necessarily drawn to each other by any bond of natural affection. It makes home-life (in the best sense of the word) impossible; for the father is a casual visitor, and the mother and children are but units in a heterogeneous flock, dependent on a practically irresponsible guardian who, from the mere accident of his being the eldest of the flock, is expected to be able to regard every member with an impartial love, and to prefer their interests to those of the wife of his bosom and the children of his loins.

While attempting to maintain the impartibility of family property, it has been unable to prevent such property from being encumbered in every possible way, and the effort to get rid of the encumbrances demoralizes the people to such an extent that Malabar has become notorious for forgery, perjury and reckless litigation.

The rule which vests the management of Tarawâd property in the eldest male, raises a man to power when he is in his dotage,—cuts short his reign,—results in frequent change of managers,—saddles each with obligations that he cannot possibly discharge,—creates a constant conflict between duty and interest, and by way of climax to the many temptations which invite him to provide for his wife and children by malversation and breach of trust, offers him the assurance that he cannot be called to account. Finally, by declaring the right of every member to receive maintenance from the Tarawâd, from the womb to the grave, junior members are encouraged to pass useless lives in sloth and idleness without effort to better their condition.

Mill somewhere remarks that the laws of most countries are far worse than the people who live under them, and happily it is beyond dispute that the Marumakkathâyam Hindus in practice follow a higher and better way of life than that which is supposed to regulate their domestic rights and duties.

So strongly has the natural feeling in favour of wife and children become developed, that in North Malabar one stock objection to a marriage-law was that the people did not want what they had already got. According to the North Malabar witnesses the rule is that the union of a man and woman lasts for life. The wife lives with the husband. Divorces are almost unheard of, or are extremely rare. Respectable people set their faces against polygamy. The father is *de facto* the guardian of his wife and children, and educates the latter. In the absence of

testamentary power, men, where they have the means, invariably make provision for their wives and children by gifts *inter vivos*; and if they were to die before having made such provision, their Tarawâds would be forced by public opinion to make the widow and orphans an adequate allowance. Thus according to all the evidence given before us, a marriage-law in North Malabar and throughout the greater part of South Malabar, would merely legalize what is already the prevailing custom.

This leaning towards a married life, with its attendant obligation to rear and educate the children, is growing from day to day. Marriage is already claimed to be a social institution, and the gradual advance of the community towards patriarchal family-life has already gone far to make the Tarawâd system unworkable in practice, and must (law or no law) eventually accomplish its overthrow.

62. We find a further argument in favour of legislation in the fact that it will discourage, and probably prevent, the growth of polygamy.

Taking Malabar as a whole, polygamy is now so rare that all the Commissioners are agreed that it presents no serious difficulty in the way of legislation, and need not be recognized in any marriage-law that may now be passed.

But the average Malayâli is not at present in favour of a monogamous marriage-law. He has indeed a lively and sincere desire that his wife (or wives) should be chaste and faithful, and should be bound to him as long as he wishes; but for himself? He is a Hindu, and would be under the Hindu law. That law, as now administered, permits polygamy, and he would therefore defend his privilege of having as many wives as he pleases.

This sentiment in favour of polygamy is visibly developing along with the social forms of ‘marriage,’ and unless legislation now affords a guide and support to that section of public opinion which condemns polygamy, it may hereafter become extremely difficult to recognize marriage as an institution, either judicially or by legislation, without recognizing polygamy also.

63. The last argument to which we need allude is the desirability of removing from injured ‘husbands’ the temptation to take the law into their own hands. “Nowhere,” says Mr. Logan, “is neglect of the marriage tie more savagely avenged” than in Malabar, and this opinion has been re-echoed by writers of all opinions, with approval. According to our colleague, Mr. Chandu Menon, the Nayar ‘husband’ had of old the right to slay the seducer of his ‘wife’ on the spot, with impunity; and he has still an excuse for taking private vengeance on the wrong-doer, because the law now grants him no redress.

In the words of our President, “the proposed Act will on the one hand elevate and ennoble the precarious social marriage into a legal institution, whilst the strong arm of public law will on the other protect the domestic circle against the incursion of irregular passions and thereby remove one cause of acute suffering in that circle, and a strong temptation to the commission of crime.”

To the question “Is legislation expedient?” we would answer by an emphatic “yes.”

64. We will refer here to the question, *How would the legislation affect the people governed by the Aliyasantâna law?* The Aliyasantâna castes in South Canara do not intermarry with Nayars or Tiyans, and it is apparent that the proposed law, if confined in its operation to the Marumakkathâyam Hindus of Malabar, can have no effect, either good or bad, upon the Aliyasantâna people.

Legislation for Malabar may, and we believe will, lead to a strong agitation for the extension of the law to South Canara. The Memorandum of our colleague, Mr. Mundappa Bangêra, and the letters of Mr. Brodie, the present Collector of South Canara, and of Mr. Ramaya Punja, District Munsiff (the two last papers in Appendix III.) are full of interesting information, and deserve attentive perusal. Mr. Brodie, who knows both Districts, thinks that marriage legislation is more desired in South Canara than in Malabar, and our South Canara informants show that there is a large section of the people, who desire the complete abrogation of the Aliyasantâna system.

An effort to shake it off was contemplated in 1869, under the circumstances described in the papers of the above-named gentlemen, and we cannot forbear to quote, from the Memorial then prepared for submission to Government, the following description of the evils arising from the system. It shows that the indictment brought against the Aliyasantâna system and against Marumakkathâyam are one and the same.

"This system of inheritance," say the Memorialists, "is opposed to Nature; for Nature has implanted in the heart of man an affection for his progeny, and a desire to bestow on them all that he possesses, and to see them happily settled in life. But the Aliyasantânam Law demands that a man shall love his nephews more than his own children, and thereby compels him to run counter to human nature. No positive law, however stringent it may be, ever triumphs against Nature, and the result therefore is that while the estates of Aliyasantânam families are made over to the management of a single individual, he on his part is prompted by his natural inclinations to betray the trust reposed in him, in the interest of his nephews, which it was the object of the Law-giver to protect,—and to press into his service perjury, forgery, and other utterly demoralizing expedients to carry out his wishes the more effectually.

The Law of Aliyasantânam, or nepotism, therefore has, ever since its introduction, been breeding nothing but mischief. And all Courts of Justice in the District, and almost everyone conversant with Canara, are fully aware how the Ejamân, or Kâranavan, of a family governed by the Law of Aliyasantânam fraudulently contrives to bestow on his wife and children what fortune he can, at the expense of the property which by Law he is bound to keep and to bestow on his sister's son. Such Ejamâns are, however, in one sense, not to blame for they only yield to Nature which the Law with little policy directs them to disown. And we believe much of the demoralizing litigation that disgraces this District, can be traced to this revolting system.

This system of inheritance has proved ruinous to great and wealthy families. The Ejamân, or the headman of a family, in which the son succeeds his father, has it generally at heart to improve and increase the property of his family, for he is sure to bestow it on his children, towards whom he has a natural affection. And even if such a headman should happen to encumber his estate with debt, his children think it their interest to redeem it. The same however is not the case with the Ejamân of a family governed by the Law of Aliyasantânam. He would defraud his nephews,—at present rightful heirs of all the property, real or personal,—to provide his own wife and children with a suitable fortune; while his children also, who would otherwise have improved their father's property, join their father in destroying it; for they know they must make hay while the sun shines, and that when the property passes away from their father, they would lose all means of profiting by it.

His successor also does the same in his turn, for it is not natural that he should act otherwise. It is thus that great and wealthy families, sooner or later but surely, collapse and gradually dwindle into nothing.

The present state of the Aliyasantânam people, compared with what it was several centuries back, shows that nothing but evil and ruin have come out of the change inaugu-

rated by Bhutâlapândya, and that the people are gradually going downwards in the scale of social advancement. Everyone conversant with the habits of the Aliyasantânam people is aware what ruin this anomalous system of law has entailed upon them." (Vide Appendix III., last paper.)

It only remains for us to express our concurrence in the view of the President that any form of marriage legislation which may be thought fit for Malabar, may be expediently and without difficulty extended to South Canara.

65. We now come to the question what form legislation should take. On the supposition that legislation is expedient, two alternatives suggest themselves:—

One proposal (favoured by our President) is to frame a marriage-law such as the whole body of Marumakkathâyam people may at once be able to welcome and adopt, and thus to engraft the institution of marriage upon Marumakkathâyam in such a form that the two may flourish together. Such a law amongst other things must prohibit marriages offending against existing rules of caste, must provide a ready means of divorce without resort to Court, and must recognize the Marumakkathâyam Law of Succession as meriting countenance and perpetuation.

The other alternative is to recommend a marriage-law,—such as we are sure that an English Government can and will grant,—not widely diverging in principle from those (denominational and undenominational) already on the Statute Book, all of which are based on the view that marriage is the union of one man with one woman for life, and that the wife cannot be divorced except for adultery.

The Hon. Mr. Sankaran Nair and the English Commissioner support the latter alternative, urging *first* their belief that in the present state of English public opinion, a proposal to recognize caste as an obstacle to marriage, and to permit free divorce, is not within the field of practical politics, and *second* that the Bill, in the shape in which the Hon. Mr. Sankaran Nair desired to introduce it, may be so modified as to be at once acceptable to the educated Malayâli, and in harmony with the principles which an English Government is bound to uphold.

The Commissioners (Messrs. Sankaran Nair and Winterbotham dissenting) would prefer to see the President's scheme tried, but the majority who have signed this report would humbly advise that if the scheme advocated by the President be not approved, the alternative Bill be introduced with a view to its being shaped into law.

66. We will now proceed to discuss the objections which have been raised to Mr. Sankaran Nair's Bill, and the modifications and improvements which we would recommend in deference to those objections.

I. 67. The provisions of the Bill prescribing a statutory form of marriage have been strongly objected to, on the ground that it is not in accordance with Nayar views of modesty that the bride should appear before a Marriage Registrar, who may be a man of another caste and creed.

In favour of the bride's appearance before the Registrar it must be urged that it affords a real protection to the woman, who, if she has any strength of character, cannot (with such a provision) be forced into a marriage against her will; and it seems important thus to cultivate, where it does not already exist, a sentiment amongst the males that the wishes of the females require consideration.

Such a sentiment is thoroughly in accordance with Marumakkathâyam ideas, however superfluous it may be under the ordinary Hindu Law.

However, as a concession to the strong prejudice that undoubtedly exists against the bride appearing before the Registrar in person, we concur in the President's scheme (sketched in para. 16. I. and VI. of his Memorandum) if, as we understand it, it allows the bride and bridegroom to celebrate their marriage in any form, the test of its legality being the subsequent registration,—so that the non-observance of any particular ceremonial shall not be urged as a ground for impeaching the validity of the union.

Under this scheme, at the time of marriage a declaration in writing in a prescribed form will be signed by the bride and bridegroom, by their legal guardians (if any) and by not less than two witnesses, and will be thereafter registered in accordance with the provisions of the Indian Registration Act, the bride being exempt from liability to appear in the Registration Office.

We would only add that we do not in the least regard the acceptance of this procedure as a *sine quâ non*.

II. 68. The Bill does not prohibit marriages between persons of different castes, who are not now allowed by caste-rules to intermarry, and as to the expediency and effect of this non-prohibition there is a direct conflict of opinion among the Commissioners.

Our President is of opinion that "the marriage to be legalized must be between persons, who are permitted to cohabit with each other by the custom obtaining for the time being in the caste to which they belong." He says, "In dealing with a customary marriage in a society which recognizes caste as a *quasi*-religious institution, I see no alternative but that of recognizing such customs as having a legal origin, although I would not fossilize them, but help on social evolution by inserting the words 'for the time being,' and thereby recognizing any change which may take place from time to time owing to the spread of education."

Here, with due respect, we must express our doubt as to whether the phrase "for the time being" would have the desired effect of preventing fossilization.

If, as our President says, "Society should be left free to alter these customary restrictions from time to time with reference to the requirements of social progress," we do not see how that result can be obtained if a provision upholding customary restrictions be enacted, for any alteration of the usage would be at once impeached in a Court of Law.

When once an authoritative Ruling has declared what the existing custom is, we apprehend that any attempt to depart from the custom so declared must prove abortive, if (as is sure to be the case) it is challenged by a civil suit.

69. Mr. Chandu Menon, also, thinks that in not recognizing caste-restrictions on marriage "the Bill violates the Hindu religious and social law in a most vital point." He says, "If an Anandaravan brings a Pariah wife (into the Tarawâd house) the consequences seem to me appalling. The whole of the members of the Tarawâd if they wish to keep up their caste and social status, will have to leave the Tarawâd house and live elsewhere."

The illustration does not seem to us well-chosen; for an Anandaravan cannot bring his wife into the Tarawâd house without the consent of his Kâranavan.

Letting that pass, we may remark that precisely the same objections those raised by Mr. Chandu Menon were urged by the Hon. V. Ramiengar, c.s. in 1872, when the undenominational Marriage Act was before the Council. (*For St. George Gazette Supplement*, May 21st, 1872, page 59.)

He says that "this (provision that no law or custom, other than one relating to consanguinity or affinity, shall prevent marriage) will be regarded as an invitation to a Brahman to marry a Pariah girl; to a Mudali, Chetti or Pariah seek the hand of a Brahman girl."

As a matter of fact there has not been one single instance of such mis-alliance, nor is it likely that the same provision in the proposed Marumakkathâyam Marriage Act will have any greater effect.

Marriages in defiance of caste do not occur and are not likely to occur but if and when they do, we believe it to be useless to ask the Legislature to declare them void.

Government has hitherto refused to regard distinctions of caste as an impediment to marriage, and we suppose that the same arguments that have before prevailed are likely to prevail again.

70. We would not however under-estimate the difficulty. It is a fact that in numerous cases the parties to a marriage contracted in defiance of caste restrictions, could not enter their Tarawâd house without (in Native opinion) polluting the whole family and rendering every member liable to boycotting and excommunication.

It is just and necessary to protect the Tarawâd from such consequences and we would therefore provide that if the difference in caste between the parties to a marriage be such that social usage condemns them to excommunication, the party so condemned shall lose his or her right of entry into, or residence in, the Tarawâd house, and that the man should lose his right of succession to the office of Kâranavan.

In making this suggestion we have not lost sight of Act XXI. of 1850, but we believe that the proposed provision might be passed into law without conflicting with the principle of that Act.

III. 71. Following the undenominational Marriage Act the Bill proposes to disregard restrictions of consanguinity unless a relation between the parties can be traced within the fifth degree.

This is denounced as a provision that sanctions marriages viewed by the people as incestuous.

It must be replied that the wisdom of the provision has been already discussed and approved by Government. So long as Native public opinion rules that a man and woman descended from the same female ancestor should not intermarry, no such marriages will wilfully occur. But it must be borne in mind that as a matter of fact the Nayars and Tiyans do not maintain ancestral trees, and Mr. Winterbotham believes as the result of his Jamabandi experience, that there are very few Marumakkathâyam families, who can ascertain the pedigree of themselves and their relatives for more than three generations.

Several witnesses have alluded to the undoubted fact that *pula* (death pollution) falls into disuse when the relationship is distant, and in a few generations the original ancestress becomes wholly lost sight of.

A majority of four of the Commissioners would wish to see all customary restrictions of consanguinity upheld, while Messrs. Winterbotham and Sankaran Nair opine that as the restrictions are not founded on reason, it may be properly left to social opinion to maintain or abrogate them. When there is so much doubt about pedigree, it would they think be highly inexpedient to put it in the power of everyone to challenge the validity of a marriage on the ground that the bride and bridegroom were descended from the same female ancestor.

IV. 72. The next objection against the Bill is as regards its provisions relating to divorce. Here, no doubt, lies the chief difficulty in the way of meeting the wishes of the many intelligent Nayars and Tiyaṇs who are agitating for a marriage-law.

Most of them adopt the arguments which have led some great modern thinkers to advocate divorce by mutual consent.

If marriage be a mere civil contract, why should not that contract be dissolved and a fresh one be entered into at the will of the parties? Why (they argue) should the iron rivets of the law bind together a man and woman who have learnt to detest each other?

Our President thinks the argument unanswerable, and he accordingly sketches two schemes of divorce.

The one, which he would prefer, proposes that either husband or wife, desiring to repudiate the other, should apply to the District Munsiff to serve on the opposite party a notice declaring his or her intention to terminate the connexion. The application to the Court to serve the notice should have the consent of the party's Kāranavan endorsed upon it, except in cases where the applicant is a husband living apart from his Tarawād and possessed of separate means of support.

On the expiry of two years from the date of service of this notice the marriage should become dissolved. The interval is intended to afford ample opportunity for reconciliation.

73. As an alternative scheme (if one be deemed indispensable) the President would formulate the legal grounds of divorce. He would declare them to be adultery, cruelty, desertion for two years, change of religion, impotence, sexual incapacity, permanent and infectious disease, unsoundness of mind, transportation for life, absence for seven years without any information as to whether the party absent is alive or dead, and "any cause which renders the mutual discharge of matrimonial duties incompatible with due regard to personal safety."

Suits for nullity of marriage would be filed in the District Munsiff's Court, and it would be competent to the District Munsiff to refer issues of fact in matrimonial suits to a caste Panchāyet, to be constituted on the application of either party to the suit, or by the Court itself on its own motion. The verdict of the Panchāyet would be final, subject to the provisions of the Civil Code relative to trials before Assessors. If either party repudiates the marital relation without just cause, the guilty person shall forfeit one-fourth of his or her self-acquired property, if any, to the other. If there are children, the ownership of such property shall vest in them, the usufruct alone vesting in the innocent wife or husband during her or his life.

74. Regarding these schemes we think it sufficient to say that if Government thinks that either of them may be taken into consideration as a basis of legislation, we will not say a word against it. What we would most earnestly dispute is the opinion that legislation is inexpedient unless one or other of these schemes be adopted. If Government is unable to give its sanction to a law drawn on the lines sketched by the President, the educated Malayāli will still beg for the legalization of marriage, with whatever restrictions on divorce the Government may deem indispensable in the interests of the State and of morality.

We are aware that the State must specially guard the interests of those who have no voice in legislation, and who are unable to protect themselves,—that is, the helpless women and children who outnumber the adult males by more than three to one. "Divorce laws" (says a modern writer) "should be the thorny burrs protecting the child, and preserving a home and training for it." We recognize that to talk of mutual consent is a mockery when the parties are not equally matched, and when it is in the power of the stronger to extort from the weaker vessel a reluctant consent by systematic worry, tyranny and ill-usage—we see that if divorce is to depend on mutual consent, a man or woman, bent on divorce, is placed under the temptation of doing all in his or her power to render the union intolerable to the other party, and that all hope of an amicable arrangement is at an end.

If Government, therefore, moved by these and other arguments, refuses materially to relax the law of divorce as contained in the various Marriage Acts now on the Statute Book, we still assert that a minority of educated Malayālis are ready to accept the high standard of morality which such a law imposes: that the educated few are the leaven which will leaven the whole lump, and that their good example will in two or three generations, or perhaps sooner, lead the rest to adopt the same standard—a standard which we know can be reached and lived up to, as exemplified by the large body of Assyrian Christians on the West Coast, amongst whom there is no divorce and a laudable rarity of scandal.

V. 75. Amongst the civil rights which the Bill proposes to attach to marriage, that which has been most keenly opposed is the right of the children to succeed in case of intestacy, to the self-acquired property of their father and mother.

This change in the Law of Succession is denounced,—

First, as introducing a double system of inheritance, likely to breed strife and litigation, and

Second, as an indirect attempt to destroy the Tarawād system by depriving the Tarawāds of the self-acquisitions of junior members.

76. As regards the objections to what Mr. Justice Holloway styled a "piebald" system of inheritance, they are discussed by the High Court in the case reported in I. L. R., Madras, VIII., page 239.

A remark made by a very able and experienced observer, reported in that case, deserves notice in passing. Mr. DeRozario, the Sub-Judge, says:—"It cannot be concealed that there is a wide feeling of discontent with the Marumakkathāyam system among the classes which are governed by it, and by none is

the hardship of the rule more felt than by Tiyans, who having adopted a system of marriage and acquired with it, as the natural consequence, a love of their offspring, are debarred by this system from transmitting to them their acquisitions which descend to some remote relation who is not unfrequently a third or fourth cousin of the acquirer." The High Court admit that the double system of descent is an incongruity, but point out that similar incongruities are not unknown to the law elsewhere. They point out that in England "the eldest son may succeed to one estate in virtue of the general law of primogeniture, and the youngest to another in virtue of the custom of Borough-English, and all the sons in equal shares to a third in virtue of the custom of Gavel-kind." Finally they rule that where a Makkathâyam man and a Marumakkathâyam woman intermarry, the issue are *primâ facie* entitled to their father's property in accordance with Makkathâyam and to their mother's property in accordance with Marumakkathâyam. This piebald system is already in full force amongst the Mappillas and Tiyans of North Malabar, and the incongruity it involves does not occasion any insurmountable difficulty.

The only strife and litigation to which the double system of inheritance can give rise will be due to the difficulty of distinguishing self-acquired from ancestral property; and this same difficulty will equally arise in every case where property is devised by Will.

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

77. The arguments urged against any change in the law of Succession are,—

- (a) That a great majority are content with existing usage, and
- (b) That this usage rests on the divine ordinance of Sri Parasu Rama, who directed that the nephew should perform the funeral ceremonies of his maternal uncle, and succeed to his property.

Now, in the first place, if the great majority are content with existing usage under which self-acquisitions lapse to the Tarawâd, how is it that the power to devise by Will is so eagerly and unanimously demanded? What does this keen desire for testamentary power betoken, except dissatisfaction with the existing law of intestate succession?

Under existing usage the separate property of a mother lapses on her death to her Tarawâd, and does not go to her children. Our knowledge of the District, and the evidence of the witnesses entitle us to say confidently that there is a general feeling that a woman's separate property should go to her children.

It is only as regards the self-acquisitions of the father that there is serious difference of opinion, and even as to those the great majority of our witnesses would allow no part to go to the Tarawâd, and thereby evince their discontent with the existing law.

Is it to be wondered at that many, wavering between the customary claims of the Tarawâd and the moral obligation to provide for wife and children, should suggest the compromise of giving a share to each?

We cannot accept the proposed compromise as satisfactory. In cases where the self-acquisitions were so large as to form a more than adequate provision

for the widow and children, the compromise might be unobjectionable; but what is to be said for it in those far more numerous cases in which the amount to be divided is insufficient to support the deceased's widow and children?

In most cases the self-acquisitions will take the form of a hut and paramba (garden) in which the deceased lived with his wife and family. The proposal to give half to them and half to the Tarawâd must necessitate a difficult partition, which will probably not be effected without litigation, and often lead to the expulsion of the widow and orphans from their home.

We appeal to the following reasons in support of our view that the whole of the self-acquisitions should go to the survivor and children:—

1. If marriage is to be legalised, the obligation of the husband to provide for his wife and children should be recognised as paramount, and the law should be in consonance with reason and natural justice.

2. In most cases the self-acquired property will be but a pittance for the wife and children, of which no part should be taken from them.

3. The property will generally be in a shape which renders partition difficult, and the proposed co-sharers being opposed in interest, would always be driven to a ruinous division.

4. In those numerous cases where the husband lives apart from the Tarawâd in a house of his own, and where in fact the family is composed of the father, mother and their children, it is unjust to constitute an outsider to the family circle as a co-heir, and thus to disturb the wife and children in the possession of the home and property which they have been enjoying in the life-time of the deceased.

5. The power of devise by Will will give every man the power to dispose of his property according to what he knows to be the necessities of his individual family, and there need therefore be no change in the Law of Succession unless he so chooses.

78. Our President, for the reasons recorded by him in para. 24 of his Memorandum, considers that only half the self-acquisitions should go to the wife and children of the deceased as an allotment by way of provision for maintenance, but subject to the proviso that due regard shall be had to what they may have received from him by gift during his life.

M.R.Ry. Rama Varma Tamburân would recognize the right of succession of the survivor and children, but would give half of the self-acquisitions to the Tarawâd in consideration of what he regards as the obligation of the nephews to perform the funeral ceremonies.

79. We must now notice what we may term the religious objection to a change in the devolution of self-acquisitions.

It is urged that according to Marumakkathâyam the nephew is bound to offer the funeral oblation to his maternal uncle: that he will refuse to do so, unless he inherits the latter's self-acquired property; and that therefore (as Mr. C. Karunagara Menon puts it at pages 10 and 11 of his Pamphlet) the soul of the uncle cannot, according to the Hindu religious belief, be saved from hell.

We would answer this objection by a quotation from the paper of the retired Sub-Judge Mr. K. R. Krishna Menon (Appendix III, page 227). He says:—

“In this part of the country the capacity to confer religious benefits, is not the ground for regulating succession. Even if this capacity be considered as the paramount reason for regulating succession, the son should stand foremost among the persons who can present funeral cakes with any spiritual efficacy. Nayars are essentially Hindus in religion, and Hindu Sastras must be their authority for seeking spiritual benefits by performance of *post obit* ceremonies. Whomsoever the Hindu Sastras name to be the fittest person for the performance of such ceremonies for other Hindus, he must equally be the fittest person for Nayars also. That this person is the son, no Hindu can deny; and in fact he now performs such ceremonies and gets nothing from his father in return. It is true that there are some texts in Manu, Yātñya-vaalkya and others to the effect that a Sudra, who does not know his father, may present oblations to his maternal uncle. If these texts are of any authority, they must be equally binding upon Sudras all over India. They are found among the texts which recognise twelve sorts of sons, and recommend a Brahman to make over his wedded wife to another to beget a son (Kshêtrajâ).

“They are now obsolete, and binding upon none. The Kêrala Mahâtmyam, which is set up as a special authority for Malabar, also treats the father as the highest object of reverence and recommends the performance of the uncle's funeral ceremonies as one would do for his own father, ‘Mâthulânânja samskâram pitrunuddhisya jâthayah,’ and the promiscuous intercourse recommended in the previous chapter and the consequential inability of one to know his own father is the sole ground assigned for the rule. It will thus be seen that there is no force in the argument which some set up that the key of spiritual salvation amongst the Sudras is with the nephew and that the legislature cannot order the transfer of inheritance from the nephew to the son without transferring such key also to the former. In fact, the key was never with the nephew if the Hindu religious works are to be believed. The 61st and 62nd rules of Anâchâram are not pretended to enact any new law. They are a mere codification of what had been already enacted by Parasu Rama, because Marumakkathâyam had existed before Sankarâchâriar promulgated these rules of Anâchâram, and the Kêrala Mahâtmyam is thus the sole basis of the law, and we have seen that there is not much in it in support of the argument. Under the marriage system now proposed to be introduced, a Nayar would, as any other Hindu, be certain of his father, and therefore there is no harm in changing the line of succession from the nephew to the son, as the sole reason given for the existing system will then disappear.

“If the nephew still considers that he is under a moral obligation to perform his uncle's funeral rites and does perform them, he will only be doing what the son has hitherto been doing without any remuneration.”

Whenever a junior member of a Tarawâd dies leaving self-acquisitions, it is his juniors who must perform the funeral oblations, but the property goes to the Kâranavan.

It may be urged that such juniors have a joint interest in the property, but if the next in age below the deceased happen to be a Dâyadi or attâladakka-kâran, i.e., a member of another branch divided in interest, he is nevertheless entitled, and bound, to perform the funeral rites, though his chance of succeeding to the property is extremely remote.

Thus Mr. C. Karunagara Menon, B.A., who thinks that the nephew holds “the key of spiritual salvation,” himself tells us that “all those who are descended from a common female ancestor, though belonging to different Tarawâds without right to inherit, are entitled to perform religious oblations to one another, in consideration of a contingent right to inheritance which may arise on a family

becoming *extinct.” Under the proposed law the Tarawâd will still have this contingent right of inheritance. Its claim to succeed is not taken away, but merely postponed to that of the children.

But for the fact that the opponents of the proposed law are not to be convinced even by a High Court Ruling, the question would seem to be really concluded by authority, for in I.L.R., 14 Mad., 299, Muthusami Aiyar and Best, JJ., hold that the “Right of succession under the Aliyasantâna Law is no way dependent on capacity to offer funeral oblations.” Even in other parts of India, perhaps with the exception of Bengal, the right to perform the funeral ceremony does not involve a mutuality of right of succession. (I.L.R., 8 Mad., 125.)

As the law now stands funeral oblations are duly observed though the deceased may have left no self-acquired property, or though he may have alienated the whole of it by gift *inter vivos*,—and it is also universally desired that the power should be conferred of disposing of self-acquisitions by Will.

Is it not clear from these facts that the duty of performing funeral ceremonies is recognised to depend on relationship and not on the right of succession?

80. On the question of guardianship there is considerable diversity of opinion.

Our President thinks that the father should be declared guardian “when he is permanently living together with his wife and children,” and that where the wife and children live in the wife's Tarawâd house, their guardianship should remain with their Kâranavan as at present, but that the father should have the right to be consulted regarding the education and marriage of his children, and to apply to the Court in the event of a disagreement between him and the Kâranavan, for such directions as are most conducive to the children's interests.

M.R.Ry. Râma Varma Tamburân Avargal concurs in this view; but the three other Commissioners who have signed this Report think that it would be extremely difficult to embody such provisions in an Act, and that simplicity—the usage of all nations who have the institution of marriage—and the tendency of the Marumakkathâyam followers to adopt that usage, are in favour of the guardianship being vested in the father.

81. We do not think it necessary to lengthen this Report by discussing in detail the many minor points in which we believe the Bill to be capable of amendment.

We have noticed all the main objections that have been brought against it, and discussion on the remaining details may, we think, be properly reserved until permission to introduce the Bill is granted. None of these details can be regarded as of vital importance.

82. As to the effect of the proposed legislation upon the neighbouring States of Travancore and Cochin, we shall content ourselves with saying that we do not see how any permissive marriage-law which may be in force in Malabar can work to their prejudice.

There seems to us to be no good ground on which the propinquity of Travancore and Cochin can be urged as an objection to the proposed legislation.

83. We have shown in the course of this Report the various points on which there is an unfortunate difference of opinion between ourselves and our President. Neither being able to subscribe to the other's views, our President has recorded a separate Memorandum which accompanies this Report as Enclosure A.

M.R.Ry. Râma Varma Tamburân has also expressed his views in the shape of a Memorandum (Enclosure B). While strongly advocating a permissive marriage-law, he would wish it to uphold customary restrictions as to caste, consanguinity and affinity. He would desire some means of effecting a divorce without washing dirty linen in public, and he would give a half of a deceased person's intestate self-acquisitions to the Tarawâd.

With these exceptions, he concurs in the Report, and has therefore affixed his signature thereto.

M.R.Ry. Chandu Menon defends existing usage, and thinks that the Marumakkathâyam people have already "a perfectly good system of marriage." His Memorandum forms Enclosure C.

M.R.Ry. Mundappa Bangêra, B.A., B.L., has written a description of Aliya-santâna "marriage" customs, which forms Enclosure D.

The President desires that attention should be drawn to the Diary of the Commissioners, in which their Resolutions from day to day were recorded; and the necessary extracts from it have accordingly been printed and form Appendix VI.

We would remark that we one and all of us reserved our right to modify our opinions to any extent to which further deliberation might lead us.

An attempt was made to embody the President's scheme in the form of a draft bill (*vide* Diary for June 23rd, 25th, 26th and 27th), but this was eventually given up, and the rough drafts of the Sections alluded to in the Diary have not therefore been placed on record.

84. In conclusion, we would remark that there is one point on which all the Commissioners, and practically all the Marumakkathâyam educated people, are agreed, and that is as to the desirability of conferring upon the Marumakkathâyam classes the power to dispose of self-acquired property by Will.

If this be granted, all possible precautions should be taken against perjury and forgery. No oral or informal death-bed Wills should be recognized, and probably the best way of conferring the power will be by extending the Hindu Wills Act to Malabar.

(Signed) RAMA VARMA.

(Signed) M. MUNDAPPA BANGERA.

(Signed) C. SANKARAN NAIR.

(Signed) H. M. WINTERBOTHAM.

December 1st, 1891.



MEMORANDUM.

THE Bill which the Honourable Mr. Sankara Nair proposes to introduce into the Legislative Council at Madras is of great importance to Nayers, Tiyars and other classes in Malabar who are governed by the Marumakkattayam system of inheritance. It purports to regulate the most important domestic event of about seven hundred thousands of persons and to systematise and control family notions which have influenced domestic and social life for upwards of 2000 years. As embodying a permissive marriage law regulating the relation of the sexes, in a District where a type of polyandry had prevailed until lately, it is not devoid of general interest. The questions which it raises for consideration are so grave that they cannot be too carefully studied and investigated, and the order in which they may best be discussed is the one indicated by the Government of India in their Proceedings dated Calcutta, the 22nd December 1890, No. 1863.

2. A description of the Marumakkattayam family will not I think be out of place here. In its simplest form, a Taravad or Marumakkattayam family consists of a mother and her children living together with the maternal uncle as their Karanavan. In its complex form, it consists of several mothers and their children or their descendants in the female line, all tracing their descent from a common female ancestor and living together as a joint family in subjection to the power and under the guidance and control of the senior male for the time being as its head or representative. The link of relationship is descent from a common female ancestor and the family union is subjection to a common Karanavan. The notion of Taravad proper entire family is its owner, that it is impartible except by common consent individual member is entitled to be maintained in his or her Taravad home and joint beneficial enjoyment. The joint family is called a Taravad and each of her children and descendants in the female line constituting the Taravad is called the line of a single mother. In its secondary use the term refers to a branch of the family having separate possession of a portion of the family property for convenience of enjoyment without prejudice to the unity of Taravad interest or to the general control of the Taravad Karanavan. The term includes also a branch holding self-acquired property and at the same time retaining its joint interest in Taravad property. If the Taravad is broken up by partition made by common consent, each branch is called a new or branch Taravad and the divided kinsmen are called Attaladakkam or reversionary heirs. It is noteworthy that the relation of husband and wife or of father and child is not inherent in the conception of a Marumakkattayam family. In cases in which a Nayar woman resides with her husband, it is still considered to be in accordance with immemorial usage to send her back to her own Taravad immediately after or very shortly before his death and not to remove his corpse for cremation until she is first sent away. The person that begot a child on a Marumakkattayam female was originally regarded as a casual visitor and the sexual relation depended for its continuance on mutual consent.

3. On comparing this archaic family with what is known under Hindu Law as the coparcenary or joint Hindu family to the east of the Ghats, it will be seen that the Marumakkattayam family is two stages behind in the career of progress. In the one, the paternal ancestor in the male line is the recognized stock of descent or as Vedic Brahmins say, the Gotra Rishi is the family patriarch; but in the other, descent is traced from the maternal ancestor in the female line. The transition from the one to the other is due to the institution of marriage forming part of the social system. Again, the growth and development of natural affections under the institution of marriage marks another stage at which the patriarchal family was broken up by allowing partition at

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the option of any coparcener and transferring women to the family into which they marry. Further, the ancient Roman family was one stage in advance of the joint Hindu family as constituted prior to the establishment of the individual right of partition; for, in the former, the father was substituted for some remote paternal ancestor and each of the children became *sui juris* either on his death, or by emancipation during his life, or in consequence of marriage in "*manum*." Through the several stages of progress, the notion of property is traceable to four principles, viz. (1) that the head of the family was accepted as its representative or the fiduciary owner and manager of its property; (2) that as the family was broken up by partition, its property was likewise divided; (3) that what each member of the family acquired by his unaided exertion was regarded as acquired for the family in which his individual existence was merged. Again, this theory of merger was first modified by the recognition of a personal right of exclusive beneficial enjoyment on the part of the member who acquired the property, and since displaced by the notion of individual ownership which carried with it a power to alienate the property at his pleasure during life.

4. Any enquiry at this distance of time as to the origin of the Marumakkattayam family must from its nature be more or less speculative. The popular belief is that Sri Parasurama was the incarnation of God, that he reclaimed Malabar from the sea and organised the Marumakkattayam system, and that it had thus a divine origin. But comparative ancient history suggests that the social system was probably organised at a time when relationship was derived from the mother and when a child did not know its father and the father, his child, or at all events, when paternity was regarded as uncertain. In a primitive stage of social organisation, relationship might naturally be derived rather from the mother from whom the children indubitably derive their being than from the father, as to whose real relationship a doubt might sometimes arise. The institution of marriage and the relation of father

seem to us so natural and obvious that we are apt to look upon them as aboriginal and

whole human race, but we must dismiss this idea from our minds in order to understand on which the social system was originally constructed in Malabar. For, the recognition of the mother as the sole basis of relationship and the elimination at each generation of the husband in the case of a female and of the wife and children constitute the characteristic features of this unique system of family. This relationship, strange as it might appear at first sight, is not however peculiar to Malabar. Herodotus says that one custom peculiar to the ancient Lycians was that they traced their descent from their mothers and reckoned up their ancestry in the female line. Lubbock

works on Savages that on Etruscan tombs, descent is traced through the female line. Speaking of the ancient Germans, Tacitus observes, children are regarded with equal affection by their maternal uncles as by their fathers, and some even consider this as the more sacred bond of consanguinity and prefer it in the acquisition of hostages. This description seems to point to a state of society in which female inheritance had been recently but not universally abandoned. Again, both Mr. McLennan and Lubbock remark that in the ancient Pictish Kingdom, no son is recorded to have succeeded his father till the 8th century. Turning to India, there are traces in Vedic texts of a controversy as to whether the father or the mother contributes most to the birth of a son and of a recent adoption of the theory that we owe the spiritual part of our nature more to the father than to the mother. It is not unlikely that the recognition of consanguinity as the sole test of relationship had its origin in Malabar in the absence of marriage and in a casual or fugitive relation of the sexes which I term polyandry in this paper, and there is considerable authority in support of this view. It is not denied by several of the witnesses examined by me that polyandry prevailed in ancient times and the Sub-Judge of South Malabar speaks of it as an antiquated practice. His Highness the Zamorin of Calicut accounts for the nephew's succession by referring it to the fact that paternity was originally not known. The Dewan of Cochin considers that the apparent and certain relationship of the child to its mother was the true reason for preferring the sister's son to one's own son as one's heir.

5. It is pretty certain from the usage obtaining in Kovilakams or the families of ancient rulers and petty chieftains that in former times there was no marriage in Malabar. There,

the ladies cohabit with Nambutiri Brahmins without any formality and are at liberty to change them at their pleasure with the consent of the senior Rajas. It may be that the aristocracy of a country adhere to an ancient usage more tenaciously than the middle and the lower classes, but it is anything but probable that the institution of marriage originally existed among the latter whilst it did not exist among the former.

Again, there is a list of sixty-four customs peculiar to Malabar called the Kerala Anacharams or irregular customs of Malabar; and according to popular tradition, they were promulgated on the 26th August 825 A. D. by Sankarachariyar, the great Vedantist and the founder of the school of philosophy known as the Advaita or non-dualistic school of religious doctrine. The 59th of these customs is that the eldest son of the Nambutiri Brahmin is alone entitled to legal marriage. This shows that so early as the ninth century, the younger sons of Nambutiri Brahmins consorted with Nayar women and that the sexual usage among the latter was not founded upon marriage. There are two vernacular treatises to which reference is often made by the orthodox party, and they are called Kerala Mahatmiyam and Kerala Iolpatti. The former is in Sanskrit and the latter in Malayalam, and both contain traditions current among the people. I find some verses in them which, if authentic, have a bearing on the history of sexual usage in Malabar. One verse says "With one woman, three or four may consort." Another verse is to the effect that "in the middle country one man for one woman, for, so it is among the Gandharvas. Among Devas a woman should consort but with one man on one day." Kerala Mahatmiyam, it is said, is not really an ancient treatise, but it was composed about 150 years ago by a Nambutiri Brahmin. Assuming that such was the case, still it is not without some value as evidence of the practice prevailing at that time especially as a distinction is made between the middle country or North Malabar and the rest of the District.

Moreover, a Mahomedan historian Shiekh Zin-ud-din is cited by Mr. Logan in his Memoirs as saying in the middle and latter half of the 16th century that each Nayar woman had one or four men who cohabited with her and the men seldom quarrelled, the woman distributing her time among them just as a Mahomedan distributes his time among his wives. In his account of the East Indies, Hamilton wrote thus in 1727 "The Nayar husbands, of whom there might be twelve, but no more at one time, agree very well for, they cohabit with her in their turns, and he that cohabits with her maintains her in all things necessary for his time". Further, the extracts made by Mr. Winterbotham from the writings of several others lead to the same conclusion.

It is often a historical fact especially in connection with marriages, that certain forms have survived the social exigencies which originated them and there are several such forms in Malabar. Among persons subject to the Marumakkattayam usage in North Malabar, especially at Karutanad, there is a form of marriage called Usham Porukka; and its etymology suggests that one had to wait for one's turn. Another form of marriage which is in vogue in North Malabar and often resorted to by those who are poor in order to avoid the expense consequent on Podamuri or giving cloth which is the approved form of marriage, is called Vidaram Kairuga or coming to the house. A girl married in this form is not to this day taken into the husband's house unless and until Podamuri is performed; this indicates, again, that in former times the husband was a casual visitor at the wife's house. Among the Tiyars of North Malabar a sum of money is paid during the marriage ceremony to the bride's Karanavan called the bride's kanam; this shows that the bride was once treated as mortgaged for use until the kanam was repaid. It is in evidence that some years ago, a suit was actually brought to recover back the kanam amount on the ground that the wife had deserted her husband without good cause, but that the suit was dismissed. Again, the form of marriage in use in the Palghat Taluk is called Kidakkora, which signifies lying together. As part of the ceremony a declaration is made by one of the bridegroom's party to the senior female of the bride's house in the presence of the assembled guests in the following terms:— Let this youth visit this damsel for six months; and a reply is given in the terms 'Be it so'. Apart from negative and symbolic evidence, there is positive evidence to show that polyandry

still lingers in the Ponnani and Valluvanad Taluks especially on the Cochin frontier of the former Taluk. There is a general reticence on this subject among the witnesses probably because, as stated by one of them, it is considered that a candid acknowledgment of its existence is a reflection on the community to which they belong and that it is not proper for a man of respectability to say that it prevails among his neighbours. The fact that a woman has occasionally had four or five husbands in succession is some internal evidence that polyandry has only recently gone out of recognized practice in South Malabar. Among carpenters, blacksmiths and kam-malars in the Calicut, Valluvanad and Ponnani Taluks, several brothers have one wife between them, although the son succeeds the father amongst them. There are two theories as to how polyandry came to prevail in Malabar in ancient times. The one is that Nambutiri Brahmins introduced it for their own benefit on economic grounds, and the other is that Nayars brought it with them when they settled in Malabar, or adopted it from among the aborigines. It is not necessary for my purpose to investigate this question and I pass over it with the remark that a handful of Brahmins who must have settled in Malabar in small groups from time to time could not have succeeded in uprooting the national institution of marriage, if any, even if they had attempted to do so.

6. Whatever may have been the practice in former times, the evidence shows that polyandry has now almost died out throughout Malabar and that several forms of marriage now control the relation of the sexes.

There are six forms of marriage in Malabar and they are known by the names of (1) Podamuri, (2) Vidaram Kairuga (3) Usham Porukka, (4) Sambandham, (5) Kidakkora and (6) Mangalam. The first three prevail in North Malabar and the fourth is observed in the greater portion of South Malabar: The fifth is the name given to marriage in the Taluk of Palghat; it is also used as a synonym for the fourth in parts of the Valluvanad Taluk; and the sixth is the approved form of marriage among Tiyars in North Malabar.

The ceremony to create the relation of husband and wife is, as recognized by society, common to all these forms, and the couple that go through those forms are afterwards known as husband and wife. They precede consummation of the marriage and are generally gone through on the day on which it is consummated. Each of these forms of marriage has its peculiar or distinctive feature. In the Podamuri form, the bridegroom gives and the bride accepts a cloth as the token of marriage. In Vidaram Kairuga, the bride remains in her own Taravad house and is visited there by her husband until he is followed by Pouamuri. She is not regarded as fit to be brought by the husband into her own Taravad house or to associate with his female relations on terms of equality of caste. In cases in which this form of marriage proves fruitful, Podamuri usually takes place before childbirth. There is no material distinction between Vidaram Kairuga and Usham Porukka save that the latter is generally resorted to in the former Karutanad Taluk. The ceremony called Mangalam is peculiar to the Tiyars of North Malabar, and during its performance a small sum of money is paid to the bride's Karanavan by the bridegroom as the bride's kanam, and a further payment is made as a matter of form to the bride's uncle's son when the couple leave her house as the price of his preferable right to her hand. Sambandham differs from Podamuri in that the gift and acceptance of cloth form no part of the ceremony, whilst in parts of South Malabar, betel and nuts are given instead of a cloth by the bridegroom to the bride. In Kidakkora, which, as observed already, is the form in vogue in the Palghat Taluk, the permission of the senior lady of the bride's Taravad is asked and given for the bridegroom visiting the bride for a period of six months. How far some of these forms have an historical value as relics of polyandry I have already considered, and it only remains for me to add that the union constituted by them all lasts at present for life in the majority of cases.

7. Turning for a moment to the marriage customs obtaining in Kovilakams, I find that none of the six forms of marriage is observed or has its counterpart there. A ceremony however, called Veli in some Kovilakams and Kaliyanam in others is celebrated with great pomp and at considerable expense. Ordinarily, it is performed before the maiden attains her maturity and the Kovil Tambiran ties a piece of gold round her neck in the Kovilakams in North Malabar, and a member of the family of the Raja of Cranganore does the same in the

Kovilakam of His Highness the Zamorin. The ceremony has however no significance as creating a binding marriage tie. If the Kovil Tambiran or other person tying the neck ornament according to the usage of the Kovilakam is willing to become the husband of the maiden when she attains maturity, she consorts with him. If not, she consorts with a Nambutiri Brahmin without any further formality or ceremony, and after a time she is free to put him away at her pleasure and take another Nambutiri Brahmin in his place with the consent of her Karanavan and protector, the senior Raja of the Kovilakam for the time being. I do not find that relation between the ceremony and subsequent sexual usage which exists between marriage and married life.

8. I may refer here to another customary observance called "Talikattu Kaliyanam" among Nayars and Marumakkattayam Tiyars throughout Malabar. According to custom every girl must go through the ceremony before she attains puberty; otherwise she is considered to lose her caste. In its essence the ceremony consists in tying a piece of gold round the girl's neck, and in its detail I notice certain observances which symbolise a few forms of religious belief amongst the people. As a religious ceremony it is taken to give the girl a marriageable status and in North Malabar she is addressed afterwards as Amma or lady. But in relation to marriage it has no significance save that no girl is at liberty to contract it before she goes through the Talikattu ceremony. On the East Coast a Tali is regarded as a token of marriage and no woman removes it from her neck during her husband's life; but it is not so regarded in Malabar. The ceremony lasts for four days and at its close the girl may remove the Tali if she likes. There is a preponderance of opinion among the witnesses whom I have examined and those who have sent in answers to our interrogatories, that it does not constitute a marriage or create a right in the person who ties the Tali to cohabit with the girl. In some parts of South Malabar, however, there is a belief that it is a marriage, but even there, the custom is to tear up a cloth called Kachai cloth on the fourth day of the ceremony as a symbol showing that marriage has been dissolved. A ceremony which creates the tie of marriage only to be dissolved at its close suggests an intention rather to give the girl the merit of a marriage rite or of a Samskaram or a religious ceremony than to generate the relation of husband and wife. It must be observed here that the tearing up of the Kachai cloth is a form not gone through in North Malabar. The ceremony is designated by some to be a sacramental marriage, and if such is the case, it is so in form but not in substance. That it cannot be otherwise is clear from the fact that the 'Manavalan' as the person who ties the Tali is usually called, does not acquire a right to cohabit with the girl. In North Malabar it is a Brahmin who ties the Tali and he is usually dismissed after the ceremony is over with a small present in acknowledgment of the service rendered by him on the occasion. In South Malabar it is usually an Enangan or a man of equal caste that ties the Tali, though, according to custom in some families, a person belonging to a particular family is eligible for the purpose. Among the Marumakkattayam Tiyars of North Malabar, a woman of the barber caste formerly used to tie the Tali, but a party of reformers headed by the late Deputy Collector Mr. Kanaran altered the practice when Sir W. Robinson was the Collector of the District, and according to the altered practice, it is the intended husband's sister and in some cases the intended husband himself that ties the Tali. It is a curious fact that the same man may at one time tie the Tali upon a number of Nayar girls collected together under one decorated pandal or upon several sisters. There is also no objection to the same person tying the Tali at one time on the mother and at another time on her daughter. The fact is that whatever may have been its historical origin, the ceremony has at present no other import than that of an essential caste observance preliminary to the formation of sexual relation and is analagous to the ceremony of Samavartanam prescribed for Brahmin bachelors who desire to terminate the Brahmachari Asramam or the status of Vedic student, and enter on Grihastha Asramam or the status of a married man. Having regard to the fact that several of its details bear a resemblance to a portion of the marriage ritual observed by Nambutiri Brahmins, it is not unlikely that they introduced the ceremony among Nayars as a caste rite, but it must be remembered that the essential element of a Brahminical marriage, viz. taking the bride by the hand or Panigrahanam and the walking of seven steps or Saptapadi, and the Homam or sacrifice to the fire, are not to be found among its details.

9. Passing on to another marriage custom, a Nayar female is not at liberty to marry a Nayar of an inferior sub-division of her caste whilst a Nayar male is at liberty to marry a woman of an inferior sub-caste, though it is not competent to either of them to choose a wife or husband from outside the Nayar caste. For instance, neither a Nayar male nor female can marry a Tyati or Tiyan, and if such a marriage is contracted, the male or female belonging to the higher caste loses his or her caste altogether. Again if a Nayar woman takes a husband from an inferior division of her caste, she is excluded from social intercourse on terms of equality of caste though not from the use of caste temple or tank. This rule of inter-divisional prohibition is, however, one-sided; for, if a man of a superior division of a Nayar caste selects a wife from an inferior division, the marriage is recognised as valid in society though the wife is not permitted to enter the kitchen in respectable Nayar families or Taravads.

So far as a marriage is forbidden outside the Nayar caste, the practice is in accordance with the rule of Hindu Law, viz. choose your bride inside the caste but outside the family. So far as the inter-divisional prohibition is concerned, the rule is borrowed from that branch of ancient Hindu Law which regulated the constitution of mixed castes. There was a time in the history of Hindu Law when a man who was born to a Kshatria or Vaisya might become a Brahmin or a Kshatria. Thus Visvamitra, a Kshatria by birth, became a Brahmin by learning and merit. At a later stage of the history of Hindu Law, advancement from one caste to another by piety and merit was abolished as a caste institution and a rule was introduced that one could only rise from an inferior to a superior caste if one's paternal ancestors belonged by birth to the latter for a prescribed number of generations. The notion on which this rule was based was that in the procreation of a child, the creative power of the father was the dominant factor and that it was his caste status that purified and improved that of the mother and the child. On this view a Brahmin or a Kshatria woman was prohibited from marrying a Kshatria or a Vaisya respectively, whilst a Brahmin or a Kshatria was at liberty to marry a Kshatria or Vaisya woman. The one connection was said to be in the inverse order and to lower the status of the woman and her child, and was forbidden. The other connection was considered to raise the status of the mother and the child and was described to be in the direct order, and it was therefore permitted. The connection in the direct order was termed Anuloma and that in the inverse order was called Pratiloma, and the rule was extended to intermarriages between Brahmins and the inferior castes when they were permitted by ancient Hindu Law. It is this doctrine of Anuloma and Pratiloma that explains the custom which is found to prevail among Nayars.

There is strong reason to think that the Talikattu Kaliyanam, the prohibition of sexual union outside the caste and the doctrine of Anuloma and Pratiloma, were originally introduced by Nambutiri Brahmins as restrictions on polyandry. The first was probably designed to give the woman by a solemn ceremony a caste status so that its loss might operate as a punishment, and the second and the third were designed to restrict the original tribal polyandry to one with a man of superior caste or of the same division of caste, the violation of the rule being punished with loss of caste. As the Nambutiri Brahmins belonged to the highest caste, the practice of women consorting with them came to be regarded as the approved form of sexual usage, and it was generally resorted to by the aristocratic classes, who were better able to secure them as consorts for their women. The middle and lower classes regulated their practice in the same way and restricted the union of their women with persons of the same and superior divisions of caste. It is not difficult to understand that when forms of marriage were since adopted the restrictions that had prevailed before were retained as restrictions on marriage. The evidence shows that if a Nayar female consorts with a male without going through any of the forms of marriage, she is not put out of caste even in respectable families, provided that he acknowledges the intimacy and he is of equal or superior caste. This sort of union, though not common, has not yet disappeared, nor is it treated as prostitution as is the case on the other coast. This is, again, another relic of the communal marriage or caste polyandry that preceded the introduction of individual marriage.

10. There is another marriage custom prevailing in North Malabar. A woman crossing the river called Korapuzhai, which runs on its southern frontier, is supposed to forfeit her caste, and the orthodox belief is that it is not competent for her to marry in South Malabar which lies to the south of the river, but the men of North Malabar are not under such disability. This custom is common to both Nayars and Tiyars. In South Malabar an alliance with a male or a female of North Malabar is considered to be a preferable union. From necessity the custom was not rigidly adhered to since the introduction of the British rule in villages which lie on or near either side of the river. In recent years there has been a tendency to depart from it, but the instances of such departure are not as many as might be expected from the progress of education. Among Tiyars there is but one caste, the only distinction being that those residing in North Malabar conform to the Marumakkattayam usage, while the Tiyars in South Malabar follow the Makkattayam or the system of inheritance according to which the son is his father's heir. Nevertheless, the custom is not without some force amongst them. Notwithstanding the occasional departure from the immemorial usage in these days of free intercourse between different parts of Malabar, it has not yet lost its hold on the public mind in North Malabar. It is in evidence that when a Nayar of North Malabar marries a woman of South Malabar, that part of the marriage ceremony which consists in the formal taking of the bride into her husband's house in procession on an auspicious day is dispensed with. If the husband brings his South Malabar wife into his North Malabar Taravad, the orthodox females of the Taravad endeavour to exclude the new comer from the kitchen which, according to popular belief on the West Coast, must be free from what is called pollution. As to the origin of the custom, three versions are given. According to one it was due to an edict of one of the ancient Kolatri or Chirakkal Rajas that the women in his territory should not cross the frontier river lest they might sympathise with their husbands who were the subjects of the then ruler of South Malabar. The objection to this view is that the prohibition is one-sided and applies only to females. Another version is that polyandry prevailed largely in South Malabar whilst North Malabar was comparatively free from it, and that the edict was issued to protect the purity of women. Historically, this appears to have some foundation, for in the vernacular treatise called Kerala Mahatmyam, the verse says that women in North Malabar live with but one man at a time. A third version is that women had to be ferried over the river in small boats manned by Moplas and that fear of pollution accounts as well for this usage as for other river objections. A Tiyar witness at Tellicherry has stated that the Tiyars of South Malabar readily intermarry with an inferior class called Iluvars and that there is an apprehension in North Malabar lest a Tiyar woman may by forming an alliance in South Malabar marry one whose caste is not free from alloy. There is also a belief among the Nayars of North Malabar that they are more conservative and adhere to caste rules more closely than is the case in South Malabar, and that the rule of interdivisional prohibition regarding marriage is not so rigidly observed in the Ponnani Taluk and in other parts of South Malabar as in the North. Whatever version may be correct (probably each version has had its share in originating and strengthening the usage) the fact is that it is still considered binding as a rule of caste among the majority of Nayars and Tiyars of North Malabar.

11. There are a few more marriage customs which I ought not to pass over. As regards the marriageable age, there is no customary restriction, marriage before puberty being permitted though it is neither obligatory nor common among Nayars and Tiyars. Among Nambutiri Brahmins, women often marry long after they attain maturity, though in theory marriage before puberty is considered to be preferable. No special objection is, however, generally urged by the witnesses so far as the Bill does not recognize child marriage. Again, a remarriage is not forbidden by custom on the death of the husband though among Nambutiri Brahmins, enforced widowhood is a recognized institution as on the East Coast. Polygamy is, however, allowed among Nayars and Tiyars, though it is not common, and in this respect the custom is in accordance with the modern Hindu Law. As regards the freedom either to marry or not to marry, it is conceded to women as well as to men, the rule of Hindu Law which prescribes marriage as indispensable to women having no obligatory force either

among Nambutiri Brahmins or among Nayars and Tiyars. With reference to prohibited degrees of relationship, the rule, as founded on consanguinity, is that persons descended from a common female ancestor are not at liberty to marry one another. Among Nambutiri and other Brahmins the rule is that there can be no legal marriage in the same Gotram, the only distinction between them and Nayars and Tiyars being that the female ancestor is substituted for the male ancestor as the person from whom descent is to be traced. The Bill departs from this custom so far as it restricts the prohibition to five degrees. With reference to forbidden affinity, the rule of prohibition is considered to be the same, no member of the Taravad of a deceased wife or husband being eligible as the second wife or husband. On this point, however, there is a difference of opinion in South Malabar, several confining the prohibition to such relations by affinity as stand in the position of parent or child. The Bill, however, prescribes the same rule of prohibition both as regards relationship by consanguinity and affinity.

12. Having described the marriage customs, I proceed to consider the second question, viz. whether they are connected with the religious observances of those who are subject to the Marumakkattayam law. As observed by the Government of India, there is always a connection between the two on the other side of the Ghats where the law of inheritance is founded upon a theory of spiritual benefit, and the theory of spiritual benefit depends on a sacramental marriage; but on this coast the law of inheritance is independent of marriage. It is true that Marumakkattayam Hindus follow the Hindu religion and consider that funeral and annual obsequies are indispensable to the spiritual benefit of their deceased ancestors. It is also true that the right to property and the obligation to make the funeral and annual offerings go together and are so correlated to one another. But they depend in Malabar, not on sonship, but, on the relation of nephew and maternal uncle, of junior and senior Anandravans, or of grandnephew and descendant in the direct and collateral lines of ascent and descent. This distinction is the outcome of the family system in which the relation of father and child is not a recognized factor. Looking to the forms of marriage in use, they are not regarded as constituting a religious ceremony or a Samskaram, or sacrament in the Hindu or European sense of the word. There is no officiating priest in attendance, there is no formula to be repeated, there is no Vedic, Puranic or religious chant or exhortation, and there is no formal benediction. Whilst neither Podamuri nor Vidaram Karigai nor Usham Porakka nor Sammandham nor Kidakkara nor Mangalam is a religious ceremony; they are forms of marriage conventional among the castes and classes that conform to them so far as they embody certain forms of national belief in what is deemed customary to ensure a prosperous union. The ascertaining of the agreement of stars, the fixing of an auspicious day, presents to Brahmins, the lighting of one or more lamps in the presence of the bride and the bridegroom and the sprinkling of grains of rice by the senior lady of the bride's house over the lamp and over the couple, are incidents which, according to popular notion, presage a happy marriage. Here I must observe that the Talikattu ceremony or Kaliyanam which is considered to be a religious ceremony is only a caste rite analogous to Samavartanam among Nambutiri Brahmins. While it is an indispensable preliminary to contracting a marriage, it does not of itself constitute a marriage. Although the Veli ceremony performed in some Kovilakams and in Kshatria families is ritualistic and similar to the marriage prescribed for Nambutiri Brahmins, yet it is not marriage in the sense that a man and a woman are united together as husband and wife and that they acquire an exclusive right to conjugal intercourse with one another. The conclusion I come to is that the marriage customs among Marumakkattayam Hindus have no connection with their religious observances such as exists under ordinary Hindu Law.

13. The third question is whether a majority of Marumakkattayam Hindus desire legislation to regulate their social marriages, and the Commissioners are unanimous in thinking that a very large majority desire no change in their usage. Most of the Kovilakams or the families of the ancient rulers of the country are of that opinion. The families of former local chieftains such as Stanis, Naduvalis and Desavalis and the aristocracy

are also not in favour of legislation. The great majority of landholders representatives of respectable Taravads are against legislative interference and it is the interest of Nambutiri Brahmins to oppose it. The official and the educated classes and those who come within the sphere of their influence by family connections and business relations are divided in opinion. A large majority of even those classes are again in favour of legislation on the lines suggested by the Bill, but a good proportion of them, especially in South Malabar, is in favour of legislation with considerable modifications. The opposition to the Bill is very strong among Nayars generally throughout North Malabar though among Tiyas at Tellicherry and Cannanore, a good number is in favour of a modified form of legislation. A comparatively strong minority support it in the Palghat Taluk where several influential Taravads have recently suffered from dissensions among Karavans and Anandravans. I must here mention that a large number of representative men among landholders in the District have not come forward to express their views although all that could be done was done to draw the attention to the object of our enquiry. From what I have heard from Tasildars, District Munsifs, members of the local Bar and some influential landholders throughout the District, I believe that they are averse to any change and that their reluctance to come forward is due to a national idiosyncrasy and not to a tacit assent to the proposed legislation. I also understand that there is a general impression that it would disturb the harmony that exists at present among families in Taravads and break up the Taravad system which they still desire to preserve as their immortal institution having, as they suppose, a divine origin. I must answer this question in the negative.

14. The next question which we are asked to consider is whether legislation is necessary for the protection of the minority, and if so, whether it is expedient. The minority that desire legislation in a modified form is numerically small, its percentage being very low—about one in a hundred and fifty. It consists in the main of the educated and the official classes and of those who come within the sphere of their personal influence. The number of graduates, undergraduates and matriculates in the District is about 1000 and the numbers of officials drawing a salary of more than Rupees 10, Rupees 20 and Rupees 50 a month are respectively 1063, 245 and 90. Among the educated classes there are two sections, one holding that beyond creating a testamentary power in regard to self-acquired and separate property, there ought to be no interference with the existing usage, and the other also desiring a modified form of legislation. The former say that the relation of the sexes as regulated by social marriages and protected by social opinion is as satisfactory as can be desired, that instances of arbitrary and capricious divorce are rare and are always reprobated in society, and that wives and children are generally well provided for among respectable classes by gifts *inter vivos*. They go on to observe that what is needed is neither a new form of marriage, which though permissive is likely to introduce among females belonging to one and the same Taravad the invidious distinction of those who are legally married and those who are not, nor a new law of succession in regard to self-acquired property which would deprive the Taravad of one main source of acquisition from which it is from time to time recruited, and thereby pave the way for its gradual deterioration and ultimate extinction. They urge further that a double system of succession would lead to quarrel and litigation and that the great majority of the people are still attached to their Taravads and to their immemorial law of inheritance which, they believe, is founded on divine ordinance. On the other hand, those who are in favour of legislation say that at present, adultery, bigamy and enticing away a married woman are not penal, that public opinion, though some check, is not a sufficient deterrent, and consequently men are tempted to take the law into their own hands and to commit crime. They also allege that at present there is no protection against wives and children being left destitute in cases of intestacy and that it is unjust that the law should ignore their status as fathers and that of their women as wives. Whilst concurring in the opinion that a testamentary power is needed by almost all, they add that only a share varying from $\frac{1}{2}$ to $\frac{1}{4}$ of self-acquired and separate property should be given to wife and children in cases of intestacy. Moreover, they generally urge that the existing forms of social marriage should be legalised, that no one needs a new form of civil marriage, that caste and customary restrictions

on marriage should be retained and that the existing freedom of divorce should not be taken away. They object to a system of divorce as embodied in the English Law or in the Indian Divorce Act or in the Parsi or Brahmo Samaj Marriage Acts, and suggest that new provisions should be framed in view to afford on the one hand facilities for divorce and on the other to prevent arbitrary or capricious dissolutions of marriage. They are almost unanimous in deprecating a resort to divorce Courts and the necessity for public revelations of frailty in domestic life. The proportion of the educated and official classes who desire legislation subject to the modifications described above is about sixty per cent. of their total strength. An overwhelming majority however object to the Honourable Mr. Sankara Nair's Bill in its present form and the number that would take the Bill as it stands is too small to render legislation expedient on their account. The principal objections urged against it are (I) that it ignores caste and customary restrictions on marriage and thereby interferes with caste, (II) that it sanctions what are according to social usage deemed to be incestuous marriages; (III) that the form of a marriage before the Registrar is obnoxious to the people and that no one has any scruples about going through the customary form (IV) that the provisions relating to divorce are ill-adapted to the present state of society in Malabar and that revelations of conjugal frailty in public Courts are most repulsive to the people and (V) that the provision which gives the whole of the self-acquired property to wives and children to the exclusion of the Taravad and Taivali relations amounts to violent interference with the customary law of inheritance and goes beyond what husbands and fathers do during their lifetime inasmuch as in disposing of self-acquired property by gift *inter vivos* they as a general rule give only a part to their wives and children and reserve the remainder for the Taravad or for their sisters and nephews.

15. In this connection I should also enumerate the several influences at work among Nayers and Tiyars which help or retard evolution in favour of an organised system of marriage. I may mention amongst them (I) gifts from husbands and fathers to wives and children, (II) the general practice in North Malabar for the wife to live with her husband not only when the latter has self-acquired property but also with the permission of his Karanavan when he has no such property, (III) the comparatively recent practice among the respectable classes in South Malabar to imitate North Malabar generally in the case of Karanavans and occasionally in the case of Anandravans, (IV) the growing practice of marrying at a distance instead of in the vicinity as was the case prior to the introduction of railways and the increased facilities of communication, (V) the uniform and rigorous administration of justice in British Courts which prevents men from taking the law into their own hands, (VI) the exigencies of official life and (VII) above all, the steadily increasing influence of Western ideas and culture. Whilst on this subject, I have considered also the question whether the Courts are likely to recognize the existing social marriages as legal marriages, and it is very doubtful that they will do so. It is no doubt true that there is a customary marriage and that a contract may be inferred from its incidents. But having regard to the fact that in theory either party may arbitrarily repudiate it at will, the obligation created by it is one which either party may ignore at his or her pleasure and there is no uniform formality which may be accepted as a customary regulation fixing its duration throughout Malabar. It is a contract of which the breach, though checked in some measure by public opinion, is neither invariably nor effectually restrained by a definite rule. Such a contract is a contradiction in terms and is not likely to be accepted as creating a binding tie until and unless the practice of divorce is regulated in some mode so that the obligation may invariably be taken to subsist until the regulation is complied with. The conclusion to which I come is that a very small minority desire legislation on the customary basis and in a popular form and that it is necessary to their protection and highly desirable in aid of progress and good morals. I am however of opinion at the same time that legislation on the lines suggested by the Honourable Sankara Nair's Bill is inexpedient and is likely to prove unpopular. It does not steer clear of rules of caste which is a religious institution or of the ancient and customary law of inheritance which the masses still suppose to be of a divine origin. It purports further to introduce a highly elaborated system of judicial divorce amidst a people who are just emerging from a type of polyandry at least in the greater part of South Malabar, and to prescribe a statutory form of civil marriage which is

obnoxious to the people and which is required by no section of the educated classes in the District. It sanctions again what are deemed to be incestuous marriages and is regarded as dealing lightly with the solemn domestic event of a people who attach special weight to conventional forms of marriage, and to cast a stigma upon those forms by ignoring and practically superseding them. If legislation is undertaken at all, it must be on a popular basis and in a mode which interferes neither with caste nor with the immemorial law of inheritance, and sufficiently takes into account the habits of the people as regards the privacy of their women and which does not force on them an elaborate system of judicial divorce contrived to meet the requirements of societies where the institution of marriage has prevailed for centuries, and time has invested the bonds of marriage with the highest possible tension. If these are not to be recognized as the conditions of practicable legislation, I must say that legislation is not expedient for the present. The case would then stand thus, the majority do not desire any change and say we never felt the want of a marriage law and sought for it. Half of the educated classes go with them and say that our social marriages are as good as legal marriages and our women are adequately provided for by gifts *inter vivos* and that all that we need is only testamentary power as regards self-acquired and separate property. The other half say we do not desire to give up caste or to ignore the customary degrees of prohibited relationship nor do we desire to ignore the customary forms of marriage or the claims of our sisters and their children, though we wish to provide for our wives and children out of our self-acquired property. We desire to have our marriages protected by legislation, but we do not seek to hamper our freedom of divorce by restrictions borrowed from other systems of law but ill-suited to our present social condition. The only alternative suggested by the exigency of the situation is either that of legislating on a popular basis by legalising the existing marriage customs as far as possible and permitting a system of free divorce by judicial process as contradistinguished from an elaborate system of judicial divorce or that of deferred legislation for the present except for the limited purpose of authorising testamentary disposition of self-acquired and separate property. As regards the argument that the law is only permissive, they say that the parties who may marry under the Act are members of Taravads or quasi corporate bodies and that any law which affects them individually is likely to have the same effect upon their Taravads as pulling out a corner stone is likely to have upon an ancient edifice. If legislation on a popular basis together with a system of free divorce by judicial process could be adopted, I would recommend it, for it would gradually nationalise the institution of marriage in the course of a few years and aid social progress and supply a want felt at present by no doubt a very small but a growing minority. I hesitate to assume the responsibility of submitting to the Government that legislation on any other basis is expedient for the present except for the purpose of legalising testamentary disposition of self-acquired and separate property. I shall recur to the question how far legislation is expedient even on the popular basis after considering the other questions suggested by the Government of India.

16. The next question for consideration is what is the form which legislation, if any, ought to take.

I. The new Act should purport to legalise the existing forms of social marriage and not to provide a new form of civil marriage. In the first place it is unnecessary to contrive a statutory form when there is a form already in use in society. As pointed out already, there are six forms of marriage which though different in different parts of Malabar are adopted in a public manner in the presence of a large number of friends and relations as modes whereby the intention of the parties to constitute the relation of husband and wife is manifested. Again, a statutory form will seldom prove acceptable to a community which attaches a special value to a conventional form as conducive to a prosperous marriage. By superseding the customary form, it is liable to be misconstrued as casting a stigma upon it. The Registrar before whom the marriage is to take place according to Mr. Sankaran Nair's Bill may be a Tiyar, a Mopla or an East Indian; and in Malabar, especially in North Malabar and among the respectable classes throughout South Malabar, there is a prejudice against young women appearing in public offices. It was proposed during the discussion among the Commissioners that the statutory form might be retained in addition to the customary form. Where is the

necessity for it? Neither the educated nor the uneducated have the slightest scruple about going through the customary form. The only case suggested is that of a young man taking fancy to a pretty girl and desiring to contract a marriage because his Karanavan or his Taravad is unwilling to sanction the union. If the couple are *sui juris*, the consent of their guardians is unnecessary, but if they are not *sui juris* and need the protection of guardians, the couple ought to wait until they attain to the proper age and it is not for the legislature to open a door for romantic marriages and to ignore the right of legal guardians. I do not think that in the present state of society in Malabar a statutory form of marriage is desirable either in addition to or in supercession of the existing customary form.

II. Again, the marriage to be legalised must be between persons who are permitted to cohabit with each other by the custom obtaining for the time being in the caste to which they belong. It will be observed from the marriage customs already described that there are two restrictions on marriage due to caste. The one is that no Nayar male or female shall marry below and outside his or her caste, and the other is that no female shall marry into such a sub-division of her own caste as would entail on her forfeiture of caste. Both these restrictions have, as explained before, a legal origin, the one in the general rule of Hindu Law obtaining at present on the other side of the Ghats, and the other in the Anuloma doctrine of ancient Hindu Law. In dealing with a customary marriage in a society which recognizes caste as a *quasi* religious institution, I see no alternative but that of recognizing such marriage customs as have a legal origin, although I would not fossilise them but help on social evolution by inserting the words "for the time being" and thereby recognizing any change which may take place from time to time owing to the spread of education. I would also fix the prohibited degrees of relationship in accordance with custom and introduce no change so as to sanction what may be characterised as an incestuous marriage. As regards the belief that a woman in North Malabar is not at liberty to cross the Korapuzhai river, it relates to territorial residence and is not referable to any principle of Hindu or other system of law.

In the reply of the District Munsif of Badagara it appears there are objections to crossing rivers in the District and the restriction is not one which can be upheld as reasonable, and I shall leave it to be regulated by social opinion.

III. Further, the form in which marriages may be contracted under the Act ought to be described as the one customary in the caste or class to which the woman belongs. It is necessary to describe it so in order that a Nambutiri Brahmin or a male member of a Kovalakam may contract a marriage under the Act if he chooses to do so; otherwise there may be no form applicable to the case as the Brahmin or the Kshatriya marriage ritual does not apply to a marriage with a Nayar woman. In dealing with the intricate question of caste it will be seen that I have kept before my mind three principles, *viz.* (I) that the State should not repudiate caste restrictions, for such repudiation would be deemed to be an interference with caste rules, (II) that it should tolerate such restrictions only so far as they have a legal origin and passed into what might be deemed a customary law and (III) that society should be left free to alter them from time to time with reference to the requirements of social progress.

IV. The next provision which I considered relates to the marriageable age. The Bill fixes it at 18 in the case of males and 14 in the case of females. In the Marumakkattayam family, every member, whether a minor or an adult, is subject to the Karanavan; and under the Roman family system, a marriage contracted without the consent of the father was null unless the father subsequently approved of it. It appears, however, from the evidence that Anandravans in Malabar do not always obtain the consent of their guardians and that the only mode in which Karanavans deal with such conduct is that of refusing permission to the Anandravan bringing his wife into the Taravad house unless and until he is reconciled to the union. It is advisable not to restrict the freedom of adults to marry without the consent of their Karanavans and at the same time to fix the age at which the Karanavan's consent may be dispensed with sufficiently high to enable the contracting parties to see whether they can support the obligations of married life without aid from their Taravads. On these considerations the age upto which the Karanavan's consent is necessary may be fixed at 21 years.

V. Another condition contained in the Bill is that the man or woman shall have no wife or husband living at the time when the marriage is contracted. This may be adopted as necessary to prohibit polyandry and polygamy. The object with which legislation is proposed is to nationalise the institution of marriage and to prevent polyandry. The evidence shows that it had died out long ago in North Malabar and that it has almost died out though more recently in South Malabar. As regards polygamy it is acknowledged to prevail but seldom. Several witnesses, however, advocate its retention on the ground that it is sanctioned by Hindu Law, but as the proposed legislation is permissive and as it is the educated men who move for it, I consider that the restriction ought to be retained in the interests of women. I have also before my mind that it is the nephew or the Anandravan who is entitled to make the funeral or annual offerings under the Marumakkattayam system, and the remarks of Lord Brongham in *Warrender versus Warrender* and in the case of *Hyde and Woodman* in which a polygamous marriage was held to be no marriage in an English Court of Justice.

VI. The next provision which was considered relates to the machinery provided for making registration evidence of a marriage under the Act. Though most of the witnesses object to the celebration of marriage before a Registrar, many have no objection to registration being constituted as evidence of its legal recognition provided that the bride is declared exempt from personal appearance in the Registration Office. It is necessary, however, to prescribe some mode whereby marriages contracted under the Act may be distinguished from social marriages to which it is not the wish of the parties concerned that the proposed Act should apply. A declaration embodying the necessary information is considered to be appropriate and it may be provided that it should at the time of marriage be signed by the parties to it and also by their legal guardians when they are under 21 years of age and attested by not less than two witnesses. It may be further provided that the declaration should be registered in accordance with the provisions of the law applicable to the registration of Assurances, the bride being exempt from liability to appear in the Registration Office. It may also be declared that the declaration or a registered copy of it shall be evidence of the facts stated therein without further proof.

VII. The next branch of marriage law which I have had to consider relates to divorce. Any system of divorce that is introduced must satisfy two conditions, *viz.* (1) that it must be suitable to the present state of conjugal relation in Malabar and (2) that it must at the same time adequately ensure the stability of the matrimonial union. Among Marumakkattayam Hindus, marriage has yet to be legalized; polyandry has ceased but recently, and no religious sanction sustains the notion that one man is united in wedlock to one woman all life for better or for worse. The basis on which the duration of the marital relation rests is that the couple should do their best to get on together well and that, if they fail, it must cease. Hence the husband or the wife may in theory divorce the other at will. But in practice neither does so except for a cause which commends itself to his or her family and to the society in which they move. Arbitrary divorces appear to be rare, much more so in North than in South Malabar. In most cases the Anandravans are too poor to support a family and have no self-acquired property, and they work for their Taravads and marry or put away their wives only with the consent of the Karanavan who allows them to bring their wives into the Taravad house and maintains them out of Taravad income together with other Taravad relations. This is the general practice in respectable Taravads in North Malabar when there is cordiality and harmony in the family. What grounds of divorce are considered reasonable in Marumakkattayam society and whether any formality is observed when marriage is dissolved are matters concerning which I have taken evidence. But the evidence is discrepant and conflicting and conveys the impression that save adultery no other determinate cause is recognized and no specific form is observed throughout Malabar or even in the same part of the District. Adultery, cruelty, mutual desertion, disobedience on the part of the wife, neglect to maintain on the part of the husband, incurable or infectious disease, impotency, barrenness, stealing the husband's property, levity of conduct and incompatibility of temper are among the causes enumerated by one or other of the witnesses. It is stated by several witnesses that the wife is at liberty to take a second husband if the first discontinues matrimonial intercourse for one year and omits to send to her the customary presents during the two principal

feasts of the year, viz. those of Vishu and Onam. It is also observed by some witnesses that in parts of the District, when the husband desires to divorce the wife, he takes one or more cloths to her Taravad house and leaving them there, announces to her Karanavan that he divorces her. These causes and forms do not however appear to be so general or uniform as to render it safe to accept them as containing the elements of a customary law. What scheme of divorce is then best adapted to Marumakkattayam Hindus?

The Honourable Mr. Sankara Nair has incorporated into his Bill the provisions of the Indian Divorce Act and those of the Parsi Marriage Act. Even most of the educated and official classes of Malayalis, who desire legislation, insist that they be expunged, and the strong opposition which the Bill has evoked throughout the District is in the main due to them. The principal ground of objection is that they constitute an elaborate system of judicial divorce devised to support a high standard of matrimonial sanctity not unfrequently found impracticable even in societies in which marriage has been a religious as well as a legal institution for centuries and in which lapse of time and strength of religious sentiment have carried it beyond the stubborn exigencies of married life. Another ground of objection is that the procedure prescribed by the Bill is complex and that suits for nullity of marriages, for judicial separation and for divorce, accompanied as they are with public revelations of the frailty of domestic life, are obnoxious and repulsive to the people of Malabar as elsewhere. Having regard to the history of the modern system of divorce law in England, on which Indian enactments are founded, and considering how divorce was absolutely forbidden before the Reformation, how the prohibition was enforced by Ecclesiastical Councils likening marriage to the union of Christ with his Church, how more practical views came to prevail after the Reformation, how slow, notwithstanding, was the progress from legislative to judicial divorce and from the notion of religious to that of civil marriage and how closely every departure from the requirements of a sacramental marriage was hedged around and restricted, I am inclined to think that the objections are not without weight.

On referring to the history of the Civil Law, I find that in ancient Rome, as in Malabar, there was free divorce. There, divorce was permitted either by mutual consent or at the will of either of the spouses, and Gaius refers to it as existing in his time; and divorce at the pleasure of either party was called Repudiation. Until the close of the Republic and the commencement of the Empire, social opinion was found to be a sufficient check upon the abuse of the right of free divorce, and bright pictures of conjugal fidelity and devotion were not uncommon during that period of the Roman history. Here I may state that Mr. Logan observes in his District Manual that female chastity in Malabar is as good as elsewhere though marriage is not a legal institution and that "nowhere else it is more jealously guarded and its breach is more savagely avenged". The system of enforced privacy in the case of women and their early home training lend weight to Mr. Logan's remark as a correct description of the case in North Malabar and also generally in South Malabar. After the commencement of the Empire, Roman manners became corrupt and the right of free divorce was abused so much so that the general depravity was censured by Seneca and satirised by Juvenal. Under the guidance of eminent jurists imperial enactments were passed, not to take away the right of free divorce, but only to restrain its abuse. The procedure adopted was this. What were deemed by the State to be good causes of divorce were formulated and pecuniary penalties were prescribed for repudiation without a just cause. If the wife was the guilty party, she forfeited her right to claim the *dos* and, if no *dos* was constituted, she forfeited one-fourth of her property of which the ownership vested in the children and the usufruct in the husband. If the husband was the guilty party, he incurred a similar forfeiture in favor of the children, the usufruct alone vesting in the wife. If there were no children the ownership of the property forfeited vested in the innocent party. On the conversion of Rome to Christianity, Constantine passed an imperial enactment limiting the right of divorce to three cases specified with regard to the husband and to three mentioned with reference to the wife, and he did so owing to the uncompromising vehemence with which Councils of the clergy denounced the sinfulness of

divorce; but the habits of the people were too strong both for the decrees of Council and for the enactment of the Emperor. The result was that after one or two slight modifications the enactment was withdrawn and the freedom of divorce re-appeared in the Institutes of Justinian with all its former incidents. Again, although divorce is not allowed under the Hindu Law as administered to the regenerate classes on the Eastern Coast, the Smriti of Yagnavalkya directs that if one supersedes his wife without just cause, he shall forfeit to her one-third of his property, and the Hindu Law of unjust supercession recognized a principle of compensation to mitigate its rigour when it was found impracticable to prohibit polygamy.

With these general remarks, I proceed to explain the scheme of divorce which is suggested. It is framed on the view that a system of free divorce by judicial process, as contradistinguished from an elaborate system of judicial divorce, is alone adapted to the present condition of Marumakkattayam Hindus. Either the husband or the wife is recognized as being free to divorce the other with reference to the existing custom. It is framed by analogy to the right of repudiation considered by the Roman law to be applicable to a similar state of society.

But in the Roman law it was the private act of the party concerned, though at a later period it became the general practice to send a notice in writing by means of a freedman who delivered it to the other party in the presence of seven witnesses. The intention was to preserve clear evidence of the transaction, and with the same object a judicial process and a judicial declaration are substituted as far more effectual than a private intimation which may be denied and give rise to litigation.

To prevent, however, the abuse of a right of free divorce, two restrictions are imposed. The first is that the application for a notice should have the consent of the Taravad or Taivadi Karanavan endorsed upon it except in cases in which the husband who divorces his wife lives separately from the Taravad and has independent means of support. This will create a necessity for discussion in a family council and thereby prevent the exercise of the right on a sudden or hasty impulse. In devising this check, I only follow the general Taravad usage in North Malabar already mentioned. The second restriction consists in prescribing an interval of two years before the marriage is dissolved. It is imposed by analogy to desertion for two years and intended to afford ample opportunity for reconciliation and to render temporary dissension between the two families innocuous.

The above was the scheme framed at Calicut after discussion among the Commissioners, but on closer consideration, it appears to me desirable to reduce the period of probation to one year and to bring it into conformity with the practice obtaining in parts of Malabar according to which cessation of matrimonial intercourse for one year is considered to be equivalent to a divorce.

17. To this scheme the objection was taken that, as it differs from the Divorce and other cognate Acts in force in India, it might not be accepted, and it was suggested as an alternative that the Government might be enabled to extend either at once or after the Act had been in force for sometime, the provisions of the Divorce Act. After carefully considering the matter, it seems to me that the alternative suggested is likely to render legislation unpopular and inexpedient, one of the conditions, subject to which legislation is desired, being that the Divorce Act and the provisions of other cognate enactments should not be extended to Malabar.

If an alternative scheme is deemed indispensable it appears to me desirable, at all events for several years to come and until the institution of marriage is nationalised, to follow the Civil Law and to declare as just grounds of divorce the causes specified in the Indian Divorce Act and in other cognate enactments as just causes either for dissolution of marriage or for judicial separation, and direct that if either party repudiates the marital relation without a just cause, the guilty person shall forfeit one-fourth of his or her self-acquired property, if any, to the other, and that, if there are children, the ownership shall vest in them, the usufruct alone vesting in the innocent wife or husband during her or his life. It seems to me that when social opinion is found to be unequal in its practical operation as a restraint in this country, a penalty

such as the one proposed will prove effectual and affiliate the right of repudiation to modern legislation on the subject. In suggesting the adoption of this principle of compensation, I only follow the Civil Law and the Smriti of Yagnavalkya, and substantially make a provision for the wife who may be unjustly superseded and give the corpus of the property to the children, if there are any. The husband ordinarily makes a provision throughout Malabar in the form of gifts *inter vivos* when the conjugal union lasts for life as intended when it was constituted. If the principle of compensation is adopted as a check, it is desirable to reduce the period of probation to 6 months. It only remains for me to mention what should be deemed just causes of divorce. As to adultery, cruelty and desertion for two years, they are causes recognized by the English Law of Divorce. I would add to them change of religion, impotence, sexual incapacity, permanent and infectious disease, unsoundness of mind or any other cause which renders the mutual discharge of matrimonial duties incompatible with due regard to personal safety. As regards adultery the rule is that if the wife is guilty of it, it is considered to be a just cause of divorce. If the husband is the guilty party the rule is otherwise; some aggravating circumstance is insisted on as detailed in Section 10 of Act IV of 1869. This rule appears to me to be open to question for several reasons. Viewed in relation to the reciprocal obligation to conjugal fidelity, I see no reason why moral depravity should be tolerated in the case of the husband whilst it is rigidly and properly denounced in the case of the wife. Viewed with reference to the suffering occasioned by it, it is not less intense in the case of the woman than it is in the case of the man, though when the former is the sufferer, it is the acute suffering of an uncomplaining woman and not the violent outburst of ill-repressed anger. Viewed with regard to its historical origin, the distinction made between the husband and the wife is referable at least in part to the fact that the man is the law-maker. I am not unaware of the justification suggested by several writers that the honor of the family suffers in the one case than in the other inasmuch as the frailty of the woman throws a cloud over the legitimacy of the children. Whatever weight might be due to this view in societies in which legitimacy is the basis on which the right of inheritance rests, it has not the same force in Malabar where the sister's son is the heir-at-law. Again, a Nayar husband who may get tired of his wife under the proposed Act may possibly form a Sambandham, and if it is not registered under the Act, the connection may not be penal if it is not formed with a woman already married under the Act. Following the Scotch Law I propose to recognize, as suggested in the Bill, adultery on either side as a just cause of divorce.

As for cruelty and desertion, they are causes recognized by the Divorce Act and illustrated by several judicial decisions. The former embraces every form of oppression which renders the discharge of matrimonial duties incompatible with due regard to personal safety. The latter includes every case of abandonment by either party, save that which ensues from mutual agreement, a point which is not material when a right of repudiation is recognized in either party subject to certain conditions.

Change of religion is under Hindu Law a cause of civil death and although under Act XXI of 1850 it entails no forfeiture of right of inheritance, the continuance of conjugal intercourse between a caste wife and an outcaste husband is impossible in practice.

Impotence and sexual incapacity are causes which need no remark. However undesirable it might be to recognize them as conditions subject to which the relation of husband and wife is to continue in a family constructed on marriage, the objection is not entitled to the same weight where the institution of marriage is engrafted on a different family system under which the wife and children have always a Taravad to fall back upon. As to unsoundness of mind and permanent incurable and infectious disease supervening after marriage, freedom from them is the basis on which a contract of marriage is generally concluded and several witnesses enumerate them as customary causes of supersession or divorce. Their non-recognition as just causes would only lead to deterioration of matrimonial purity though it would be just in such cases to impose an obligation to make a suitable provision for the party afflicted. To the causes enumerated above, I would also add transportation for life and absence for a period of seven years or more without any information as to whether the party absent is alive or dead.

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18. Before quitting the subject of divorce, I desire to make a few remarks regard procedure to be followed under the new Act if the alternative were adopted. The machinery suggested by the Bill and borrowed from the Parsi Marriage Act consists in the creation of a special matrimonial Court and in the providing of three remedies, viz. 1. Suits for nullity of marriage, 2. Suits for judicial separation, and 3. Suits for dissolution of marriage. As already observed the majority of that class of educated Malayalis who ask for legislation object to it as novel and complicated. A special tribunal such as the District Court would alone be an appropriate tribunal to enforce an intricate system of judicial divorce. But no necessity for such tribunal would arise if a system of free divorce were substituted for it only with a right to claim compensation in certain contingencies. A District Munsif would be the cheapest and nearest functionary who might reasonably be expected in such cases to administer justice in a satisfactory manner. Nor is there adequate necessity to maintain the distinction between judicial separation and dissolution of marriage in a District where there is no religious marriage and where social usage recognizes no double remedy. As regards suits for nullity of marriage, they would lie under the general law without a specific provision not only for breach of the conditions specified in the proposed Act but also for fraud or force. I fail to see sufficient reason for devising a special system of procedure in Malabar distinct from the procedure followed in the trial of matrimonial cases under Hindu Law as administered on the Eastern Coast. There is, however, one matter which deserves special notice in connection with this part of the marriage law. It would be a great improvement if issues of fact relating to conjugal frailty were referred for trial to a local jury or Panchayat and the necessity for scandalous and demoralizing revelations in public Courts of Justice thereby averted. The ancient territorial distribution of Malabar into Nads, Desams and Taras, the divisions of leaders of the Nayar community into Naduvalis, Desavalis and the elders of the Tara, of which Mr. Logan gives a very interesting account in his District Manual, afford, though now in decay, some facilities for constituting a caste Panchayat out of the elders of the caste in each Tara who took cognizance of caste offences and preserved ancient usage from the ninth century, when Cheruman Perumal became a Mahomedan and Mecca, to the close of the last century, when British rule was introduced. I would introduce a provision in the proposed Act making it competent to the District Munsif to refer issues of fact in matrimonial suits to a caste Panchayat to be constituted on the application of either party to the suit or by the Court itself of its own motion and rendering its verdict final subject to the provisions of the Code of Civil Procedure relative to trials before Arbitrators. The revival of such tribunal for the trial of matrimonial suits has been suggested by a considerable number of educated Malayalis. It is however feared that the caste Panchayat may not work well and may be found wanting in judicial impartiality. But I am not without a firm belief that if it is carefully constituted and encouraged it will be accepted by the people with all its imperfections as a very appropriate subsidiary tribunal for the investigation of delicate questions of conjugal infidelity.

19. The next subject considered by the Commissioners is that of civil rights to be attached to marriage under the proposed Act. In determining their scope, I have taken into consideration not only their legal conceptions but also the Marumakkattayam usage on which the rights have to be engrafted.

20. A power of testamentary disposition over self-acquired and separate property is included among them in the Honourable Mr. Sankara Nair's Bill. The Commissioners are unanimous in thinking that the power may be conceded, but they are of opinion that it should be declared to be co-extensive with the power to alienate property by gift *inter vivos*, and that the proviso contained in the Bill should be omitted. There is a general desire for such power both in North and South Malabar, and there is no reason why a person competent to alienate property by gift *inter vivos* should not be at liberty to do the same by will. My attention has also been drawn to the case reported in I. L. R. XII Mad. 126 wherein it is pointed out that the habit of making wills has existed in Malabar from 1826 and it is urged that under similar circumstances a testamentary power has been conceded to persons governed by Hindu Law. It is further alleged that husbands are in some instances reluctant to make, by gifts *inter vivos*, a provision for their wives and children

present state of the conjugal relation, they may rejoin their Taravads, and a few cases of desertion have also been brought to my notice. There is, however, no necessary connection between marriage and testamentary power and the Commissioners think that it is desirable to give such power whether or not a marriage is contracted under the Act, restricting it to cases in which a power to make a gift during the testator's life exists according to the nakkattayam law as at present administered.

21. The second right considered is the right of the wife to be maintained by her husband. Commissioners consider that it should be attached to marriage under the Act, except cases in which the wife may forfeit it by her conduct or refuse to live with her husband without lawful excuse. For the purpose of formulating the cases in which a husband may refuse maintenance, Mr. Winterbotham suggested that the provisions of Section 488 of the Code of Criminal Procedure might be adopted, and it was agreed to at Calicut. I consider, however, that it is better to provide that whatever defence is available to the husband under Hindu Law in answer to the wife's claim for maintenance is available under the Act. Such a provision would be more complete than Section 488, for questions may possibly arise in connection with the wife's obligation to live with the husband as to which no rule of decision can be found in that Section. I may mention for instance cases in which the husband is suffering from leprosy or has changed his religion or renounced his caste or seeks to bring his wife into the society of a prostitute. The Malayalis are Hindus and the rule of Hindu Law on the subject is likely to prove more acceptable.

The provision as contained in the Honourable Mr. Sankara Nair's Bill is that the wife and children shall also retain their rights as members of their Taravad and shall further be entitled to maintain her from the husband. So far as it omits to recognize the right of the husband to claim maintenance in certain cases, the omission may be supplied as mentioned above. So far as it recognizes the right as a member of her Taravad, several witnesses object to it on the ground that it is not right to claim maintenance from her Taravad whilst she is being maintained by her husband in his residence. They overlook, however, the fact that like a male Anandravan, a female is, under the Marumakkattayam usage, only entitled to be maintained in her Taravad house and that she is not at liberty to claim separate maintenance from her Karanavan unless he refuses to support her when she offers to live under his protection. The intention is to preserve to the wife her right to be maintained in the Taravad house and thereby to enable her to fall back upon it either if her husband is unable to support her, or if she cannot live with him. To avoid, however, any misconception, it may be declared that the wife is entitled to claim maintenance from her husband without prejudice to her right to be maintained by her Karanavan in her Taravad house.

22. The third right considered is that of the husband to compel his wife to live with him when she refuses to do so without lawful excuse. Here also, whatever is a lawful excuse under Hindu Law may be declared to be a lawful excuse under the proposed Act. A limitation of the right is however necessary with reference to the Marumakkattayam usage on which it is to be a graft. According to that usage, the Karanavan lives with his wife and children in his Taravad, and this is the case both in North and in South Malabar. The ground on which the practice is justified is that the Karanavan cannot afford frequently to leave his Taravad and to visit his wife in her own Taravad. Again, the Anandravan lives with his wife and children apart from his Taravad house, either when he is in the public service or when he has self-acquired property or separate income and is able to support them. This is considered to be due partly to education and enlightenment, partly to affection for the wife and children fostered by marriage, and partly to the exigencies of the public service. Such cases are, however, comparatively limited in number both in North and South Malabar. Moreover, there is a general custom in North Malabar according to which, Karanavans in respectable families deem it their moral, if not legal, duty to receive their Anandravan's wives into their Taravads and to support them, except when the Anandravans marry without their consent or do not live in harmony with them. In the three classes of cases mentioned above,

the general usage is in accordance with the right and it needs no limitation. Of Anandravans in South Malabar have no separate property or income is that the Anandravan's wife and children ought to live in their own house, their proper residence according to Taravad usage, and that her husband is under no obligation, social or legal, to receive them into his Taravad out of Taravad funds. But the wife's obligation to live with the husband is an ability to support her and in the absence of such ability, it is not her intention to be compelled to quit her Taravad. Again, in this class of cases marriage is the understanding that the wife is to live in her own Taravad, and Taravad custom are referred to in justification of the practice. In the women in Malabar speak of their residence in their husbands' Taravads as a sojourn or as a temporary visit, and the ancient Taravad notion that a woman's domicile is her own Taravad has not yet lost its hold on them. Hence it is not the right to cases in which the husband has self-acquired property or separate income to support his wife and children or his Karanavan is willing to support them in his

23. The fourth right considered is the right of the father to the custody and guardianship of his children. When regard is had to the incidents of a legal marriage outside Malabar, there can be no two opinions, but the Marumakkattayam usage is not in accord with the Honourable Mr. Sankara Nair's proposal. According to the usage, the father is their legal guardian, wherever they may live, and the father is considered to live with his wife and children to be their *de facto* guardian with the Karanavan's permission. The proposal to make the father their legal guardian, even if the wife and children live in their own Taravad house and under their Karanavan's control, seems to me to be of doubtful expediency. When I consider how it is likely to work in relation to the very large number of Anandravans in South Malabar who marry without any separate property and on the understanding that their wives and children are to live in their own Taravads, it appears to me to be anomalous; and if adopted, it will bring the father into conflict with the Karanavan and result in discord and litigation. I do not think that we can go so far as to make the father their guardian when he is permanently living together with the wife and children, and transforming in that case the present *de facto* guardianship into legal guardianship. I would, however, recognize the right of the father to be consulted regarding the education and marriage of his children though they live in their own Taravad, and to the Court in the event of a disagreement between him and his Karanavan for such directions as are most conducive to the interests of the children. I must add here that in regard to the proposed limitation of the right of guardianship, there is a difference of opinion among the Commissioners, Mr. Chand Menon and the Raja of Parapanad agreeing with me and the others being in favor of the proposal to make the father the legal guardian in all cases in supersession of the Taravad Karanavan.

24. The fifth and the most important right discussed by the Commissioners is the right of succession in cases of intestacy mentioned in clause d of Section 34 of the Honourable Mr. Sankara Nair's Bill. It is vehemently assailed by several witnesses as an indirect attempt to break up Taravads and as a provision which introduces a double system of inheritance likely to breed strife and litigation. I may here refer to Karunakara Menon's pamphlet and reply to our interrogatories as containing a summary of all that can possibly be urged against it, and though I do not agree in all that is said by him, I still think that some of his objections are entitled to weight. In dealing with this right I must premise that I take the legitimate scope of the Commission to be to report on the expediency of introducing a marriage law as a graft on Marumakkattayam usage without unduly interfering with the customary law of inheritance. I do not desire, however, to be understood as supporting the Marumakkattayam system on economic grounds and I own that there is much to be said against it if it is to be judged on those grounds and with reference to the requirements of an enlightened modern society. An archaic system of management founded on the notion that the maternal uncle will adequately protect the interests of the children

a proposal to transfer to wives and children the whole of the self-acquired
in cases of intestacy, three of the Commissioners including myself think
should not exceed a half. There is considerable evidence in su-
ew that it should be so limited not only in justice to the claim-
der the Taravad law but also with reference to what those who own se-
dinarily do in disposing of it when they provide for their wives and child-
ws that they generally reserve a moiety, if not more, for their sisters and nie-
on that is necessary to ensure an adequate support for the wife and ch-
y appears to me to consist in a declaration to the following effect,
dren shall have a right to so much of the self-acquired and separate
nd father as will provide them with a suitable maintenance with-
y have received from him by gift made during his life. This
what husbands and fathers would ordinarily provide for their
ir Taravad relations if they made a will. M. Rama

25. The next and sixth right which I would propose to include among the rights created by the Act is the wife's right to compel the husband to receive her into his house or to live with and maintain her in cases in which he may compel her to do so. These are in their nature reciprocal rights and if created, both the husband and the

As regards persons governed by the Aliyasantana law, I think that the proposed Act may be extended to them. In connection with this matter, I may refer to the letters received from Mr. Sturrock and Mr. Brodie, to the memorandum drawn up by Mr. Mundappa Bangira and to the replies from several persons subject to the Aliyasantana law.

I observe that as in British Malabar, there is a social marriage in South Canara. There is a section of the Aliyasantana community who consider its non-recognition by the Courts as a legal marriage to be a grievance, and it would seem that the number of persons who wish for a permissive marriage law there is somewhat larger than in Malabar. There is also the same necessity for legislation. In S. A. 233 of 1868 (IV. M. H. C. R. 203) the High Court remarked as follows:—"The relation of husband and wife under the Aliyasantana system is in truth not marriage but a state of concubinage into which the woman enters of her own choice and is at liberty to change when and as often as she pleases."

The observations of Mr. Brodie appear to me to be weighty and as the proposed legislation is permissive and on the basis of the existing custom, the Aliyasantana people may also be permitted to take advantage of it.

As regards the marriage customs which prevail among them, Mr. Mundappa Bangira has drawn up a Memorandum and it is scarcely necessary for me to recapitulate them. As in Malabar, there is a social and customary marriage which may be declared to be a legal marriage provided that it is valid according to the existing custom. Among the conditions subject to which it is proposed to validate the social marriage in Malabar, those which prohibit child marriage and polygamy and relate to a declaration and its registration and to divorce may be retained. In Canara, as in Malabar, there is no restriction as to marriage, polygamy and there is a special custom as to prohibited degrees of relationship.

There are, however, three peculiarities in South Canara which do not exist in Malabar. There is no restriction in Canara similar to the Korapuzhai objection in Malabar. Anuloma and Pratiloma are recognized there, and as it is not proposed to introduce a new Act and as the doctrine of Anuloma and Pratiloma is not as such but as an element of custom, I see no objection to the subject to the conditions mentioned above. In connection with divorce made by the husband at the time of the marriage called Thiridoche, a divorce by judicial process and declaration proposed in this paper, especially as the payment made is not substantial and varies from 2 to 1000. As regards re-marriage of women, however, there is one peculiarity. It is only a widow that is permitted to marry a widow and one recognized with the Widow Marriage Act. It should be specially declared that though the person that marries a widow is not a widower, the marriage shall not be invalid on that ground.

As regards the form of re-marriage, it differs from the form sanctioned by custom for the first marriage, but no special provision is necessary in regard to it, the declaration that a marriage contracted in accordance with custom shall be valid being sufficient. All that is needed in regard to persons subject to the Aliyasantana law appears to me, therefore, to consist in inserting a separate section to the effect that the proposed Act shall apply to them also and in adding a special declaration regarding re-marriage of women as mentioned in the preceding paragraph.

28. It only remains for me to mention two principal objections to which the proposed scheme was said to be open by Mr. Winterbotham during the discussion at Calicut. Before doing so however, I may state that all the Commissioners consider that if the scheme is adopted, many are likely to prefer legal marriage to social marriage, and the former will, though gradually, become a national institution in Malabar. This appears to me to be in itself a great benefit and no small aid to the cause of social progress and good morals. It will tend to eliminate from the Marumakkattayam social system the baneful notion seriously put forward by several persons of high social position that it is the exclusive privilege of Nambutiri to contract a legal marriage. Having regard again to the exclusive character of conjugal affection, the proposed Act will, on the one hand, elevate and ennoble the precarious social marriage into a legal institution, whilst the strong arm of public law will, on the other, protect the domestic circle against the incursions of irregular passions and thereby remove one cause of acute suffering in that circle and one strong temptation to the commission of crime.

29. Turning to the objections, Mr. Winterbotham considers first that the proposed scheme is not undenominational and that it differs from the scheme of legislation hitherto sanctioned by the legislature in India and evidenced by the Divorce Act, the Christian Marriage Act, the Brahmo Samaj and Parsi Marriage Acts, and similar enactments in England. It is true that the proposed scheme is denominational in the sense that it is mainly based on the marriage customs obtaining in the Marumakkattayam society but it must be remembered that like the law of inheritance, the law of marriage is more or less conventional in every society and takes into account such of its peculiar customs as entwine themselves either with its religious sentiment or with the abiding influences exerted by its past history. In this view, the Brahmo Samaj and Parsi Marriage Acts seem to me also to be denominational and they are intended to apply only to particular communities, the former to a body of Secessionists from the Hindu religion and the latter to a community having a religion of its own. We should not overlook the fact that the marriage law administered to several classes of the non-Aryan races on the east coast is a law evidenced by their customs and that the marriage law of the Aryan section of the Hindu community itself is nothing more than its Smriti law as modified by subsequent usages recognized as immemorial. I may also observe that the Divorce Act itself is framed in regard to Christian marriages. It is by no means my intention to depreciate the high ideal of matrimonial sanctity and purity which underlies the frame of a marriage law on the English or a cosmopolitan basis, but I must add that it is not practicable in Malabar either for the present or for many years to come.

30. The second objection is that the recognition of freedom of divorce is a matter which is not desirable to let every body into and out of a matrimonial relation sanctioned by law. My answer is that the social condition in Malabar in regard to marriage leaves only a choice between a law which affords facilities for divorce whilst it is a capricious divorce, and abstention from all legislation for the present. It is as between the two alternatives, the introduction of a marriage law together with a provision restraining the abuse of freedom of divorce by recognizing a proper compensation is preferable and conducive to social welfare. I have also to observe that whatever objection may exist against affording facilities for divorce, when matrimony is a source of misery instead of happiness, in a society in which the family is not a legal marriage, it has not the same force in the Marumakkattayam society where the husband and children have always a Taravad to fall back upon for their support. I confess that the expediency of recommending a marriage law on what is called an undenominational basis in the hope that one at least of ten thousand may take advantage of it. The opinion of the Marumakkattayam society forming a very large majority will regard such legislation as tending to overturn their customs and to denationalize them and as one rather to be deprecated and avoided than to be approved and followed. I have only to add that as I read the letter of the Government of India, I think we are asked to suggest legislation in a form which is practicable in Malabar if expedient, but not on any *à priori* basis or in a form which may be impracticable or inexpedient though it may commend itself when it is looked at from a special standpoint.

Recurring to the question of expediency, I desire, in view of its importance, to summarize once more all that can be said about it. (I). I do not think that legislation is expedient on the lines indicated by the Honourable Mr. Sankara Nair's Bill or on any *à priori* basis, which does not take into account customs founded on religious sentiment and on abiding influences due to past social history. In this opinion the Raja of Parapanad and Mr. Chandu Menon concur, whilst Mr. Winterbotham, Mr. Sankara Nair and Mr. Mundappa Bangira dissent from it. (II). All the Commissioners think that legislation in general accordance with the proposed scheme will be acceptable to those who desire to secure protection for their social marriages and pave the way for legal marriage gradually becoming general in Marumakkattayam society.

With the exception of Mr. Chandu Menon, the majority of the Commissioners consider it expedient and Mr. Chandu Menon himself recommends it if the Courts do not recognize the social marriage as legal whilst the decision of the High Court already cited with reference to marriage in Aliyasantanam society renders such recognition unlikely. Whilst at Calicut, I reserved my opinion on this point, and, after careful consideration, I attach weight to the following considerations:—

1. Though the minority that desires legislation is small, it is a growing and an educated minority and every year will add to its strength and influence.
2. The right to contract a legal marriage is personal to every one of Her Majesty's subjects and the demand for a permissive law is but reasonable.
3. It is a demand which will be repeated year after year until it is conceded.
4. Legislation on the basis indicated by imperative social customs is alone expedient when it is intended for a society as a body; and it is likely to become popular and national in proportion to the extent to which such customs and other lasting social influences are taken into account, and the proposed scheme satisfies these conditions as far as practicable.
5. It eliminates from the Bill the three main grounds of objection underlying the strong opinion it has evoked, viz. a statutory form of marriage which no one need be lawfully suited to the present social conditions and a theory of marriage which is at the Marumakkattayam society. A majority of the people are still attached to the Marumakkattayam system and are opposed to it on economic grounds.
6. In attaching new rights the scheme takes into account the existing ones and alters in substance what are recognized as social into legal obligations.
7. It differs from the existing custom only on four points, viz. (1) in recognizing child marriage; (2) in prescribing a declaration and its registration; (3) in refusing legal sanction to polygamy and (4) in proposing certain alterations to check arbitrary divorce without at the same time taking away freedom of divorce. As regards polygamy and child marriage, the law has been resorted to; as regards registration of marriages, the prescribed form has been adopted and as regards the restriction on capricious divorce, the stability of the union demands it, at all events, when and where the freedom of divorce is not recognized.
8. It is an important aid to national progress and good morals. And,
9. As a permissive law, it will not force a legal marriage on those who are unwilling to contract it.

I am, therefore, inclined to concur in the opinion of the majority of the Commissioners that legislation on the lines indicated in this paper is expedient.

PRESIDENT'S SUPPLEMENTARY MEMORANDUM.

The report of which a copy has been furnished to me by Mr. Winterbotham was not before me when I drew up my Memorandum on the resolutions recorded at the meetings of the Commission at Calicut and with reference to the Minutes of Messrs. Chandu Menon and Rama Varma Tamburan. The report purports to be that of the majority of the Commission and treats my Memorandum as a minute of dissent. It, therefore, only remains for me to submit for the consideration of the Government a few remarks on the alternative scheme of legislation proposed therein.

2. It will be observed that practically the report contains the views of three out of the six Commissioners, viz. Messrs. Winterbotham and Munappa Bangira and The Honourable Mr. Sankaran Nair, and I presume that the fourth, Mr. Rama Varma Tamburan, has signed it subject to the remarks contained in his minute. As, however, the opinions of all the six Commissioners are before the Government, the question whether the report in its entirety is that of three or four Commissioners seems to be immaterial.

3. The grounds which led me to the conclusion that if legislation is expedient, it is expedient only on the lines indicated by me, are fully set forth in my Memorandum. Turning to the alternative scheme, it embodies almost all the provisions of the Honourable Mr. Sankaran Nair's Bill, which it is clear from the evidence, are at variance with the marriage customs now obtaining in Malabar and are opposed not only to the feelings of the majority of the Marumakkattayam society, but also to those of the majority of that section of the educated classes who are in favour of a marriage law. It ignores caste restrictions and the customary rules of consanguinity and affinity and retains the stringent provisions as to divorce and the rule of succession to self-acquired and separate property, as contained in the Bill.

4. Before proceeding, however, to discuss the alternative scheme in detail, I think it desirable to consider whether it is practicable or expedient to adopt it as a basis for legislation.

5. The first and most prominent objection is its revolutionary character. If it were put before the Government that the Hindu Law as administered on this side of the Ghats is a relic of archaic legislation; that the law of coparcenary is, in the opinion of some, unworkable and obstructive of the development of individual industry; that the succession of distant Sapindas to the exclusion of near blood relations is opposed to natural instinct; that the total displacement of daughters by sons in the line of succession is not in consonance with parental affection; that the theory of funeral oblations and spiritual benefit on which the Hindus rely is unreasonable; that if a law framed on rational basis were substituted, it would, in the course of a few generations, become the law of the people in general; that some of the English educated men who vehemently declaim against some of the provisions of the Hindu Law may be treated as "the leaven that will leaven the whole lump"; I entertain no doubt that the Government will say, wait until the few induce the many to agree with them. In the meantime, sound policy forbids violent legislative action against the wishes of the bulk of the population, on the ground that they are "uninstructed in the English sense of the term." Yet, this, in short, is the basis on which the alternative scheme rests. The permissive character of the proposed marriage law is no justification where it alters the Marumakkattayam law of succession to self-acquired property and disturbs the domestic relation in a family corporation constituted as a Malabar Taravad is.

6. The second objection is that the scheme departs from the lines laid down by the Government of India for the guidance of the Commission. As I read their letter the expediency of legislation rests solely on the ground that the measure is either desired by the majority of the classes subject to the Marumakkattayam law, or is essential for the protection of the minority. In paragraph 59, the report says, "we do not dispute the view that the proposed legislation is not at present desired by the majority; but we also believe that the uninstructed majority will rapidly follow the lead of the enlightened classes." It proceeds to state that "the great bulk of Nayers and Tiyars are tenants of small holdings paying rack-rents and earning a scanty living by agriculture; that they are totally uninstructed on the subject of the proposed legislation; and that "the landlord and agricultural classes as a whole have little education in the English sense of the term and have that horror of innovation which characterizes most orientals." The state of popular feeling on the subject, the several classes opposed to all legislation and the section of the educated and official classes in favour of it on the basis of the existing custom are referred to in paragraph 13 of my Memorandum. I would here ask whether it is reasonable to suppose that the tenants of small holdings would follow the lead of a few educated men and not the example of the Kovilagams (families of ancient rulers), Naduvalis (representatives of local chieftains) and of the aristocracy in general of the country and their own landlords and agricultural classes?

7. In dealing with the question whether the measure is essential for the protection of the minority, the report adopts five of the grounds stated at the close of para. 30 of my Memorandum and omits the most important ground stated therein, viz. that legislation intended for a society as a body is expedient only on the basis indicated by imperative social customs and is likely to become popular in national proportion to the extent to which such customs and other lasting social influences are taken into account. I must also add that in coming to the conclusion that legislation on such basis is expedient, I was influenced by the consideration that the opposition in North Malabar is due mainly to the obnoxious provisions of the Bill indicated in my Memorandum, and not to a belief that the customary marriage needed no protection or legal recognition. I also pointed out (para. 14 of my Memorandum) that the educated classes were divided in opinion; that their number did not exceed a thousand at the most; that about 60 per cent. of them desired legislation on the customary basis; and that the minority who were prepared to take the Bill in its present form was too small to justify legislation on its lines. The report overlooking the statements contained in this paragraph, expresses dissent from the view, that the number of persons who would accept the Bill as it stands is too small to render legislation on its lines expedient. I have again referred to the recorded evidence and find that not more than a dozen out of 121 witnesses orally examined, state that they would take the Bill as it stands. Several of them object to some of the provisions embodied in the scheme and state that their acceptance is only provisional on legislation on the customary basis being refused. I have also referred to the replies to our interrogatories from 322 persons and find that not more than forty agree to the conditions of the Bill, which the alternative scheme retains. I would pause here and ask whose lead it is expected the uninstructed majority will follow? Is it the lead of the fifty persons willing to accept the scheme in its present form or of the 40 per cent. of the English educated men who are against all legislation or the 60 per cent. who would only accept legislation substantially on the customary basis? Again, I find among the educated minority who object to those provisions of the alternative scheme which are at variance with the custom of the country, a number of High Court Vakils, First Grade Pleaders, District Munsifs, as also the Nayar Sub-Judge of Tellicherry and the Nayar High Court Judge of Travancore, and a number of intelligent men both in British Malabar and in Travancore and Cochin. May I ask whether it is the lead of these gentlemen or of the educated men (about 50 according to evidence) that the uninstructed majority will follow? I fail to see how on the evidence before us the alternative scheme can be regarded either as acceptable to the majority or as essential for the protection of the minority.

8. The report states (para. 59) that the proposed law, if introduced, will not remain a dead letter, and in support of this position refers to the fact that "many of the strongest oppo-

nents" of the proposed legislation have expressed "a lively dread of its speedy acceptance by a large proportion of the people." Extracts are given from the evidence of two witnesses (56 and 119). Here I would simply observe that I do not understand the intention of the Government to be that an obnoxious law should be forced upon the people in anticipation of its being accepted by them in future. It is in my opinion clearly unsafe to disregard the popular feeling as evinced by the mass of the evidence recorded by the Commission, upon the strength of statements made by some of the opponents of the proposed measure, in which, in their anxiety to avoid it, they exaggerate what they conceive to be the ill effect likely to ensue from it.

9. Passing on to the form of legislation, I do not think that the Government desire to improve the national morality by aggressive legislation. The first difficulty we had to face related to the form of marriage prescribed in the Bill. It is discussed in para. 16—I of my Memorandum and in para. 67 of the report. In the latter it is stated that the Commissioners who have signed it do not in the least regard the acceptance of the procedure suggested by me as a *sine qua non*. I must here observe, that no one that desires legislation needs a statutory form, or has scruples about going through the customary form, and that the introduction of the former is liable to be misconstrued as casting a slur on the conventional usage and as treating a solemn event as a business matter. A statutory form is itself open to no objection, but the question is whether it is either needed by, or acceptable to, the people for whom it is intended.

10. The next question we had to consider was how to meet the difficulty arising from caste restrictions on marriage. This question is discussed in para. 16—II and III of my Memorandum and in paras. 68-70 of the report. In the latter a solution is suggested in these terms: "We would not, however, underestimate the difficulty. It is a fact that in numerous cases the parties to a marriage contracted in defiance of caste could not enter a Taravad house without (in native opinion) polluting the whole family and rendering every member of it liable to boycotting and ex-communication. It is just and necessary to protect the Taravad from such consequences, and we would therefore provide that, if the difference in caste between the parties to a marriage be such that social usage condemns them to excommunication, the party so condemned shall lose his or her right of entry into, or residence in the Taravad house, and that the man should lose his right of succession to the office of Karanavan". This suggestion virtually annexes the penalty to violation of caste usage, and to this extent it amounts to a departure from the principle of neutrality invariably adhered to by the British Government and a retrogression from the policy of Act XXI of 1850. It is moreover in direct conflict with paragraph 16 of the report where, assuming, contrary to the bulk of the evidence, that caste restrictions are disapproved by the Nayers themselves, it proceeds to say that "it is highly necessary to guard, in any legislation that may be contemplated, against perpetuating such restrictions on marriage." As pointed out in my Memorandum, caste is a quasi religious institution, and legislation validating marriages in contravention of caste rules will be regarded as an interference with their religious usage.

11. In this connection I may point out that the remark in paragraph 68 of the report based on a misapprehension. The principles on which the caste difficulty should, in my opinion, be met in legalising customary marriages are explained in para. 16—II and III of my Memorandum. In advertence to the doctrine of neutrality I stated that such restrictions should be tolerated the same way as they are in the case of marriages contracted on this side of the Ghats so far as they are referable to the rules of Hindu law. I stated also, that the society should be allowed to alter its customs with reference to the requirements of progress, and that this object might be effectually secured by inserting the words "for the time being" and thereby imposing upon the Courts to recognize the custom actually existing at the time of marriage. There was a decision at some former time recognizing a different custom could not, as the report, preclude the recognition by the Courts of a subsequent modification of the custom. I may here quote Sir Fitz James Stephen's observations on the Brahmo Marriage Bill:

Mr. Chandu Menon refers, viz. "The native laws should not be changed by direct legislation except in extreme cases, though they may and ought to be moulded by the Courts of Justice so as to suit them to the changing circumstances of society. If this principle is fully grasped, it will, I think, serve as the key to nearly every question, which can be raised regarding the alteration of native laws."

12. The next point on which the report dissents from my view is as to maintaining the customary restrictions on marriage on the score of consanguinity or affinity. In para. 71, the report justifies the Bill on the ground that the limitation therein contained has already been approved by the Government. If it is intended to refer to the Brahmo Marriage Act of 1872, it must be borne in mind, that that Act requires a declaration from the parties to the marriage, that they do not profess the Hindu religion, whereas the proposed legislation concerns those who profess that religion. Here I may ask whether any Marumakkattayam Hindu would declare that he does not profess the Hindu religion. Again, I would draw attention to the remarks contained in paras. 28-30 of my Memorandum. Another reason assigned is, that the Nayars and Tiyars do not maintain ancestral trees and that it is difficult therefore to prove relationship beyond the fifth degree; but it must be observed that the family tradition kept alive by the observance of pollution on the occasion of every birth and death is relied on by the people as adequately supplying the want of family trees. According to the alternative scheme, if a Taravad consists of members related to each other beyond the fifth degree, a marriage between them would be legal. It seems to me extremely undesirable to interfere with the custom in a matter like this; the marriage between parties having the same female ancestor being considered to be incestuous and to entail loss of caste.

I may here point out that, in regard to both caste restrictions and those founded on consanguinity and affinity, the alternative scheme differs from the Bill submitted in 1884 by the Committee consisting of Raja Sir T. Madhava Row and Messrs. Logan, Wigram, Sankaran Nair and Karunakara Menon. Section 4, Clause 4, of that Bill is in these terms:—"The relation of the parties must not be such in respect of consanguinity, affinity or otherwise that, according to any recognized custom, a marriage between them would be improper." To illustrate the popular feeling on the subject I may, apart from the bulk of the evidence before me, refer to the minutes of my colleagues, Messrs. Chandu Menon and Rama Varma Tamburan, and the remarks of the Sub-Judge of Tellicherry and the High Court Judge of Travancore.

14. The provisions relating to divorce are discussed in para. 16—VII and paras. 17 and 18 of the Memorandum, and in paras. 72-74 of the report. The ground on which my proposals rest is as stated in the report, that I consider the marriage to be a mere civil contract and as dissoluble at will, but that a highly elaborated system of judicial divorce is ill-suited to the Marumakkattayam society just emerging from polyandry. The report states that whatever objections on divorce the Government may deem indispensable in the interests of the community, the educated Malayalis will still beg for the legalisation of marriage. Having regard to the evidence before us, I am unable to concur in this opinion. The alternative scheme appears to be open to the remark that a divorce law which, it is assumed, will be availed of two or three generations hence, is premature, and that the example whose example is expected to influence the general Marumakkattayam population as already stated, infinitesimal. I have, moreover, only to refer to paras. 29 and 30 of the Memorandum where I have considered the objections taken in the report. I still consider that the report says, the standard of morality is low and the institution of marriage is in its infancy, my proposal to regulate divorce by judicial process and by the annexing of the right of free divorce, would be the first instalment of reform. That it is practicable, would be an undoubted improvement on the existing state of affairs and would elevate the tone of sexual relation. It would also be susceptible of further improvement by paving the way for nationalizing marriage as a legal institution.

The next point of difference is that which relates to the right of succession to self-acquired property in cases of intestacy, which under the Marumakkattayam law as at present

administered, vests in the Taravad; the alternative scheme transfers it in whole to wife and children. This question is discussed in para. 24 of my Memorandum and paras. 76-78 of the report. In the latter it is stated, that a double system of inheritance prevails elsewhere, and that, though it may be incongruous, the incongruity does not occasion any insurmountable difficulty. The real question, however, is not whether there is any insurmountable difficulty, but, whether it is expedient to introduce it by legislation. Again, it is suggested (para. 77) that the eager and unanimous demand for testamentary power betokens a general dissatisfaction with the existing law of intestate succession, implying thereby that there is a general desire to give away the whole of the self-acquired property to wife and children. This inference is not warranted by the evidence. According to the evidence before the Commission, many desire to give, and, when they make gifts *inter vivos*, do give, a portion only, and but a few give away the whole to their wives and children. It is true that the majority are not satisfied with the law of intestate succession to self-acquired property as now administered; but the general belief disclosed by the evidence is, that this law is founded on an erroneous decision of the High Court, reported in II. M. H. C. R. 162. That decision is, it is considered, based on a mistaken view of the custom of the country, according to which the acquirer's Taivali relations, i. e. his brothers, sisters and sisters' children, are entitled to succeed in preference to the more distant members of the Taravad. It is the desire to restore the previous custom which, together with the ground mentioned in para. 20 of my Memorandum, accounts for the demand for testamentary power.

As regards the remark that the division into half and half is an unsatisfactory one, I have only to observe, that, where there are conflicting claims upon the property of the acquirer, viz. those of the wife and children on the one part, and of the Taravad and their children on the other, the best solution is a compromise based on the practice of those who make gifts *inter vivos*. If the self-acquired property is either too small, or in excess of what is required, for an adequate provision for wife and children, the inequality will be corrected by the acquirer himself by the exercise of his testamentary power. The real issue is whether it is the practice generally followed or the desire of a few that ought to be accepted as a guide in framing a law for the disposition of property in cases of intestacy. It must also be observed that in a society constituted as the Marumakkattayam society is, the affection for one's sisters and sisters' children is much stronger than it is elsewhere, and this makes the practice as regards the reservation of a portion of self-acquired property for them intelligible.

17. As for the religious objection considered in para. 79 of the report, it cannot be denied that the Marumakkattayam system is regarded by the masses as resting on divine ordinance and that any interference therewith against the wishes of the majority is liable to be regarded as an interference with their religious belief. It can, likewise, not be denied that the Marumakkattayam system imposes the obligation to offer funeral oblation on the sister's son and not on the son. The religious objection, therefore, urged by Mr. Karunakara Menon is entitled to weight to this extent, viz. that where there is no Taravad property, the alternative scheme would give the whole of the self-acquired property to the son, while "the key to salvation" is with the sister's son. From a strictly legal point of view, however, the religious obligation and the right of succession are correlatives as regards Taravad property only, the self-acquired property being at the absolute disposal of the acquirer during life. I may also mention that even where there is neither Taravad nor self-acquired property the obligation to perform funeral rites is peremptory and neglect to perform them would entail forfeiture of caste. Therefore, although, in strict law, this obligation is independent of inheritance, yet policy requires, that a legislative provision which would take away the means whereby the sister's son is enabled to discharge his religious duty should be guarded against. It is true, as stated by Mr. Krishna Menon, a retired Sub-Judge, that, when Sri Parasurama introduced the Marumakkattayam system, owing to the absence of the institution of marriage, it was not known who the father was, and this probably was the reason why the obligation was imposed on the nephew; but the ex-Sub-Judge's suggestion that when the marriage Act is passed and paternity rendered certain, the obligation would devolve on the son, is not tenable. It is not likely that his dictum

and the texts quoted by him will be accepted by the people as sufficient to displace an ordinance of Parasurama in special reference to the Marumakkattayam system.

18. It only remains for me to notice the two side issues with which the question of legislation is complicated in the report. The first is, whether the Marumakkattayam system is good or bad, and whether a marriage law should or should not be so framed as to bring about its gradual decay and ultimate extinction. The report deals at length with this question; but the instructions of the Government, as I understand them, do not require the Commission to go into it. Assuming, however, that the Commission is at liberty to go into it, and assuming also that it is desirable on economic grounds to break up the Marumakkattayam system, the fact that the great bulk of the people concerned are, as the evidence shows, anxious to maintain it, renders any legislation in that direction inexpedient. I would here refer to para. 24 of my Memorandum. If the system is, as the report takes it so unworkable, how is it that a very large majority of the Marumakkattayam classes base their objection to the Honourable Mr. Sankaran Nair's Bill on the ground that it tends to destroy it? I may point out that the opposition is the strongest in North Malabar where, as the report says, the natural feeling in favour of wife and children has become strongly developed. The effect of the evidence, as summarised in the concluding part of the above quoted para. of the report is that those who are in favour of legislation desire a marriage law to merely legalize what is already the prevailing custom; whereas the Bill, as well as the alternative scheme, overrides the custom and aims a death-blow at the Marumakkattayam system. The Dewan of Cochin opposes all legislation on the ground that it would be ruinous to the Taravad system. The Dewan of Travancore, whilst approving of the proposal to introduce a marriage law, expresses the opinion that it should not be such as "would sap the foundations of the Marumakkattayam system". The Nayar Sub-Judge of Tellicherry (Mr. Gopalan Nayar), as to the provision regarding succession to self-acquired property, says:—"I would certainly object to Section 34, clause (d) of the Bill as it would be virtually interfering with the Marumakkattayam law of inheritance, which the majority of the people do not as yet want to set aside. As I learn from the Honourable Mr. Sankaran Nair's speech in the Council when introducing the Bill, his object is to provide for such of the Marumakkattayam Hindus as wish it a form of marriage which the law will recognize; and so far I am with him; but I do not see why with a view of merely attaining this object we should startle the people of Malabar with innovations on their property law which the majority do not as yet want and which the exigencies of the case do not demand". The Nayar High Court Judge of Travancore (Mr. Kunhi Raman Nayar) writes:—"The proposed (d) as to succession deals, though indirectly, a death-blow to the Marumakkattayam system of inheritance. If the Taravad is not to get a portion of the self-acquisition of its members, the Marumakkattayam Taravad system cannot be properly worked or maintained according to the intention of its founders. That system has endured for ages, and the Taravad is the best extant type of the primitive Hindu undivided family, whose cherished idea is to work for the good of the whole and not for the individual benefit alone; it has conferred domestic happiness in past ages on a large proportion of the inhabitants of the west coast, and it is not proposed to do away with the system altogether; if so, the soundness of the proposal (d) is open to question. In my opinion all that the State ought to do at present to satisfy the requirements of the progress of the Malabar society, is to declare marriages under the present system valid for the purpose of bringing the sinners against morality under the latches of penal law, and to confer upon the wife and children a claim for maintenance out of the husband's self-acquisition, should he die without making due provision for them".

19. The second side issue raised is as to the theory of the Marumakkattayam system of sexual relation. This is discussed in paras. 30-50 of the report. That the 'Talikkattu Kaliyanam' is only a preliminary caste rite and not a marriage, is a fact as to which there is no difference of opinion. That prior to the introduction of 'Podamuri' and other species of Sambandham (forms of individual marriage), the sexual relation was of a fugitive character and that there was no marriage in the proper sense of the term, is also not denied. But the question is not as to the primitive theory of sexual relation, but as to whether, as stated by the Honourable Mr. Sankaran Nair, when asking for leave to introduce

his Bill, there is at present a marriage in practice, and, if so, whether the customs relating thereto are such as would furnish a basis for legislation. As I read the report, this position does not seem to be disputed; for referring to the Marumakkattayam Hindus, the report states (para. 48) that "they are all or nearly all of them better than their custom, and the majority (as we are told and believe) cleave to one woman for life." Again, referring to the ancient notion, that chastity was not a virtue prescribed for Nayar women, and that "they were specially created for the Nambutiri bachelors to play with," the report adds that "Nayars will not submit to this teaching much longer." The very same evidence, from which the above conclusions are drawn, associates the improvement in the relation of the sexes with Podamuri and other species of Sambandham. It is clear, then, that in the course of social progress the majority of the Marumakkattayam Hindus have engrafted forms of marriage on their ancient practice, that these forms are resorted to as overt acts whereby the intention to marry is manifested, and that the sexual relation thus constituted in the majority of cases endures for life. This being so, the point for consideration seems to be, whether it is legislation on the customary basis or on the basis of the Brahma Marriage Act (the so-called undenominational Law) that will, by enlisting the sympathies of the people, more effectually help on social progress. The report, however, overlooking this consideration mixes up notions of the ancient polyandry with the present social marriage customs, and does not discriminate between a legal marriage and a social marriage. Further, by introducing other side issues, the report throws a cloud over the relations of the sexes as it now exists and states (para. 50) that "Marumakkattayam was and still is destitute of the institution of marriage." If the marriage customs are so bad as to render the sexual relation sanctioned by them nothing better than what it was in the primitive stages of the Marumakkattayam society, how are we to account for the admitted improvement in its moral tone, and how can legislation on the rigid lines of the alternative scheme be recommended? Our colleague, Mr. Chandu Menon, in his interesting Memorandum, describes the marriage customs in detail, and they are accepted in the report as accurate. But the report states (para. 43) that, because a Nambutiri Brahmin who goes through 'Podamuri' does not consider it a marriage binding upon him, therefore it cannot be regarded as marriage in any other case. A Brahmin may not look upon any marriage other than Vedic as binding upon him; but it is no sufficient reason for concluding that as between Nayars, it is not regarded as binding either. On the other hand, that the Nambutiri Brahmins themselves are compelled to go through the same formalities of wedding proves that, owing to social progress, the Nayar women insist on giving the union the character of a marriage. However this may be, legislation with a provision for a declaration and its registration as suggested by me, would make such marriages with even Nambutiri Brahmins binding.

20. Our colleague, Mr. Chandu Menon, himself a highly educated and representative Malayali, whose opinion may be taken as reflecting the sentiments of a pretty large section of the educated classes, draws attention to the following observations of a member of the Vice-regal Legislative Council:—"Laws relating to such subjects as marriage have their root in the very deepest feelings and in the whole history of a nation; nor is it easy to imagine a more tyrannical and a more presumptuous abuse of superior force than that which would be involved in an attempt to bring the views and practices of one nation upon such subjects into harmony with those of other nations whose institutions and character have been cast in a different mould".

21. I must here add that when I expressed an opinion generally in favour of the Bill framed by the Committee appointed in 1884, I had not before me the evidence which I now have as to the provisions relating to divorce and the right of succession of the wife and children to self-acquired property.

22. In conclusion, I have only to state that after giving my best consideration to the subject, I cannot persuade myself to believe that the alternative scheme is expedient.

Memorandum by RAMA VARMA TAMBURAN AVARGAL

OF PARAPPANAD,

Member of the Malabar Marriage Commission.

As a member of the Special Commission appointed by Government to provide evidence as to the customs in connection with the Marumakkathayam Hindu marriages in Malabar, and whether the proposed changes in the Draft Bill prepared by the Honorable Mr. C. Sankaran Nayar are desired by the majority of the Malayalis following Marumakkathayam system of inheritance, or are essential for the protection of the minority, and to express an opinion regarding the expediency or otherwise of the Bill, and if expedient as to what form it should take, taking at the same time into consideration the effect of the legislation upon the people of Travancore and Cochin, and also upon those governed by the Aliya Santana law, I now lay before the Government my own individual views on all the points on which the Government requires information. The evidence we have collected forms part of the records in connection with this enquiry.

The customs connected with Marumakkathayam marriages in Malabar are 'Sambandham', 'Pudamuri', 'Vidaram Kairal', 'Uzhamporukkuga', 'Mangalam', 'Kidakkora', and 'Pariyam Chayga.' These are the seven forms of marriages obtaining in Malabar. As Taluks differ, so do the forms of marriage. In some Taluks there are two or three forms of marriage. In the same form of marriage the ceremonies observed, and the formalities gone through, vary as amsams or desams do. In some places in Malabar there is no form of marriage even in its simplest sense. Men and women simply pair-off according to fancy. The ideas and feelings which give marriage its sanctity are foreign to all the above-mentioned seven forms of marriages. These marriages theoretically speaking can be dissolved at the will of the parties, though practically in many cases the union lasts for life. The essential element is the same in all these forms of marriages. The husband-elect, with some of his friends, goes to the bride's house at night on the day fixed, and there, after partaking of the feast prepared for him, consummates the marriage. So far as I have been able to ascertain there is nothing to show that these marriages have any connection whatever with the religious observances of the people, but I must repeat here what I said in connection with another then contemplated legislation :—"There is no question which the Hindus, the orthodox portion of them, cannot by a twist or two connect with their religion which prescribes rules for every-day life in its minutest details,—When the Hindu must rise, when he must wash his face, when he must bathe, when he must take his food, and when he must go to sleep, &c.,—but in my opinion public morality

and the true interests of the general community, which in no way clash with the Hindu religion in its simple and pure form, must, in the eye of the Government, be above all other considerations." Marriage is the origin of all relations, and of some of the most important rights and duties; any proposal on the part of the educated Malayâlis to make it binding and sacred, and confine the relation to one man and one woman, making it at the same time indissoluble at will by either party, seems to me to be quite reasonable.

It is my decided opinion that the proposed changes with certain modifications are desired by the great majority of the educated, intelligent and thoughtful portion of the Malayâli community following the Marumakkathâyam law. Desired about eight years ago by some intelligent and educated Malayâlis, then and now in high official position, to give out my views on the questions of Malabar marriage and descent of property through females, I wrote a paper embodying my views on these two questions. This paper appeared as a leading article in the *Madras Times*. I will now quote here a portion of that article:

"Malabar is to this day known to Europeans, and other foreigners, as a narrow piece of land intervening between the Western Ghâts and the sea-board, physically so situated as to give no access to the eyes of civilisation. The inhabitants of this strip of low land are known to remain apart from the civilisation of other parts of India, and to retain social customs which mark a much ruder stage of human advancement than Hinduism, and which in other parts of India only lingers among isolated hill tribes." Of these social customs the one that has struck Europeans as most curious is the custom of relationship through females. This custom is defended on the ground that "the descent can be proved from the mother, while it is often impossible to know the paternity of the child," a precaution showing that no confidence can be reposed upon female virtue. That a man's property descends to the children of his sister to the exclusion of his own, for whose existence he is chiefly responsible, looks remarkably peculiar. This absurd custom, which has done most to perpetuate the poverty of Malabar, has strangely been so acted upon in the teeth of facts, proving it to be a relic of early barbarism. The degree of affection determining the nearness of relationship always regulates the law of succession, preference being given to the descending line over the ascending. But in Malabar this degree of affection, or of relationship, has nothing to do in deciding to whom a man's property after his decease should go. The tie of consanguinity determines the succession. The grounds on which the disposal of property by inheritance in Malabar exists seem to me to be any thing but just. In ninety-nine cases out of a hundred a man exerts himself to acquire a fortune chiefly to make a pecuniary provision for those whom he was mainly instrumental in bringing into the world, not certainly for those who can plead no valid moral claim upon his protection. No parent can feel happy in this world unless he sees his children are provided with such education and means as would enable them to start with a fair chance of successfully accomplishing life's journey. Every parent considers it his chief duty to see how much he has done to help his children. But in Malabar parents are under no such binding obligations. Here the uncle, the mother's brother, who is practically the head of his sister's family shall place his nephews at school, and also extend to them such support as can be naturally expected from one whose impulses of

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natural affection are not half so warm as those of the father. What I have just stated is the rule and this rule like all other rules has its exceptions. True we find here and there a father taking upon himself the duty of training and supporting a child, but one should not forget that it is optional to the father to exert himself in the interests of his child who is another man's property. The Malabar system of inheritance is a mystery to Europeans. I have said that the Marumakkathâyam law has done more than anything else to perpetuate the poverty of Malabar. What I mean is this. Persons have less inducements to labour under this custom than under what prevails in other parts of India. It is labour which puts the greatest part of the value upon land, without which it would be scarcely worth anything. It is a fact, which no one will dispute, that Malabar has been favoured with natural advantages such as few parts of India can boast of, but the motives which lead to the proper use of these advantages are few. The opinion is gaining ground among great thinkers who have attempted to investigate the Malabar system of inheritance, which they call a relic of ancient barbarism, that it has its origin in the early institution of communal marriage. It has been proved beyond the possibility of doubt that man in his primitive condition has no idea of marriage as it is now understood among civilised races. Among races in the lowest stage of civilisation a communal marriage system prevailed under which "all the men and women in a small community were regarded as equally married to one another." In a community so constituted, no one knew his father and no father knew his son; but the tie between the mother and the child and the brother and his sister is perceptible.

The educated portion of the Malayâli community think of making their 'Tali-kettu' ceremony a binding marriage ceremony. The 'Tali-kettu' now is no marriage in itself. It creates among the Nayers no relation as husband and wife. It is a preliminary purifying ceremony analogous to 'Samâvartanam' in point of capacitating to marry. I believe the proposed changes are almost indispensable for the protection of the minority even if the majority is not in favour of them. The minority simply asks for a permissive law. All the Government has to consider is if it will in any way interfere with the rights and interests of the majority. In my opinion the proposed law can be so modified as if passed, not to interfere either with the one or the other as I will explain by-and-by.

The proposed marriage legislation, as it is now framed, is not certainly expedient as has been admitted by the Hon. Mr. C. Sankaran Nayar himself after the enquiry.

I will state here what form the proposed marriage legislation should take in order to make it an expedient legislation which will protect the minority without seriously interfering with the rights and interests of the now opposing majority. The Commissioners are unanimous in their opinion that the majority of the people in Malabar desires no change.

All legal marriages should be essentially monogamic, and the union they contemplate be life-long. At the time of marriage the man must have completed the age of sixteen years and the woman the age of twelve. In case either party has not completed the required age they must obtain the consent of their legal guardians to the marriage. The position of the parties should not be such in

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respect of consanguinity, affinity and caste that according to the custom then obtaining a marriage between them should be improper. I am not very particular as to the form of marriage that ought to be legalised. There are seven customary marriages as shown above. Any one of these, or the 'Tāli-kettu' ceremony, can be legalised. The 'Tāli-kettu' ceremony is not now a marriage in itself, but a preliminary purifying ceremony analogous to 'Samāvartanam' ceremony in the case of males creating a competency to marry.

I am certainly in favour of parties appearing before a Registrar or Sub-Registrar, and in his presence solemnising and signing a declaration such as is referred to in Section 14 of the proposed Bill. Here we have many safeguards against fraud, but there is difficulty in solemnising marriages in this way. Our girls, naturally very shy, will be reluctant to appear before the Marriage Registrar and sign the declaration. Ninety-nine out of 100 witnesses were against solemnising marriages in this way. I made a proposal before the Commission. That proposal was that the marriages be solemnised before a "Caste Panchayat" and a declaration in duplicate written on special Forms purchased from the stamp-vendors be signed, having always as one of the witnesses the Village Munsiff to whose presence the girl may not object, as he will, as it almost always happens, be a man of her own amsam, not quite a stranger to her. I have no objection to the Registration Scheme sketched out by our President.

Now I come to the divorce question, the most important and difficult of all questions in connection with marriage. But for considerations of the welfare of the offspring, I would have been for natural bond against legal bond, for union by affection against that by law. All arbitrary divorces should be disallowed. While I am to support the life-long permanence of marriage, I entertain grave doubts as to the desirability of parties appearing in a Court of Justice, and there washing their dirty linen before the public and thereby defiling the moral purity of the general community. I do not object to stringent judicial circumspection regulating divorce, but to giving wide publicity to private immoralities. I admit such publicity may have a wholesome effect on the thoughtful few, but I cannot forget the fact that it demoralises the unthinking many. It is my decided opinion that the divorce Courts are productive of more evil and of less good. I believe the day may not be distant on which even the European nation will recognise this fact. If divorce has many disadvantages, it has (after marriage has proved utter failure) advantages more than counterbalancing the sentimental disadvantages. My proposal is that if the husband and wife, feeling their then married life unhappy with no chance of their ever pulling well with each other, desire to dissolve marriage, they must apply to the same Village Panchayat before which he signed the declaration of marriage, to hear their grievances and decide on the merits of the case. I have no objection to a Judge hearing the case in his private room where reporters and the general public should have no access on any excuse.

I am against the parties being imprisoned for disobeying the decree for restitution of conjugal rights. Some fine will serve the purpose intended.

The husband shall be *ipso facto* the legal guardian of his wife and children so long as they live with him in his house; but in their Tarawād house, the Kāranavan

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shall be the guardian. The wife and children remaining in their Tarawād house cannot claim maintenance from the husband. They, when living with the husband in his house, cannot claim maintenance from the Kāranavan. By-the-bye I must express here that to those accustomed to see true family life with a father, wife and children, the Malabar Tarawād headed by a very old Kāranavan and composed of members most distantly related to each other and with half brothers and half sisters, would appear an extremely strange and heterogeneous mixture. Compared with those Tarawāds the Eastern harems can be said with some propriety to be homogeneous. The Bill makes an attempt to remove all the existing caste consanguinity and affinity restrictions. That shall never be tolerated. I wonder how the Hon. Mr. Sankaran Nayar, himself a Hindu Malayāli, thought that such attempt would not be strongly opposed. All these restrictions should remain as they are now. Only such marriages as are permitted by custom shall be legalised. There is no custom of a Nayar marrying a Tiyan girl and *vice versa* Marriage between parties who have birth and death pollution is considered incestuous. The very idea of such marriage is shocking. There is no marriage now between a North Malabar Nayar woman and a South Malabar Nayar. Such marriage was prohibited when Malabar was under different rulers always in conflict one with the other, on consideration of political expediency. As those grounds do not exist now, I do not understand why these prohibitions should also not die out with them. Before concluding this subject I must observe that in spite of a thousand and one levelling influences of modern civilisation, the system of caste is still as strong as it ever was. To destroy it in one day is beyond the range of possibility. It may, and must, die a natural death. Only the other day some of the respectable Tiyans in Calicut presented me an address in which the caste system was alluded to in the following words:—

"It is superfluous to say that as a community we have even in this century of progress, made no progress worthy of that name in spite of the levelling influences of the British Government, and that our movements are necessarily hampered by the immutability of conventional distinctions of caste, more remarkable in Malabar than elsewhere." To this I replied thus: "You call yourselves the darkened section of the community." I do not think so, but I know it would have made more progress had it not been for "the immutability of conventional distinction of caste" to which you allude in your address. I admit our caste system as it divides the community into classes with no hope of general sympathetic co-operation for the well-being of the community at large, impedes the progress of the Hindus; but I very much doubt if the time has come, or will come within a reasonably distant date, to find men to undertake the task of abolishing it altogether, as it has been so cleverly interwoven with the very fundamentals of the Hindu faith."

If the husband die intestate one-half of his self-acquisition, which must be his exclusive individual property, should go to his wife and children and the other half to his Tāvazhi or Tarawād. I would have been for giving the whole of one's self-acquisition to his wife and children but for the consideration that among the Marumakkathāyam Hindus the funeral rites and ceremonies are invariably performed not by the sons, as among the Makkathāyam Hindus, but by the nephews. The sons may if they like perform these ceremonies, but they are not bound to perform them; but that is not the case with nephews. They must perform. If they fail to perform the ceremonies they can have no intercourse thereafter with

their own caste people. An arrangement by which the nephews are to perform the funeral rites and ceremonies and to make all the necessary expenses incidental to their proper performance, and the sons are to take possession of all the property left behind by the deceased, is not justifiable. Pleasures all on one side and pains all on the other side is not an equitable arrangement. One should be quite at liberty to dispose of one's separate or self-acquired property by Will, but with the restriction that his children should not be without means to live upon. It is very doubtful whether he is bound to make sufficient provision for his wife also.

To the question what will be the effect of the proposed legislation upon the people of Travancore and Cochin, my answer is that it will have very little,—not much worth mentioning. I have not much experience in Cochin, but I am a Travancorean, born and bred there. Malabar is only my adopted country, though I have made it now the place of my permanent residence. I still go to Travancore once a year and make a pretty long stay there. My family has long been connected by marriage with the Travancore Royal family. All the other members of my family are still in Travancore. I have had enough opportunities to discuss with many people the Malabar custom prevailing in "Kêralam", a name given to Travancore, Cochin, and Malabar jointly. All the English-educated men are dissatisfied by the present not very satisfactory state of their marriage custom. I am almost certain that if a law legalising marriages in Malabar be passed to-day, not long after a similar law will be passed also in Travancore. In a paper by the Rev. S. Mateer, who has more than thirty years' experience in Travancore and who "wholly occupied in vernacular labours amongst the natives", moves freely with them both high and low, read the other day at the general meeting of the Anthropological Society of Bombay an address printed in the *Times of India* of Bombay where I read the following:—

"Educated Nayers begin to be ashamed of the absence of real marriage amongst them, and grieved at the social evils springing from the system. Perhaps the principal hardship is felt to be that a man's own acquisition, as well as ancestral property, goes to his nephews on his death, and only while alive can he bestow it by free gift on his sons, or make provision for his wife. It is to right-thinking men a sore humiliation also that Nayar women are open to free-love connection with Brahmans and other high castes. The publicity given now-a-days to their peculiar usages, and the ridicule of other castes who enjoy the benefits of fixed marriage laws, naturally mortify them. They have therefore formed sundry Associations, especially the Malayâla Sabha, seeking the removal of disabilities and impediments to social progress and aiding the education of their people. They are applying to the British India Government and to that of Travancore for legislation providing a form of permanent marriage instead of the present casual union, and inheritance to children for those desirous of availing themselves of these advantages." My own experience has enabled me to think exactly as the writer thinks.

CHANGANASARY, TRAVANCORE, }
22nd August 1891. }

RAMA VARMA.

LAWRENCE ASYLUM PRESS.

Memorandum

BY

O. CHANDU MENON,

Member, Malabar Marriage Commission.

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Memorandum.

to make a few observations separately about the proposed legislation regarding marriages of the Marumakkathayam Malayalies.

a Malayalie of this class and as such deeply interested in the question, say that I have given my best consideration to the arguments advanced in favour of the measure and that the opinion, I am about to express, is the result of a long and anxious consideration of the question in all its bearings and I have tried my best to ascertain the opinion of the people in general. I have discussed the matter with many intelligent and enlightened men in Malabar. It is necessary for me to note that I do not attach much value to the evidence of the Commission as a true reflection of the native public opinion in Malabar. I do not believe that the Commission is a true reflection of the public opinion of the witnesses that appeared before us, and many that answered the questions had made up their mind before-hand, either to support or oppose the measure. I do not care to represent public feelings on the subject.

As stated already I have spoken to many respectable Hindus of North and South Malabar on the subject and have no hesitation whatever in saying, from my personal knowledge, that the great body of the people or rather a very large majority, including, I may say, the whole of the aristocracy of Malabar, do not desire any change. I am fortified in this view by the unanimous opinion of the President and the other Commissioners, who have passed a resolution to the effect that in their opinion, a large majority of the people did not desire any change. The large majority not only do not desire a change, but are, in my opinion, extremely averse to any change, or more correctly speaking, indignantly condemn the proposed measure. Here I must state my firm belief that the measure would not have met with such universal and so vehement an opposition from the public, had it not been for some of the provisions in the Bill which the people rightly think, have the effect of changing their nationality, their *individuality* as Marumakkathayam Hindus. There is hardly one Nayar in one hundred, among the great body of the public of Malabar, who do not view with horror the provision in the Bill as to the non-recognition or rather the abolition of caste for purposes of marriage and the provision that changes the fundamental principles of the law of succession of the Marumakkathayam Hindus. The provision regarding the registration of marriages and the removal of the hitherto observed rules of consanguinity and affinity are also equally disgusting to the public in general. In my humble opinion, nothing could have been more unfortunate for those few, who ask for marriage law, than to have published this obnoxious bill on the basis upon which legislation on the subject was to proceed.

Of course, I admit that there is a very small minority, a very infinitesimal fraction of the population, consisting of some of the English-educated men and a few others, who desire a change in our present system of marriage. They would have done better if they had consulted the public opinion thoroughly and carefully before bringing out such a Bill. The violent changes in the social and religious constitution of Nayars, introduced by the Bill, naturally had the effect of making the orthodox Malayalees (and they are the large majority) hate the measure as one designed to abolish caste and Marumakkathayam system of succession, on the pretext

legalising marriages. In this connection it becomes necessary to say a few words about the Bill itself, in order to show the ideas of the people on the matters therein dealt with.

The Bill opens with the following Preamble:—

“Whereas it is expedient to provide a permissive form of marriage following the Marumakkathayam Law of succession and to provide for the rights of the wives and children after the performance of such marriage as enacted as follows.”

Nothing could be more misleading than this Preamble. A glance at the Bill will show that, whatever may be the declared objects, the matters dealt with therein are such as no one could have anticipated. The words used are as above.

The Bill says that the law is intended for Hindus following the Law of Succession. The people rightly ask, where we will find such a law after the Bill becomes law. It is idle to say that the Bill is in accordance with the Tarawads of Malabar. It destroys the Tarawad system. A Tarawad property means the accumulations of wealth, acquired by the members of such Tarawad, and if the law holds, as the Bill shows, the property should hereafter go to the wives and children of the person who died at the same time that the property, already accumulated, under the Tarawad system, could be distributed and enjoyed according to the Marumakkathayam law, it is perfectly plain that the Tarawads cannot exist for any length of time. Therefore, in plain words, the Bill aims at abolishing the Tarawad system altogether.

The public are struck with the provision which disposes of, in a summary manner, the caste system in Malabar. Whatever may be the prevailing opinion among a portion of the English-educated Malayalee youths on the subject, there can be no doubt as to the fact, that all eminent English and Native thinkers of the present generation, who are intimately acquainted with Indian Institutions and customs, have always thought that it would be highly impolitic, for the Government, to interfere with the caste system in this country. On this point a distinguished member of the Viceregal Council, an Englishman who had very carefully considered the question, in the course of his speech on the Brahmo Marriage Bill, 1872, said as follows:—

“The institution, of caste in particular, whatever may be its evils, has proved a safe-guard against misconduct which it would be mischievous, in the highest degree, to sweep away like so much rubbish.”

Under the Bill, a young Nair, a junior member of a Tarawad, is at liberty to marry a Pariah woman and is of course entitled to live in his Tarawad with his wife. No social or religious rule can effectually interfere with his status on account of the marriage, for, he has the express sanction of law to marry the Pariah as a Marumakkathayam Nair. No Hindu can deny that such a rule violates a religious and social law in a most vital point. Still the Bill is called “a permissive marriage law for Marumakkathayam Hindus.”

At the law of succession of the Marumakkathayam Hindus, as the law of all Hindus, who follow Makkathayam or any other law of succession, is chiefly based on religious rites, cannot be honestly denied by any one who knows the customs of Malayalees. The general principle of the Hindu Law which guides

succession is that “he who is the spiritual benefactor of a deceased person shall succeed to the property of such person.” That, according to the Malabar Law and customs of a Marumakkathayam Nair, his Anandravers are his Pindakartha പിണ്ടകർത്താ or spiritual benefactors, no one can deny. That, has been so ordained and it has been going on in accordance with such ordinance for thousands of years past. Even the most enthusiastic supporters of the Bill, in their depositions before us, affirmed that a family of Anandravers who omit to offer funeral cakes or observe pollution after the death of their Karanavan, forfeited their caste and status in society. Such a violation of the religious constitution of the relation between a Karanavan and Anandravan in Malabar, and it was in accordance with this relation that our law of succession was framed: If we ask the British Government to alter the law of succession, could we also ask the Government to alter our religious law, enacted according to the notions of Hindu Sages and law-givers for the spiritual benefit of the Marumakkathayam Hindus? Could we ask the Government to legislate that the son shall be (Pindakartha) പിണ്ടകർത്താ or the spiritual benefactor of a Marumakkathayam Nair in the place of his Anandravan? I am sure the British Government would indignantly refuse to legislate on the point even if we venture to ask them. As the British Government would not interfere with our religious law, so they could not, according to their policy, interfere with our civil rights based upon such law, unless the people wish to change it or unless the exercise of such rights involve a crime or is opposed to public policy.

The Brahmos who wanted a marriage law had to declare beforehand that they had ceased to be “Hindus.” They declared that they scorned to profess the Hindu religion and that they felt conscientious scruples in celebrating their marriages according to the rights of an idolatrous people. They declared that they had a religion of their own and that they wanted to regulate marriages according to that religion. Would any Nair in Malabar go to this length? It will be seen that the Government of India, even in the case of the Brahmos, wavered a good deal before giving a law, because they were very anxious to know how it will affect the national Hindu Law. But the Bill does not recognise this fact and legislates as if we did not care for the part of the Hindus or indeed of any nation recognised as such in India. Its provisions in this respect are most revolting to the tenets of our religion and a law which introduces such sweeping changes in the constitution of Marumakkathayam Hindus does not deserve to be called a law for Marumakkathayam Hindus.

It is said that the Bill is only permissive and does not compel Nairs to marry according to its provisions—and that if the Nairs do not like the law, they need not adopt it. This, I admit, is so; but it is necessary to consider the effect of such a law available for the Marumakkathayam Hindus. Suppose an Anandravan of a Tarawad consisting of a hundred souls, takes it into his head to marry according to this permissive law. He may marry a Pariah girl or a Nair girl of equal rank with him and bring her into the Tarawad house. What will be the consequence of this? If he brings a Nair girl she has a status quite different from that of the other members of the Tarawad and that is enough to produce great jealousy among the other wives brought into the Tarawad and to destroy the peace of the Tarawad for ever. The children of the other wives may well be pointed to with scorn by the legal wife. If the Anandravan brings a Pariah wife, the consequences seem to me appalling. The whole of the members of the Tarawad, if they wish to keep up their caste and social status, will have to leave the Tarawad!

where. Is this not very hard upon the poor Nair Tarawáds of Malabar? And to maintenance suits and other suits resulting from such state of feelings the members of a Tarawád, I am afraid that the already existing percentage rád suits will be multiplied hundredfold.

Such are some of the objections against the fundamental principles of the Bill. I do not at all wonder that all true Hindus are indignant at such startling changes in their social and religious customs and ordinances, introduced on the pre-legalising our marriages.

Having stated as above my opinion that the people are quite averse to changes on the proposed lines in the Bill, I have now to state my opinion whether the Marumakkathayam Hindus of Malabar have any system of marriage and if they have no system, whether they should have one, at least for the protection of the small minority who ask for it.

The Honorable Mr. Sankaran Nair says in his speech that "Though the Nairs are Hindus by religion their marriages are performed without any religious rites." I must observe here that those who wish the change, including Mr. Sankaran, do not wish it on account of a desire to infuse more religious elements in our marriages. The Bill has levelled down the sacred institution of marriage to a system of business-relation or ordinary contract, enforceable at law. It seems to me that the reason of stating at the outset of this speech that our marriages are performed without any religious rites was perhaps to make it appear that our present marriage system is more vulnerable in its constitution than it would have been if any religious rites were accorded to it. I do not, of course, mean to say that our marriage system is not a religious institution. We, Nairs of Malabar, have very little of Hindu rites in any of our ceremonies. All our ceremonies are devoid of Mantrams or Mantras as we are prohibited from studying or repeating Vedas. But whatever the basis of our present marriage system or whether it has any religious recognition, I must state here my opinion that a vast majority of the people of Malabar remain perfectly satisfied with the present system and should feel very uneasy if a new law to regulate marriage is thrust upon them.

It is always difficult to defend or justify the social and religious customs of a nation according to the European notions of morality and theology. Many customs sanctioned by our law and usage and observed by us daily, appear to the Europeans as extremely immoral and quite unjust according to their notions of morality. For example, the Brahmans and Kshatriyas who are said to have highly religious customs, have polygamy as an institution sanctioned by Hindu law, and from the Hyderabad to Cape Comorin you could find no orthodox Hindu, who would disapprove of it as an immoral institution. Now polygamy is looked upon as a very bad and shameful custom by Europeans. The Hindus know this very well. Some of the English-educated Hindus think of polygamy in the same way as Europeans. Yet you will not find a single Hindu, whether English-educated or not, who would agree to the view that because polygamy is permitted and practised, our present marriage system is an immoral or defective system. Likewise it will be difficult to find a Brahman who would not feel horrified if he finds polyandry practised by a Brahman woman. She and her paramour become outcasts; they are found guilty of polyandry. They are condemned and put out of

society and looked down upon by every Hindu with the greatest contempt and horror. Now to an European the polygamous husband appears as immoral and wicked a person as the polyandrous wife appears to a Brahman. But the custom permits polygamy and therefore the Hindu practises it and does not feel at all ashamed at his conduct. Such is the force, the ancient customs and manners exercise over the minds of the oriental nations. I make these remarks simply to show that each nation values its own custom in respect of its marriage and other social and religious institutions independently of what other people think of them and to a certain extent each nation has got its own code of morality in respect of such institutions. In connection with the question of introducing new marriage systems an eminent English Lawyer, who was a Law member of the Viceregal Legislative Council, once stated as follows:—

"Laws relating to such subjects as marriage have their root in the very deepest feelings and in the whole history of a nation; nor is it easy to imagine a more tyrannical or a more presumptuous abuse of superior force than that which would be involved, in any attempt to bring the views and practices of one nation upon such subjects into harmony with those of other nations whose institutions and character had been cast in a totally different mould."

I would now describe briefly the ceremonies or formalities which constitute marriage among Nairs and leave it to others to say, whether the ceremonies and formalities observed by Nairs, in order to constitute marital relations, have any religious element in them.

I think the Malayalam word "Sambandham" in its peculiar sense, as used throughout Malabar proper, Cochin, and parts of Travancore, conveys the same idea as the word marriage etymologically conveys in the English language, viz. "the union of man and woman as husband and wife." *Sambandham* is the principal Malayalam word for marriage as വിവാഹം (Vivāham) is in Sanscrit. Whatever may be the basis of the Sambandhams of the Marumakkathayam Nairs, there can be no doubt that the idea which the word conveys to a Malayalee is the same as the word *Vivāham*. This generic name "സംബന്ധം" (Sambandham) which in South Malabar between Calicut and Nedunganad and in Ponani, Cochin and parts of Travancore, is the only word to denote marriage, includes,

1. Guna Dosham as used in South and North Malabar.
2. The Podamuri or its Sanskrit synonyme Vastradānam used in North Malabar.
3. Uvamporuka and Veedāram Kyruka of North Malabar.
4. The Kidakora Kalyānam of Palghat and parts of Nedunganad.

The Podamuri, Vastradānam, Uvamporuka, Veedāram Kyruka &c. are local expressions hardly understood beyond the localities in which they are used, but there would be hardly a Malayalee who would not readily understand what is meant by "സംബന്ധം തുടങ്ങുക" *Sambandham Todunguka*. The meaning of this phrase which means "to marry" is understood throughout Kéralam in the same way and there can be no ambiguity or mistake about it.

It is thus found that "സംബന്ധം" (Sambandham) is the principal word denoting marriage among Marumakkathayam Nairs. It will also be found, on a close and careful examination of facts, that the principal features of this "സംബന്ധം" (Sambandham) ceremony all over the Kéralam, are in the main, the same. As there are

different local names denoting marriage, so there may be found local variations in the performance of the ceremony. But the general features are more or less the same. For instance, the examination, prior to the betrothal, of the horoscopes of the bride and the bridegroom to ascertain whether their stars agree astrologically, the appointment of an auspicious day for the celebration of the ceremony, the usual hours at which the ceremony takes place, the presentation of the *Dānam* to the Brāhmans, the sumptuous banquet, the meeting of the bride and bridegroom in the central room of the house, the sprinkling of the rice on the heads of the bride and the bridegroom, are features which are invariably found in all well conducted *Sambanthams* in all parts of Kēralam alike; but here I would beg to state that I should not be understood as saying that each and every one of the formalities above referred to, are gone through at every *Sambandham*. I would only say that most of them are generally gone through at all *Sambandhams* among respectable Nairs and I would further say that they ought to be gone through at every *Sambandham*, if the parties wish to marry according to the customs of the country. I would now briefly refer to the local variations to be found in the ceremony of *Sambandham* and also the particular incidents attached to certain forms of *Sambandham* in Malabar. I shall describe the *Podamuri* or *Vastradānam* as celebrated in North Malabar and then show how the other forms of *Sambandham* differ from it. Of all the forms of *Sambandham* I consider the *Podamuri* form the most solemn and the most fashionable in North Malabar. Of course my description will be borne out by the evidence that is before us.

The preliminary ceremony, in every *Podamuri*, is the examination of the horoscopes of the bride and the bridegroom by an astrologer. This takes place in the house of the bride, in the presence of the relations of the bride and the bridegroom. The astrologer, after examination, writes down the results of his calculation on a piece of Palmira leaf, with his opinion as to the fitness or otherwise of the match and hands it over to the bridegroom's relations. If the horoscope agree, the day is then and there fixed for the celebration of the marriage. This date is also written down on 2 pieces of cadjan, one of which is handed over to the bride's Kāravan and the other to the bridegroom's relations. The astrologer and the bridegroom's party are then feasted in the bride's house and the former also receives presents in the shape of money or cloth and this preliminary ceremony which is invariably performed at all *Podamuri* in North Malabar is called "*Podamurikurikal*," but is unknown in South Malabar.

Some 3 or 4 days prior to the date fixed for the celebration of the *Podamuri* the bridegroom visits his Kārnavars and elders in caste to obtain formal leave to marry. The bridegroom on such occasion presents his elders with betel and nut and obtains their formal sanction to the wedding. On the day appointed the bridegroom proceeds, after sunset, to the house of the bride accompanied by a number of his friends. He goes in procession and is received at the gate of the house, by the bride's party and is conducted with his friends, to seats provided in the Thekina or Southern Hall of the house. There the bridegroom distributes presents *Dānam* or money gifts to the Brāhmans assembled. After this, the whole party is treated to a sumptuous banquet. It is now time for the astrologer to appear and announce the auspicious hour fixed. He does it accordingly and receives his dues. The bridegroom is then taken by one of his friends to *Padinitta* or the principal room of the house. The bridegroom's party has, of course, brought with them a quantity of new clothes and betel leaf and nut. The clothes are placed in the western room of the

house called *Padinitta* in which all religious and other important house-hold ceremonies are usually performed. This room will be decorated and turned into a bed-room for the occasion. There will be placed in the room a number of lighted lamps and *ashtamangaliam* which consist of 8 articles symbolical of *mangaliam* or marriage. These are rice, paddy, the tender leaves of the cocoanut-tree, an arrow, a looking glass, a well washed cloth, burning fire and a small round wooden box called "*ചെപ്പു*" (*cheppu*) made in a peculiar fashion. These will be found placed on the floor of the room aforesaid as the bridegroom enters it. The bridegroom with his grooms-man enters the room through the eastern door. The bride dressed in rich clothes and bedecked with jewels, enters the room through the western door accompanied by her aunt or some other elderly lady of her family. The bride stands facing east with the *Ashtamangaliam* and lit up lamps in front of her. The grooms-man then hands over to the bridegroom a few pieces of the new cloth and the bridegroom puts them into the hands of the bride. This being done, the elderly lady who accompanied the bride, sprinkles rice over the lit up lamps and the heads and shoulders of the bride and the bridegroom, and the bridegroom immediately leaves the room, as he has to perform another duty. At the *Thekina* or southern hall, he now presents his elders and friends with cakes and betel leaf and nut. Betel and nut are also given to all the people assembled at the place. After the departure of the guests, the bridegroom retires to the bed room with the bride.

This is an unvarnished account of a "*Podamuri*." Next morning the *Vettillakettu* or *Salkāram* ceremony follows and the bridegroom's female relations take the bride to the husband's house where there is feasting &c. in honor of the occasion.

Uvamporuka or *Veedāramkyral* is a peculiar form of marriage in North Malabar. It will be seen from the description given above that the *Podamuri* is necessarily a costly ceremony and many people find it difficult to celebrate it in due form for want of money. Such people generally resort to the less costly ceremony of *Uvamporuka* or *Veedāramkyral*. The features of this ceremony are to a certain extent the same as *Podamuri*; but it is celebrated on a smaller scale. There is no cloth giving ceremony. The feasting is confined to the relations of the married couple. The particular incident attached to this form of marriage is that the husband should visit the wife in her house and is not permitted to take her to his house, unless and until he celebrates the regular *Podamuri* ceremony. This rule is strictly adhered to in North Malabar and instances in which the husband and wife, joined by *Uvamporuka* or *Veedāramkyral* ceremony and with grown up children, being the issue of such marriage, undergoing the *Podamuri* ceremony, some 15 or 20 years after *Uvamporuka*, in order to enable the husband to take the wife to his house, are known to me personally.

The *Sambandham* of South Malabar and the *Kidakora kalyānam* of Palaghat have all or most of the incidents of *Podamuri*, except the presenting of the clothes. Here money is substituted for clothes and the other ceremonies are more or less the same. There is also *Salkāram* ceremony wanting in South Malabar as the wives are not at once taken to the husband's house after marriage.

Immediately connected with the above said marriage ceremony, is another ceremony which is called "*Kettu-Kalyānam*" and which prevails among the whole *Marumakkathāyam* people of all classes from Cape Comorin to Kavayi. Whatever may have been the origin of this *Kettu-Kalyānam* I have little or no doubt that the ceremony, as now observed, is essentially a religious ceremony which every girl in a *Marumakkathāyam* family is bound to undergo, before attaining puberty, on pain of

excommunication from caste. This view is supported even by the evidence now before us. As almost all the witnesses have described the details of this ceremony, it will merely be a waste of time to recapitulate them here. This ceremony which is performed as a preliminary ceremony renders the girls eligible for marriage. The non-performance of this ceremony, before the girl attains her puberty, works a forfeiture of the caste of the whole Tarawād to which the girl belongs. It is said by some, who do not like our institutions, that when we look to the details of this ceremony, we find reason to think that the Nair girls, by undergoing this ceremony, become almost free to practise prostitution and lead an immoral life. It is said that by tying the Tāli on the first day and by cutting and removing it on the fourth day of the Kallyānam ceremony, a marriage was first constituted and then dissolved and that after this dissolution, the girl is permitted to lead the life of a prostitute. Nothing could be a greater or more unfounded falsehood than this allegation. In my opinion the Kallyānam is a mere preliminary ceremony something like a “സംസ്കാരം” Samskāram among other Hindus which makes the person who undergoes it, eligible to marry. The fact that the ceremony is ordained to be performed before the girl attains her puberty is in my opinion a valid reason for supposing that except as a “സംസ്കാരം” Samskāram the ceremony has no connection with actual marriage. I do not think that where facts clearly disprove prostitution and immoral life in Nair women, we should have recourse to such arguments as these to show that the Kallyānam ceremony is not intended or considered as a passport to prostitution.

The general notion among the people who do not personally know Malabar customs and institutions, is founded upon the Nambūdiri version of them and the “Keralolpathi” and the “Kērala Māhathmīum.” These two books that are supposed to give accounts of the Nair institutions, are works of the Nambūdiri Brahmans, who from interested motives, have always wished to make out that our women do not and need not practise chastity. The evidence given by some of the Nambūdiris themselves before us will, however, refute this doctrine and show that the practice has never been in accordance with it; but foreigners who wrote about Malabar in ancient times, had the Brahman version only to depend upon and the two works above quoted, to consult. Hence, there is a general notion that we have no marriage system, but only concubinage accompanied with great laxity of morals. This notion must have, in the absence of evidence to the contrary, greatly influenced the High Court of 1869, in saying as they did, about our marriage system, but I am hopeful that if matters are put in their proper light, the High Court may change their view. Mr. Logan who evidently has taken much pains to collect informations on the subject, remarks on the marriage system in Malabar in the following words:—

“This part of the Malabar Law has in the hands of unenquiring commentators brought much undeserved obloquy on the morality of the people. The fact “at any rate of recent years is that although the theory of the law sanctions freedom “in these relations, conjugal fidelity is very general. Nowhere is the marriage “tie—*albeit informal*, more jealously guarded or its neglect more savagely avenged.”

Mr. Logan of course cannot easily divest himself of his early impressions on the subject received from the writings of Buchannen, Thackery, Warden, Wilk &c. and that is why he still says “*albeit informal*.” Mr. Logan’s *theory of law that sanctions freedom in these relations* was perhaps what he found in the Keralolpathi and Kērala Māhathmīum the two recent Nambūdiri works composed with the evident object of degrading the social status of the Nairs.

As to whether our present marriage system deserves to be recognised by Law as a valid and binding system, I think there cannot be two opinions. I ask that when the Courts find that the allegations of the existence of promiscuous intercourse and laxity of morals and want of marriage system &c. in Malabar, are all absurdly unfounded, that when they find that the community of Nairs and Tiars, that is to say the respectable and a very large majority of it observe the Marriage Law, as strictly as any other nation in the world, when the court find these facts to be true, would not they hold, according to good conscience and equity, that we are entitled to the protection of the Penal and Civil Laws which protect other Hindu subjects of Her Majesty, the Queen Empress, in the enjoyment of their matrimonial rights.

From his speech, Mr. Sankaran Nair himself does not seem to be quite sure as to what was the binding character of the customary Law of marriage among Nairs, before the High Court said in 1869 “the relation to be mere concubinage.” There can however be hardly any doubt on the point, notwithstanding what the foreigners wrote about it on imperfect and absurd information they received from the great enemies of the Nairs—the Nambūdiri Brahmans and Nambūdiri-ridden Rajahs and their people in the ancient days. To prove that the Nairs who were essentially a martial race and were highly sensitive about any breach of their marital rights, had a valid and binding form of marriage, innumerable instances may be quoted from the ancient writings of well-informed men, our old country ballads and many other sources available. But I will quote here only one instance at present. The British Commissioners of North Malabar once asked the Rajah of Chirakal to inform them what was the Law on adultery among Nairs. In the reply, I understand from a credible source, will be found a statement from the Rajah to the effect that he who committed adultery with a Nair’s wife forfeited his life, that is that the husband had a right to kill the adulterer or the adulteress or both, on the spot, with impunity. To a martial race, summary laws of this nature suited better in those days than the elaborate hairsplitting Civil Law. Our race has, I admit, degenerated since those days. The martial spirit is dead under a powerful foreign Government; but I think it was clearly the duty of British Courts to have examined and ascertained most carefully and thoroughly, the state of marital relations among Nairs, before deciding the question, whether we had a marriage system or not and even if they found that there was no uniformity in the custom of marriage &c., the Courts should have helped us by validating and upholding our present system, if they found it based on good moral principles and sanctioned by social usage. Sir Fitzjames Stephen remarked in his speech on the Brahmo Bill of 1872 that “native laws should not be changed “by direct legislation except in extreme cases though they may and ought to be “moulded by the Courts of Justice so as to suit the changing circumstances of “society. If this principle is fully grasped it will, I think, serve as the key to nearly “every question which can be raised to the alteration of native laws.” Taking this principle as their guide, it will be enough if the courts will carefully enquire into the present state of things and ascertain whether we have a marriage system or not. As stated elsewhere I admit that there may be Nair women who are professional prostitutes. But the existence of such men and women do not at all prove that we have no marriage system. The English, the French and the other civilized nations, who have elaborate Marriage law, have among them, many men and women addicted to immorality and whose practices, were it not for the laws against bigamy, would have been termed *polygamy* or *polyandry*; but that does not in any way weaken the Marri-

age law in Europe. What the respectable portion of a community accepts and observes as their custom should be treated as the custom of that community and is any one who desires a change in the marriage system, prepared to say that respectable Nairs have no marriage? Even the great mass of evidence taken before us supports the view, that Nairs have a system of marriage recognised by custom. I don't think that it is necessary to change our Marumakkathayam law of succession in order to have our marriages legally recognised.

It appears to me to be a simple denial of justice to Nairs, to say that because some Nambudiri-landlords successfully use their influence, that their wealth and position in Malabar give them, to seduce Nair women, that because there are professional prostitutes among Nair women, who do not know what marriage tie means, that because we follow Marumakkathayam descent of property, therefore we are not entitled to have our marriage, however solemnised, recognised by law. That our Brahmanical Hindu law recognises as valid, marriages from which rights to property do not arise to either party to such marriage or their issue, is evident from the custom which some Nambudiri Brahmans, who are recognised as Brahmans by the whole Brahman race in India, observe in North of Malabar, even to this day. A learned Brahman of this clan was a witness before us and has described the custom. Their marriage is solemnised with all the religious ceremonies that are undergone at every Brahman marriage in India. The *Honam*, the *Mantrams*, the *Saptapadi* &c. ceremonies are strictly and rigidly observed. Widowhood is recognised and observed as strictly as in other Brahman class; yet the issues of such a solemn and religious marriage are *Marumakkathayam Hindus* and do not inherit their father's property, but follow Marumakkathayam law of descent. Now, would it not be great injustice to hold that adultery with a married lady of this Brahman caste, enticing away the married woman of this caste, are not offences under the Indian Penal Code, because the Brahmans follow the Marumakkathayam system of succession, however solemn and binding their marriage may be? In my humble opinion, the system of succession to property, has nothing to do with the solemnity or the binding character of a marriage founded upon our religious, moral and social laws and customs, and if it can be shown that we have a perfectly good system of marriage founded upon our religious and social custom, why should not that system be recognised by our Courts? That among Nairs there exist women who practise polyandry as a caste institution, recognised by our custom, is nothing but an unmitigated falsehood. It may exist in the nooks and corners of the District; but it is looked upon by the Nair community as a monstrous innovation due to the baneful Nambudiri influence. If polyandry exist in a recognised form, let it be proved. Among the Carpenter and Blacksmith classes in Malabar, polyandry exists as an institution and we see every day the 4 or 5 chosen husbands among this class celebrating their Polyandrous marriage openly according to their caste rules, and with much ceremony and pomp; but can even the worst and most uncompromising enemy of the Nair institutions point to a Podamuri or Uvamporuka or Kidakora or any other recognised form of Nair Sambandham, throughout the Keralam, at which a girl was wedded to more than one husband? If he can, I shall give up my contention and ask for legislation. I have not the slightest hesitation in saying that he would not be able to show a single instance of such a marriage whether in ancient or modern Malabar. Then, why cite the examples of the Nair harlots here and there, who are the slaves of the Nambudiris and who form secret alliances with a number of men or who practise prostitution, as a profession! It is true that our women have no widowhood,

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but I suppose there are many Sudras in other parts of India, having an undisputed law of marriage, not observing perpetual widowhood among their women. Why then, I ask, should our present system be changed, our caste-system and succession changed, our nationality destroyed?

I have nothing more to add to this separate memorandum of mine, except that if it is found that under our present system, adultery, enticing away a married woman and other offences against matrimonial laws, recognised as penal, under the Indian Penal Code, cannot be recognised as such, when committed in respect of parties married according to our present system, I should certainly solicit legislation in the way formulated by our President, the Honorable Mr. Justice Muthuswamy Iyer whose proposals are, in my humble opinion, the least likely to meet with opposition from the bulk of the Nair population of Malabar. My own opinions on each of the suggestions, made by the Honorable Mr. Justice Muthuswamy Iyer, are given in the resolutions recorded, and need not be recapitulated here.

The freedom to a Marumakkathayam Nair, to dispose of his self-acquired property, is what all the people of Malabar wish that they should possess. The declarations of a deceased person, regarding the distribution of his self-acquired property have always been respected by Nairs and a legal recognition of it by courts will enable us to make sufficient provisions for our wives and children.

O. CHANDU MENON.

CALICUT,

1st July, 1891.

ERRATA IN ENCLOSURE D.

S3A

ding omit "Part I."

line 11—*For* "indication" *read* "indications."

2, line 24—*For* "6" *read* "1."

Para. 12, line 8—*For* "a man and woman" *read* "the man and woma

Para. 12, line 14—*For* "Only a widow" *read* "Only a widower."

Para. 16, line 18—*For* "come" *read* "came."

MEMORANDUM BY M. MUNDAPPA BANGERA, B.A. & B.L.,

District Munsif of Mangalore,

AND A MEMBER OF THE

MALABAR MARRIAGE COMMISSION.

PART I.

The law of Aliya Santâna followed by several classes of Natives in the District of South Canara gives a system of inheritance similar to the one followed by the Malayâlis governed by the Marumakkathâyam law. The Canarese word "Aliya" meaning nephew (corresponding to the Malayâlam word *Marumagan*) and "Santânam" = descent or family; the whole word means descent or succession in the line of a nephew or sister's son.

The history of the origin of this custom as contained in the treatise called "*Bhutala Pandya Kattu Kattale Galu*", or, "The Bhutâla Pândya's Aliya Santâna Law," shows that it was introduced by a despotic prince called Bhutâla Pândya about the year 77 A.D. in supersession of the *Makkala Santâna* or inheritance from father to son, which was then prevailing in the Towlava country (Modern South Canara). It is said that the maternal uncle of this prince, called Devapandya, wanted to launch his newly constructed ships with valuable cargo in them, when Kundodara, King of Demons, demanded a human sacrifice. Deva Pandya asked his wife's permission to offer one of his sons, but she refused, while his sister *Satiya-vati* offered her son Jaya Pandya for the purpose. Kundodara discovering in this child indication of future greatness, waived the sacrifice and permitted the ships to sail. He then took the child, restored to him his father's kingdom of Jayantika and gave him the name of Bhutâla Pândya. Subsequently, when some of the ships brought immense wealth, the demon again appeared and demanded of Deva Pandya another human sacrifice. On the latter again consulting his wife, she refused to comply with his request and publicly renounced her title and that of her children to the valuable property brought in the ships. Kundodara then commanded Deva Pandya to disinherit his sons of the wealth which had been brought in those ships, as also of the kingdom and to bestow all on his sister's son, the above named Jaya Pândya *alias* Bhutâla Pândya. This was accordingly done. And as this prince inherited his kingdom from his maternal uncle and not from his father, he ruled that his own example should be followed by his subjects; and it was thus that the Aliya Santâna law was established on 3rd Magha Shudda of the year, 6 of the era of Shalivahana, called Ishwara, about A.D. 77 (vide The Bhutâla Pândya's Aliya Santâna Law by Mr. T. Gopal Krishna Pillay, pages 2, 3 and Appendix C; also para. 2 of the Memorial addressed to His Excellency the Governor in Council, Madras, in or about the year 1868 which will be referred to more fully hereafter).

3. This Law is intended to govern all the three classes of people except Brahmins, viz., Kshatriyas, Vysyas and Sudras, but practically only Sudras and the Jain residents of this District follow it. Hari Shettis who belong to the Vysya class though specially named in the Bhutāla Pāndya's book as subject to this law are in practice all governed by Makkala Santāna or the general Hindu Law. Among the Jains the priestly class called the Indras do not follow it. So also among the Sudras, such a strong dislike is felt against the law, that we constantly see one class after another deserting it and declaring themselves as governed by the Hindu Law. Weavers, goldsmiths and some carpenters have thus already succeeded in completely renouncing their allegiance to that law. Ganigas or oilmongers are, I understand, now attempting to break through it. Among the Bants (a class corresponding to the Nayars of Malabar) a section called *Parivarada Bants* still follow Makkala Santāna system of inheritance. So also among Billawars (a class corresponding to the Tiyanas of Malabar) a section called Halepaiks are to this day also governed by Makkala Santāna. These classes either refused in the beginning to be bound by the new law of Aliya Santāna, or revolted against it afterwards, and abandoned that new custom as being quite unsuitable to their well-being and happiness.

4. There was a general feeling of revolt against the said law in the year 1868 as evidenced by a memorial submitted to the Collector of South Canara for transmission to His Excellency the Governor in Council, Madras. The evils of this system have been thus set forth in it:—

NOTE:—(The extracts are omitted as the petition is printed in full with the letter of A. Ramaya Punja. The last paper in Appendix III to which please refer.)

5. When this Memorial was referred by the Collector through Tahsildars to 2,069 Aliya Santāna men, it was found that 525 voted for it, 465 were indifferent as to whether the proposal should be adopted or the Aliya Santāna system retained, and 1,079 voted against it. From this the Collector was of opinion that the majority of the people were opposed to the proposal and he accordingly refused to transmit the Memorial to Government.

6. The genuineness of the abovementioned work of Bhutāla Pāndya was doubted by Dr. Burnell, the late District Judge of South Canara, who was of opinion that it was a recent fabrication. Notwithstanding, it has been practically accepted by the people as the only book containing the Aliya Santāna custom followed by them and is also consulted, so far as I know, as the only treatise of authority by Courts of Justice, whenever any points of intricacy, which come up before them, require elucidation.

7. *The Aliya Santāna Marriages.*—Among the people governed by the Aliya Santāna law, there is no restriction as to the marriageable age of a girl. She is married either before or after puberty. As, however, generally marriages are celebrated when the boy or girl is young, the duty of finding out a suitable match for the boy falls upon his elders who may be either the father, the uncle or the elder brother. Before a girl is fixed upon, it is incumbent on the elders of both parties to see that she does not belong to the same Bali to which the boy belongs. *Bali* in Aliya Santāna families corresponds to *Gōtra* of the Brahmins governed by Hindu law but differs from it in that it is derived from the mother's

side, whereas *Gōtra* is always derived from the father's side. There are 16 such *Balis*, some of them containing *sub-Balis*. Several of the *Balis* are so allied to each other that inter-marriages among them are prohibited. A marriage between a boy and a girl belonging to the same *Bali* is considered incestuous as falling within the prohibited degrees of consanguinity. It is not at all difficult to find out the *Bali* to which a man or woman belongs, as one can scarcely be found who does not know one's own *Bali* by rote. And the heads of caste who preside at every wedding party and who are also consulted by the elders of the boy or girl before any alliance is formed are such experts in these matters that they decide at once without reference to any books or rules whether inter-marriages between persons brought before them can be lawfully performed or not.

8. So that, if there is no objection on the score of *Bali*, and if in other matters the elders of the parties agree, a day is fixed for performing a ceremony known as the ceremony of betrothal. On this day, the bridegroom's party (but not the bridegroom) with a number of their friends and relatives go to the bride's house with a *Tāli* or a *Bandi* (neck ornament) and also with music and tom-tom (if the parties are well-to-do in their circumstances); there the elders of both parties stand up before the persons assembled and exchange plates of betel-leaf and nuts in token of the acceptance of the marriage proposals made to each other; the *Tāli* or *Bandi* is then tied by a senior member of the bridegroom (Tarawād) or *Bali* to the neck of the intended bride; meals are afterwards served to the guests who then depart. By this arrangement the girl's relation is supposed to have entered, on behalf of the girl, into an irrevocable contract with the boy; and such contracts are rarely, if ever, broken.

9. After this is done, an auspicious time is fixed for the marriage. Singings and rejoicings begin to take place even three or four days before the day on which the marriage is to be celebrated. Each day's dinner is called by a *Marriage* may take place either in the bride's house or in the bridegroom's or even in a third party's house where there may be a separate couple married on the same day. Not only friends and relations but caste people from every part are invited for the marriage. On the night previous to the day on which the marriage ceremony is to be celebrated, the bride and her party or bridegroom and his party and caste people come in a procession to the marriage pandal with music, pomp and splendour varying with the means of the parties concerned. On the next morning, the bridegroom makes a present of a *Wodice* (or petticoat) and a handkerchief (these are all of silk if the parties are rich and respectable families); in some cases, bride's father or uncle also at the same time presents a *Dhoti* or a *Shawl*, or a laced turban, or a silver or gold waist girdle to the bridegroom. The bride and the bridegroom are then seated together side by side on a bench, or chairs, covered with a white cloth. The right hands of the bride and bridegroom are placed one over the other, the headman of the caste holding them together and announcing at the same time in a loud voice that *A the daughter of B is given in marriage to B the son of S*, when the father of the girl pours water from a vessel with a spout attached to it, called the *Dhāre Ginde*. After this, the father or the uncle of the bridegroom makes a gift of money to the bride called "*Thiridochee*;" this sum varies from two to five hoons according to the means of the parties. The guests then make presents of money to the couple and

filling their hands with rice from basins laid before the bride and the bridegroom throw it over their shoulders and heads. This is considered by all Hindus to be the universal matrimonial benediction. And at last the girl is handed over to the bridegroom's party who take her to their house. The marriage ceremony ends here.

10. If the girl happens to be one who has already arrived at her puberty, a few days after the marriage, a dinner is given to a select number of friends and relations; the bride is made to serve food to the bridegroom who makes a small gift of money to her; and on that night consummation takes place. If, on the other hand, the bride is young, another ceremony called "Madmal Madme" in Tulu, meaning puberty ceremony, takes place before the boy and girl are allowed to cohabit.

11. It must, however, be here noted that Bhutāla Pāndya's book lays down that during marriage *Dhāre Ginde* should only be touched, and not water poured down from it. This custom is even now followed in certain classes and in certain parts of the District. Perhaps this is the custom alluded to in the account given by Mr. A. Ramaya Punja, B.A., and B.L. Among all the respectable classes *Dhāre* (water) is poured on the united hands of the bride and the bridegroom or the bride's father. And I believe I am correct in stating that in all unt families also the same custom is observed. This right of pouring of lifting the *Dhāre Ginde*, formerly belonged to the heads of caste *Gurikars* among the *Billawars*. But at present it is invariably performed, perhaps in some remote villages, by the girl's father, in his absence uncle, or in his absence by her own elder brother. If the girl happens to be without any senior male relations, the *Gurikars* arrogate this to themselves even now-a-days. The publicity given to the marriage, lifting of the hands of the bride and bridegroom, the declaration made some time that such a girl is married to such a man before the caste assembly above all the pouring of water or the touching of the *Dhāre Ginde* are to make the marriage valid in the eyes of the society to which the parties belong and who look upon the marriage tie as sacred.

12. *Widow-marriages*.—Though widow marriages are allowed among the *Antāna* people, they are practised only in rare cases, for, they think that in going the custom observed in this respect by their neighbours governed by the law, they make themselves appear more respectable in the eyes of the community. No widows having children by their first husbands are generally regarded, such marriages being commonly confined to young widows only. The money connected with such marriages is very short. A cloth and sometimes a bangles and a bodice are presented by the bridegroom to the bride; a man and woman stand and sit on opposite sides of a screen or cloth held between them; their hands are joined together under the cloth by the headman of the caste and the wife is enjoined not to call her husband thence forward by his name. This ceremony is brought to an end by serving meals to the assembled guests. It will be observed that no bachelor is allowed to take a widow for his wife under this ceremony. Only a widow or a person who has already got a wife under the *Dhāre* system mentioned above can accept the hand of a widow. Moreover, a woman who has had her first husband under the *Dhāre* ceremony cannot have her re-marriage performed under

the same form, either after her husband's death or divorce from him. But the man is not subject to the same restraints; he can have any number of *Dhāre* marriages, provided he does not take a widow for his wife during those marriages. A widow cannot, even after her second marriage, take part in any auspicious ceremonies.

13. *Bayake ceremony*.—When the woman becomes pregnant, a ceremony called "Bayake" is performed. Due publicity is also given to this ceremony; and relations and caste people are invited for the occasion. The girl is seated on a bench or a chair in the *pandai*; rice is thrown over her head, cloth and money presents are made to her and repast is served to the guests. And among *Billawars* after the ceremony is over, the woman and her husband are made to sit at meals side by side and eat together. I believe the same custom prevails among the majority of other *Aliya Santāna* castes also. After this is over, the woman is made over to her mother or other maternal relations who take her to their own house where her confinement is expected to take place.

14. *Husband and wife*.—During *coverture*, the husband and wife live together either in the husband's family (*Tarawād*) house or in a separate house altogether. "Till the death of the husband" to quote the words of V. A. Brodie, Esq., C.S., Acting Collector, South Canara, in his Memorandum sent to Mr. M. Winterbotham, Esq., C.S., in connection with the Malabar Marriage Bill, "the wife and children live with him and join in the work of cultivating the fields of his family estate, like the other members of his family and are maintained out of it by him; so that the death of the husband when the widow and children have to leave everything behind them and return to the family house of the widow, effect a much greater change in their position than in Malabar where the wife and children, as a rule, have never left their *Tarawād* house and have all along been maintained, not by the husband, but by their *Kāranavan*." Under the Rules laid down by Bhutāla Pāndya, the wife and children should observe the *Sutaka* (pollution) on the occasion of death of the husband and participate in the effects of his sin or virtue; they should also share in the virtue accruing from gift and charity and in the fame or infamy arising from any deeds, while the *Santāna* (the heir or *Tarawād*) is to observe the pollution only on the occasion of birth and to succeed to the property (p.p. 7 and 36 of T. Gopal Kristna Pillay's *Aliya Santāna Law*, 1873).

15. An *Aliya Santāna* man is at liberty under the law governing him to bestow upon his children in gift moveable and immoveable property of his own acquisition but not his ancestral property. This liberty is availed of by most of the members of well-to-do families and gifts *inter vivos* are frequently made by them to their wives and children of their self-acquired properties and sometime of some portions of their ancestral or *Tarawād* property also, much to the prejudice of the rights of the remaining members of the *Tarawād*. It is this latter practice that has been deprecated in the Memorial already referred to. It is the innate nature of man to love his own children and it is not therefore surprising that even an *Aliya Santāna* man should do the same and give his own property to those who are near and dear to him. Many such valuable gifts are made by *Bants* and *Nadars* living in the Udipi and Kundapur Taluks of this District, who in their Memoranda sent to the Commission through the Acting Collector call their children "Kriya adhikari," meaning that they are the proper persons entitled to perform

obsequies to their father. On the death of the husband the "Moogoothi" worn by the wife on her nose is taken off, the "tali" tied to her neck in token of her married life is removed, and the bangles broken from her wrists. These acts give us unmistakeable signs of the importance attached to marriage among the Aliya Santâna people and make us understand that the union entered into by man and woman during the celebration of the marriage in the presence of her caste people was intended to last for life. The rule is for one man and one woman to cleave together for life unless divorce is effected between them in the meanwhile. As to the fidelity of the Aliya Santâna women towards their husbands, J. Sturrock, Esq., C.S., who was Collector and Magistrate of South Canara for over six years and served in the District for over thirteen years speaks thus in his Memorandum, dated 3rd May 1891, sent to the Commission :—"The impression formed by me during thirteen years' residence in South Canara was that, among the higher classes, the Tulu women, who follow the Aliya Santâna rules, enjoyed a reputation for singular fidelity, and that even the lower classes did not regard the marriage tie more lightly than their neighbours governed by other laws."

16. *Divorce*.—Divorce is effected generally on reasonable grounds. A woman is, however, as free to divorce her husband as the latter is to divorce the former. But this is in almost all cases done with the knowledge of their elders who with the aid of some of their caste-men inquire into the reasons assigned by either of the parties and bring on separation, if reconciliation is found impossible. I am unable here to state any particular grounds which are supposed by the parties concerned as sufficient for separation. Adultery and habitual disobedience on the part of the wife and cruelty on the part of the husband are the grounds upon which divorce is generally effected. But it is not uncommon among the lower classes to get divorce effected on insufficient grounds or at the mere will and pleasure of either the husband or the wife. Such conduct is, however, looked down upon by society with disapprobation. No divorce is supposed to be complete before the husband's gift at marriage called "Thirdochee" or the marriage expenses are returned by the woman to her husband, especially in cases where the woman is in fault and the husband is on that account compelled to give her up. How far this condition is enforced in practice among the people can be seen from the following interesting account given by our Acting Collector of two Criminal cases which come up before him for trial in South Canara :—"In the first case the complainant—a fisherman or very low caste-man—complained of another for enticing away his wife from his house, and argued that he was entitled to redress under Section 497 of the Penal Code, as his wife had not returned first from his house to her family house, and his gift at marriage, "Thirdochee," had not been repaid him according to custom. In the second, a woman contracted a liaison with another and returned to her family house. Her husband and his uncle followed and demanded either the girl or the marriage expenses, whilst the girl demanded that her marriage expenses should be repaid, and she given in marriage to her paramour. In this case the parties were Billawars or toddy-drawers, and the girl's people never disputed the husband's rights, but as it was inconvenient for them to repay the marriage expenses, her uncle confined the girl for three days in stocks put up inside the house, in order to compel her to consent to return to her husband."

17. *How far these marriages are valid under law*.—From the above account it will be seen that the Aliya Santâna men and women undergo regular

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marriage ceremonies which are held by society to be as binding upon them, as marriages performed on persons governed by other laws and also that some sort of divorce is commonly gone through before the husband and wife separate from each other. Notwithstanding it, our Courts of Justice do not recognise those marriages as valid under the eye of the law. The High Court of Judicature at Madras say in their Judgment in Special Appeal, No. 238 of 1868 (M. H. C. Reports, Vol. IV., page 203) that the relation of husband and wife under the Aliya Santâna system "is in truth not marriage but a state of concubinage into which the woman enters of her own choice and is at liberty to change when and as often as she pleases." This dictum, as observed by the Acting Collector of South Canara in his Memorandum, has "come down upon the country as a surprise and is by no means generally acquiesced in as correct by the people." In 1882, the husband of a girl complained against another for enticing and taking away his wife, under Section 498 of the Indian Penal Code, to the 2nd Class Magistrate of the Mangalore Taluk who after inquiring into the case found the man guilty and sentenced him to imprisonment and fine. This decision was confirmed in Appeal by J. Sturrock, Esq., C.S., the then District Magistrate. But on revision by the High Court, that Court held that "the customary co-habitation of the sexes under Aliya Santâna law appears to us to do no more than create a casual relation, which the woman may terminate at her pleasure, subject perhaps, to certain conventional restraints among the more respectable classes, such as a money payment and the control of relations, &c., which may be prescribed as a check upon capricious conduct," and set aside the conviction and acquitted the accused on the ground that that co-habitation "cannot be considered marriage, so as to render punishable, under Section 498 of the Indian Penal Code, a person who entices away a woman with the intents specified in that Section" (I. L. R., VI., Madras, 374).

18. This decision has not only left respectable families governed by Aliya Santâna law in a false position in Society but has also given rise to grave crimes against the person; for in cases of adultery, the husband finding that he has no redress at the hands of the law, takes the law very often into his own hands and murders his wife or her paramour. Public policy and morality therefore strongly call for reforms in this direction. If the Courts of Justice find themselves unable to recognise Aliya Santâna marriages as legal marriages, it becomes highly necessary for the Government to interfere by means of a legislative enactment and legalise such marriages. It is therefore earnestly hoped that the Government will take the case of the Aliya Santâna people into its consideration and provide for them some such law as the one now under consideration of this Commission.

MUNDAPPA BANGERA.

MANGALORE,
10th August 1891.

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APPENDIX I.

TO THE

REPORT

OF THE

MALABAR MARRIAGE COMMISSION.

Extracts relating to Marumakkathayam Sexual Usages in Malabar
Collected from Official Reports and Published Works.

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EXTRACTS FROM BUCHANAN'S MYSORE, CANARA, MALABAR.

Vol. II, p. 93, (Ed. 1870.)

Pages 93—95—December 12th, 1800, Chowghat.—“ Having assembled the most respectable of the Nairs in this neighbourhood they gave me the following account of their customs.”

* * * * *

“ The Nairs marry before they are ten years of age, in order that the girl may not be deflowered by the regular operations of nature ; but the husband never afterwards cohabits with his wife. Such a circumstance, indeed, would be considered as very indecent. He allows her oil, clothing, ornaments, and food ; but she lives in her mother's house, or, after her parents' death, with her brothers, and cohabits with any person that she chooses of an equal or higher rank than her own. If detected in bestowing her favours on any low man, she becomes an outcast. It is no kind of reflection on a woman's character to say, that she has formed the closest intimacy with many persons ; on the contrary, the Nair women are proud of reckoning among their favoured lovers many Brahmans, Rajas, or other persons of high birth : it would not appear, however, that this want of restraint has been injurious to population. When a lover receives admission into a house, he commonly gives his mistress some ornaments, and her mother a piece of cloth ; but these presents are never of such value, as to give room for supposing that the women bestow their favours, from mercenary motives. To this extraordinary manner of conducting the intercourse between the sexes in Malayala, may perhaps be attributed the total want, among its inhabitants, of that penurious disposition so common among other Hindus. All the young people vie with each other who shall look best, and who shall secure the greatest share of favour from the other sex ; and an extraordinary thoughtlessness concerning the future means of subsistence is very prevalent. A Nair man, who is detected in fornication with a Shanar woman, is put to death, and the woman is sold to the Moplays. If he have connection with a slave girl, both are put to death ; a most shocking injustice to the female, who, in case of refusal to her lord, would be subject to all the violence of an enraged and despised master.”

In consequence of this strange manner of propagating the species, no Nair knows his father ; and every man looks upon his sister's children as his heirs. He, indeed, looks upon them with the same fondness that fathers in other parts of the world have for their own children ; and he would be considered as an unnatural monster, were he to show such signs of grief at the death of a child, which from long cohabitation and love with its mother, he might suppose to be his own, as he did at the death of a child of his sister. A man's mother manages his family ; and after her death his eldest sister assumes the direction. Brothers almost always live under the same roof ; but, if one of the family separates from the rest, he is always accompanied by his favourite sister. Even cousins, to the most remote degree of kindred, in the female line, generally live together in great harmony ; for, in this part of the country, love, jealousy, or disgust, never can disturb the peace of Nair family.

* * * * *

Page 105—“ The Namburis, like other Brāhmans, marry, and live with their wives, of whom they take as many as they are able to support. A Namburi's children are also considered as his heirs. They do not lose caste on account of fornication with a Sudra woman ; and indeed, in order to prevent themselves from losing dignity by becoming too numerous, the younger sons of a Namburi family seldom marry. They live with the elder brother, and assist the ladies of the Rajas, and of the Nairs of distinction, to keep up their families ; and in general they are the most favoured lovers, the young women of rank and beauty seldom admitting any person to their bed, but a Brāhman, and more especially a Namburi.”

* * * * *

Page 165—January 5th, 1801, Kutiporam.—“ Having procured some of the principal Nairs that attended on the Raja in a visit which he made to Captain Osburne, and a sensible

NOTE.—In this Appendix, I have gathered together, for convenience of reference, all that I have been able to find written regarding the customs, which regulate sexual intercourse in the Hindu Marumakkathâyam castes.

I have not, at the moment, been able to obtain one or two well-known books (e.g., Day's Land of the Perumâls,) the absence of which may be remarked.

Considering for how long a period, the French, and the Basel German Missionaries, have been connected with the West Coast, it would seem likely, that the said customs, which throw so much light on the subject of primitive marriage, should not have remained uninvestigated by French and German Presidents in Malabar. From the German Missionaries I have obtained the single extract printed at page 5. I cannot find, on enquiry of the French authorities at Mahé, that any Frenchman, personally acquainted with Malabar, has written on the subject. Neither is it one with which the English-Malabar officials have greatly busied themselves. The shrinking from inquisitiveness on the one hand, and the natural reluctance to bring domestic peculiarities before the public gaze, on the other, have operated to check enquiry ; and this, I believe, accounts for the comparative dearth of trustworthy European testimony. Native experts have likewise held their peace : or, at least, I am unacquainted with any work on the subject in the vernacular. Dr. Burnell in the introduction to his translation of Manu, mentions the *Anâchâra Nirnayam*, (Law of Abuses) as a genuine authority on Marumakkathâyam usage, and Gundert quotes largely from “Anâchâram” in his dictionary ; but I have not met any native who has read it, and have been unable to obtain, or identify, the work referred to. The word “anâchâram” means an irregularity established by custom.

The “Kérala Mâhâtmyam,” or “*Might of Malabar*,” is an often-quoted chronicle in Sanskrit verse, ancient manuscripts of which, on palm-leaf, are believed to be possessed by some Nambudri, and Royal families. I am not conversant with the original, but have seen what purports to be a Malayalam version of it (kindly lent me by the Rev. Mr. Matthissen of the German Mission), and in this the liberty of the Sudra woman to indulge in amorous intercourse with a plurality of lovers is expressly asserted. I mention the fact in order that the Malayalam version may be impugned if at variance with the original. There is a tendency now to declare that this alleged “anâchâram” of polyandry is a sheer myth, which never existed but in the imagination of foreigners.

Calicut, May 1, 1891.

H. M. WINTERBOTHAM.

Namburi who seemed to be much in favour with that chief, I consulted them on the differences that obtain in the customs of the Nairs, who live north from the Vaypura river, from those that are observed in the southern parts of Malayala. The female Nairs, while children, go through the ceremony of marriage, both with Namburis and Nairs; but here, as well as in the south, the man and wife never cohabit. When the girl has come to maturity, she is taken to live in the house of some Namburi or Nair; and after she has given her consent to do so, she cannot leave her keeper; but in case of infidelity to his bed, may be punished with death. If her keeper have in his family no mother nor sister, his mistress manages the household affairs. The keeper, whenever he pleases, may send his mistress back to her mother's house; but then, if she can, she may procure another lover. A man's house is managed by his mother so long as she lives. When she dies his sister comes for the fifteen days of mourning. She afterwards returns to her lover, and remains with him until he either dies or turns her away. In either case, she returns to her brother's house, of which she resumes the management, and brings with her all her children, who are her brother's heirs. A Nair here is not astonished when you ask him who his father was; and a man has as much certainty that the children born in his house are his own, as an European husband has; while these children are rendered dear to him by their own caresses, and those of their mother, who is always beloved, for otherwise she would be immediately dismissed; yet such is the perversity of custom, that a man would be considered as unnatural, were he to have as much affection for his own children, as for those of his sister, which he may perhaps never have seen. Of all known manners of conducting the intercourse between the sexes this seems to be the most absurd and inconvenient. That prevailing in the southern parts of Malayala avoids all the domestic unhappiness arising from jealousy, or want of continued affection; but that here, while it has none of the benefits of marriage, is attended with all its evils."

* * * * *

Page 213—January 19th, 1801—Kanyapura, (South Canara).—"The Buntar are the highest rank of Sudras in Tulava, and resemble the Nairs of Malayala. Having assembled some reputable persons of this caste, they gave me the following account of their customs. They are of three kinds: Massadi Bunts, or Buntar properly so called; Jain; and Parivarada Buntar. The Massadi Bunts are those of whom I here examined. They can eat and drink with the Nairs; but the two castes have no sexual intercourse. They do not pretend to be by birth soldiers; their proper duty is the cultivation of the land. They can keep accounts, but are not admitted to any higher kind of learning. They have headmen, called Mocustas, one for every district. The office is hereditary in the males by the female line; the same mode of succession prevailing here as in Malayala. At present, this office merely confers dignity; the officers of Government having assumed all the jurisdiction that formerly belonged to the Mocustas, who settled disputes not only relative to castes, but also concerning property. In general, all the brothers and unmarried sisters of a family live together in the same house. All the property belonging to the family is considered as common, and is managed, for the good of the whole, by the eldest male. A man's own children are not his heirs. During his life-time he may give them money; but all of which he dies possessed goes to his sisters and to their children. If a man has a mother's brother's daughter he must marry her; but he may take two or three wives beside. The ceremony is performed by the girl's father, or other near kinsman. When a man marries several wives, none of them can leave him without his consent; but when discord runs high, he in general sends one of the disputants back to her brother's house; and then she is at liberty to marry again. A man, at any time, if he dislikes his wife, may send her back to her brother's house; and he can do no more if she has committed adultery. In all these cases, or when a widow returns to her brother's house on her husband's death, she is accompanied by her children, and may marry again, unless she has committed adultery with a person of low caste; but if that crime has been committed with a Brahman, Kshatri, Vaisya or Bunt, she is well received, her children become her brother's heirs, and no man will have any objection to marry her."

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Page 239.—"The Biluaras pretend to be Sudras, but acknowledge their inferiority to the Bunts. The business of the caste is settled by a person called Guricara, who is appointed for the purpose by the Government, and who with the assistance of a council of elders, has the power of excommunication, and of inflicting corporal punishment. None of this caste can read. They are permitted to eat animal food, but ought not to drink intoxicating liquor. The men are allowed a plurality of women, who live in their houses; but on the husband's death the widows, with their children, return to their brother's houses, and the eldest son of the eldest sister of the deceased person becomes master of his house and property. If a man fall into poverty, his children go to their uncle's house, before their father's death. Girls continue to be marriageable after the age of puberty; and a widow, or divorced woman, may marry again. A man may turn away his wife when he pleases, but a woman cannot leave her husband without his consent. This however, by committing adultery with any person of the caste, she can in general procure; for few husbands retain their wives when unfaithful; and she is not disgraced, but may get another husband, or at any rate she can live with her brother."

EXTRACT FROM "REPORT TO BOARD OF REVENUE, BY WILLIAM THACKERAY, ON THE REVENUE AFFAIRS OF MALABAR AND CANARA," DATED 8TH SEPTEMBER 1807.

(Note.—Mr. Thackeray was deputed by the Governor of Madras to collect information regarding the state of Malabar and Canara).

"The succession of the sister's son has no particular effect upon, nor does it arise particularly from, the institution of private property in the soil. It probably arises from the ancient privilege of the Brahmins to visit the women, for when they established their Hierarchy they probably wanted soldiers and mistresses. They introduced the Nairs, and they have continued the custom ever since. The head peons most likely became Rajahs, as they have in most other places, and by degrees got possession of the lands. As the fathers of the children were uncertain, the succession followed the mother, about whom no mistake could arise. This appears to me to be the origin of this extraordinary custom, which when once established among the polite Nairs became fashionable, and was adopted by the other castes, even by the fanatic Mappillers, who are followers of the prophet. The Nair is said never to marry like other Hindus. He forms a temporary connection with any young woman that pleases him, which lasts while they continue faithful. The children he has nothing to do with: they belong to the family of the lady. This aversion to wedlock, so contrary to the usual customs, ideas, and religion, of the Hindus, has probably given rise to a rule of succession so contrary to their general customs."

EXTRACT FROM A "REPORT TO THE BOARD OF REVENUE BY THOMAS WARDEN, ESQ., UNDER DATE THE 12TH SEPTEMBER 1815 ON THE SUBJECT OF LAND ASSESSMENT AND THE VARIOUS TENURES OF MALABAR."

(Note.—Mr. Thomas Warden was Principal Collector of Malabar from 1804 to 1816.)

"Para 72.—It would thus appear that the governments of the Malabar Rajahs were purely Military. Their profession was arms, and they had only their arms to rely on for their independence. The Nayars formed the Military order in the state; and held also the different offices of administration; which, it may be supposed, were generally distributed among those whose advanced age, or other infirmities rendered them unfit for active service. Their Military constitution, next to the example of the mode of succession established in the families of the Rajahs, or most likely it may have been their own custom prior to their elevation as Rajahs, may have given rise to the singular custom of inheritance which obtains among the Nayars.

73. "The profession of arms by birth, subjecting the males of a whole race to Military service from the earliest youth to the decline of manhood, was a system of polity, utterly

incompatible with the existence amongst them of the marriage state. Without matrimony the existence of the common Hindu laws of inheritance was equally incompatible.

74. "Such, I apprehend, was the condition of the Nayrs under their ancient Governments; from which condition originated their customs of Inheritance through the Female Line, without reference to the Paternal Parent, a custom that has afforded matter for much speculative opinion.

75. "It is obvious from the nature of their professional duties, that their sexual intercourse could only have been fugitive and promiscuous; and that their progeny could never under such circumstances have depended on them for support. A Nayar arriving at an age fit to bear arms, considered it the extreme of disgrace to be any longer dependent on his own Family for subsistence. If there were no employment in his own country, he would seek for it in another. Men of their habits in those days could never have wanted employment. They must have been always in request, for the havoc of war fell chiefly on their race.

76. "Considering the interminable destruction to which they were thus liable, their Laws of Inheritance, and the privilege of Polyandry allowed to their females, will be found to have been admirably suited to their Social State. The Family Property though in general managed by the senior male member of the House was looked upon as rightfully belonging to the Females; for, without their unanimous consent, not an atom of it could be legally alienated. This affords another substantive reason for the attachment to jenm right. In the Zamorin's Family, the right of the Females in this respect is so fully recognized that the signature of the Senior Tamburatty to a deed of absolute sale is deemed indispensable in all alienations of the private, or Kelgum, Property. Whatever fortune or property a Nayar personally acquired in his career through life, reverted, on his death to his maternal estate.

77. "The Females of the Nayar race were thus insured the means of maintaining their children: their privilege in regard to Sexual Intercourse, afforded to the State the surety, if it may be so termed, of a numerous offspring; and the rigid interdict they were under against communion with any caste inferior to their own, preserved the blood from pollution.

78. "After the above disquisition on the State and Form of the ancient Government of the Malabar rajahs I must here remark that what may not therein appear supported by the voluminous recorded communications, which have been read by the Board, and on which they may have deduced the inference detailed in their Proceedings, is founded on the local information which a long residence and intercourse with the people, have enabled me to acquire. In a country where little remains but the Legends of Tradition to guide our researches, we are in a great measure left to form our opinions regarding its ancient History from the prevailing Institutions and Customs.

79. "The most singular Custom prevailing in Malabar is unquestionably that of Inheritance and I have stated the grounds of my opinion for attributing its origin to a state of Society arising from a Form of Government, purely military."

EXTRACT FROM WILKS.

Wilks, in his History of Mysore (Vol. III, Ed. 1817, page 4), gives the proclamation issued by Tippoo to the Nayars, on the occasion of his visit to Calicut, in January 1788:—

"And since it is a practice with you for one woman to associate with ten men, and you leave your mothers and sisters unconstrained in their obscene practices, and are thence all torn in adultery, and are more shameless in your connexions than the beasts of the field; I hereby require you to forsake these sinful practices and live like the rest of mankind."

Wilks mentions (page 6) that "several highly enlightened correspondents who have favored the author with the result of their personal observations, after a long residence in

Malabar, bear honorable testimony to the respectable conduct of the Nair ladies of Northern Malabar." As regards South Malabar he says:—"If after a short cohabitation, the lady disapproves the choice of *her parents* (*sic*) she is at liberty to make her own, by accepting a cloth from the man of her own selection, and declaring in the presence of four witnesses that she discards her husband, and accepts the donor of the cloth; and this she may repeat as often as the donor of a new cloth can be found."

EXTRACT FROM "HISTORY OF HYDER SHAH, AND OF HIS SON, TIPPOO SULTAN."

By M. M. D. L. T., GENERAL IN THE ARMY OF THE MOGUL EMPIRE. REVISED AND CORRECTED BY HIS HIGHNESS PRINCE GHOLAM MOHAMMED, THE ONLY SON OF TIPPOO SULTAN.

(Ed. 1855, Page 60.)

"The Nayres are the nobility of the Malabar Coast. We may affirm that they are the oldest nobility in the world; for the ancient writers mention them, and quote the law that permits the Nayre ladies to have many husbands; every one being allowed four. Their houses which stand single have as many doors as the lady has husbands. When one of them visits her, he walks round the house, striking with his sabre on his buckler; he then opens his door, and leaves a domestic with his arms in a kind of porch, and who serves to inform others that the lady is engaged. It is said one day in the week, the four doors are all opened, and all her husbands visit her and dine together with her. Each husband gives a sum of money, or portion, at the time of marriage, and the wife only has the charge of the children. The Nayres, even the Samorin and the other princes, have no other heirs than the children of their sisters. This law was established that the Nayres having no family, might be always ready to march against the enemy. When the nephews are of age to bear arms, they follow their uncles. The name of father is unknown to a Nayre child. He speaks of the husbands of his mother, and of his uncles, but never of his father."

EXTRACT FROM "MALABAR UND DIE MISSIONSTATION TALATSCHERI."

By CHRISTIAN IRION.

(Printed at Basel, 1864.)

* * * * *

Page 12.—Next to the Temples and Brahmans these Nayars have now a share in the possession of land; but this, you may be sure, in such a way that no damage may accrue through them to Brahman interests. For instance, the family-property, or entailed estate belongs to the woman, *i.e.*, to the mother, or to the eldest sister who manages the household. These women, as has been already indicated, are willingly yielded to the voluptuousness of the Brahmans; or as the sixty-four Abuses express it:—"The Sudra women are not house-wives (*haus-weiber*) but class-wives (*klass-weiber*); sexual intercourse with men of the privileged castes does them no dishonour, rather honours them, so that through the women the most intimate mingling of the Sudras with the Earth-gods is effected. For a Sudra maiden the marriage ceremony is performed by some Brahman, before she attains to puberty. The priest (*sic*) will be dismissed with presents after a day or two. While she still continues living in her mother's house with her brothers, her uncle looks out as high a match as possible for her; that is to say, she receives visits from young Brahmans or Nayars, one of whom undertakes to provide her with clothing, and brings also oil for anointing, and festal presents. So long as it pleases them both, this union continues, and the children look upon the house in which they are born as theirs, and upon their mother's brother as the guide of their youth, and as the person from whom they will eventually inherit.

In Nayar language, he who feeds is the house-master (*haus-herr*), he who clothes is the paramour. The father can only give to those whom he supposes to be his children his self-acquired moveable property: all inherited property belongs to his sister's children."

(Note.—The above is a translation from a German pamphlet. The Rev. C. Irion was a German Missionary of the Basel Lutheran Mission, and had laboured in Malabar for nearly twenty years before the pamphlet was written.—H. M. W.)

EXTRACT FROM MATEER'S "THE LAND OF CHARITY."

(Ed. 1870.)

(Note.—The author was a missionary in Travancore, and wrote after nine years' experience, "wholly occupied in vernacular labours amongst the natives.")

Page 30.—To keep down the numbers of this caste, (the Nambudri Brahman,) the eldest son alone in a family is allowed to marry in regular form with a female of his own caste. The others form such temporary connections as they may find convenient, and are usually welcomed by the females of the Sudra caste, who regard it as a high honour to receive the visits of a Namburi. Should the eldest son have no issue, the second marries, and so on till the object is attained.

* * * * *

Page 36.—Amongst the Nairs there are several sub-divisions with their distinguishing titles and characteristics, and their respective gradations of caste pre-eminence.

The four castes of goldsmiths, brassworkers, blacksmiths, and carpenters form the lowest sub-division of the Sudras.

The Nair customs with respect to marriage are of a most singular and licentious character. In early youth the girls go through the ceremony of marriage by having the "tâil," or marriage cord, tied round her neck, but this is not followed by cohabitation. It is a mere formality, and simply sets her at liberty to exercise and follow out her own inclinations in more mature years. When arrived at a marriageable age, suitors present themselves, and the favoured individual offers to the young woman a cloth and other presents, and either resides with her or visits her at intervals in her brother's house. This is called "mundu koduthu pârp-pikka," "giving a cloth and residing together," and is the only practical substitute for marriage amongst these people. But this form cannot be regarded as constituting marriage in any true sense. It differs widely from the marriages of the Brahmans and Shanars, inasmuch as the engagement is not binding upon either party longer than they choose, and is readily dissolved. The woman is at liberty to dismiss the man or, the man to dismiss the woman, on very easy terms. A settlement of accounts as to presents, expenses of marriage, ornaments, &c., and a deed of separation, drawn up and signed in the presence of four witnesses of the same caste, completely dissolves this trivial connection. Many of these alliances are of course continued throughout life, but great evils result from the facilities afforded for change. Formerly, too, it was common for Nair females, while residing at their brother's house, to receive more than one visitor of the male sex, nor is this altogether unknown at the present day.

Mr. Mateer after stating that the third great sub-division of the population numbered 321,126, thus proceeds to describe it:—

Page 38.—The Ilavars and Shanars differ but little from one another in employments and character, and are, no doubt, identical in origin. The Shanars are found only in the southern districts of Travancore between the cape and Trevandrum; from which northwards the Ilavars occupy their place. These are the palm-tree cultivators, the toddy-drawers, sugar

manufacturers, and distillers of Travancore. Their social position somewhat corresponds to that of small farmers and agricultural labourers amongst ourselves.

The term Ilavar is derived from *Ilam* a native name for Ceylon. The tradition is that they are immigrants from that island, who came over at the request of some of the early settlers on the western coast. They are also called Choganmar or serfs, and in other parts of the Malabar coast Teeyars and Billavars. Their labours are chiefly bestowed on the cultivation of the cocoanut palm, and the manufacture of its various products. Many own or rent small plots of land, on which they cultivate a few trees and a small supply of kitchen vegetables, and some of them are in comfortable circumstances. They draw the fresh sap from the cocoanut palm, which is used as a drink, either fresh or fermented. It is also boiled into a coarse sugar, from which they distil the native spirit called "arrack."

The Sudra custom of a man and woman living together as husband and wife, with liberty to separate after certain settlements and formalities, has been adopted by most of the Ilavars, and by a few of the Shanars in their vicinity; and among these castes also the inheritance usually descends to nephews by the female line. A few divide their property, half to the nephews and half to the sons. The rule is that all property which has been inherited shall fall to nephews; but wealth which has been accumulated by the testator himself may be equally divided between nephews and sons. Some portion is usually left to the widow as a kind of legacy. She may, however, have received some property from her husband during his life, by deed of gift, or may have secretly accumulated her savings in anticipation of widowhood.

These strange customs have sometimes occasioned considerable difficulty to missionaries in dealing with them, in the case of converts to Christianity. Persons who have been living together after the observance of the trivial form of "giving a cloth" are of course required to marry in Christian form. The necessary inquiries are therefore made into their history and into the circumstances of each case of concubinage; deeds of separation, drawn up according to the heathen law, are read and examined, and all outstanding claims are legally settled. Many an hour have I spent along with my native teachers in such investigations. The ordinary form of divorce deed will be seen from the following translation of one in my possession:—

"This unalterable deed of separation is written and given by (woman) Valli Máthi, of Pandáratopu, in Neyyáttunkara District to (man) Mallan Changili, of Valiavilai, in Kotukkal District, on this 10th day of Veigasi month, M. E. 1034."

"Valli Máthi was married to Mallan Changili and resided with him for some time. Afterwards she refused to live with him, and went to her relatives to reside. Shortly after, she was taken as wife by one of her cousins and cohabited with him. When the former husband, Mallan Changili went and invited her to return she refused; and on his asking her to repay him the expenses incurred by him in marrying her and to sign a deed of separation, so that he might take another wife she consented to do so, on condition that he made an allowance for her support. Accordingly the expenditure was inquired into and settled and what was due to her was paid. She now signs this deed, saying, from this day I give liberty to Mallan Changili to marry or take as a wife any woman he chooses, according to caste rule, and she may inherit his property and debts, firewood and pots, and all that belongs to him.

"But should either I or my children, contrary to this agreement, make any claim hereafter on the property of Mallan Changili, the case, with this document, may be reported to the court, whose decision I shall obey, and again submit to the above terms.

"Witnesses,—

"Mallan Karuman.

"Mátandan Káli."

(Signed) VALLI MATHI."

(Note.—The above deed of separation would be very interesting if it was certain that the parties to it were governed by Marumakkathayam law, as Mr. Mateer appears to sup-

pose. The parties to it were Shânâr, many of whom admittedly follow the ordinary law of marriage and inheritance. The exclusion of the children contemplated in the last para. does clear up the doubt, because the provision may have been intended to apply to children born after the divorce. It is not stated that the woman had already any issue.—H. M. W.)

EXTRACT FROM "MADRAS CENSUS REPORT, 1871."

By SURGEON-MAJOR CORNISH, F.R.C.S., SANITARY COMMISSIONER FOR MADRAS.

(Ed. 1874, p. 350.)

The Namburi Brahmans may marry as many as seven wives: but should a bridegroom wed a girl after the age of puberty he exacts a considerable dowry. The younger cadets of the family do not marry as a rule, but cohabit with Nair woman, and the Nair females esteem the honour of such alliances highly. The Puttar Brahmans are foreigners, who have settled in Malabar, and far outnumber the Namburis being as 11,072 to 7,227.

The cultivating castes, elsewhere entered as Vallâlars, are here called Nairs. They held their land in former days on military tenure from the Brahmans. These Nairs constitute—

"The principal body of the Hindus in Malabar, and possess and cultivate the larger portion of the land." "In their personal habits the Nairs are clean. The women wear their hair in a singular fashion, drawn up in a large knot on one side, or on the top of the head. The women clothe themselves in a single cloth, often of a slight texture reaching from the waist to the calf of the leg. Abroad they wear over the shoulders, or cover their bosom with, another similar cloth, but in the house they generally put this aside. They deem it no shame to expose to the gaze of men the whole of their person as low as the navel."

The Nair women of Southern Malabar do not reside with their husbands, and until very recently held these peculiar doctrines of "free love," or of entertaining their lovers only so long as both were mutually satisfied, which seem to possess such fascinations for some classes of our American cousins. It is said, however, that the practice is now dying out. Inheritance among these people descends in the female line, as from their peculiar domestic relations no man is able to say who his father is.

EXTRACT FROM "REPORT ON THE CENSUS OF TRAVANCORE" BY V. NAGAM IYER, B.A., DEWAN PEISHKAR.

Published 1876.

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Page 226—A Nair's family or "Tarwad" consists of his uncles, brothers and sisters and his sister's children. Owing to the loose nature of the marriage contract, which is almost a necessity induced by the practice prevailing in Namburi families of only the eldest male member marrying, the others having to seek wives from among this class, no man is able to look upon his wife's children as his own, and hence he centres his interest and his affection in the children of his sisters whom he regards as his own. These children are his Anandravars, (literally, those who come after: 'anantharam'—afterwards and 'aver' they) heirs to his property and to his person (*sic*) after death. They have the sole right to all property left by the Karanavan (both uncle and elder brother are included under this term) whether ancestral or self-acquired. The funeral obsequies are also performed by the heirs in preference to sons, who also in some places perform such rites. This system of succession though intended at first as an innovation upon the customs of foreign countries seems to be defended on the score of preponderance of the female element in man (*sic*). It is argued that a man is more represented in his sister's offspring than in his own by a woman of foreign blood.

Though his wants are few and those generally such as can be easily satisfied, the Nair cannot be said to be parsimonious in his expenses. The construction of a house, and the marriage ceremonies (tying of Tâli) of his nieces are the engrossing cares of every respectable Nair and oftentimes exhaust the earnings of a lifelong labour.

Every Nair girl must go through this ceremony at an early age. After the day and the auspicious hour for the marriage have been determined upon, the erection of the marriage

Pandal * commences, the decoration of which is in cases of affluent families magnificent, and forms an important item of the marriage expenditure.

* Booth.

On the day of the marriage the relatives, friends and neighbours having arrived, the Tâli is tied round the girl's neck at the auspicious moment accompanied by the usual complement of drums beating and musicians playing, amidst the deafening halloos of the assembled women. The invited party are then given betel and nut in the order of rank and importance, and treated to a rich and varied banquet. The ceremony lasts four days, but the period of mirth and rejoicing varies with the respectability of the family. The 'Tâli' however is not necessarily the badge of married life and does not possess the importance which it has in the eyes of foreigners. The person who ties it on the girl's neck is not her husband and cannot claim to receive her favours in after life. The Tâli must be tied either by an Eliathoo, Tiruvapaud or Cholia Patter, if the girl is of a very respectable family, or by any member of their own kindred who are known as Yenangar എനാങ്കർ or Machambis മാചംബിസ്. The Tâli tier is sent off with a suitable present at the conclusion of the ceremony.

When she attains the age of puberty she chooses her husband of her own free accord, which, however, is not circumscribed by any restriction of rank, wealth, or importance, so long as she confines her favours to a class not below her own. In token of her choice she receives a Mundoo from the man, which is done in the presence of relatives and neighbours, and constitutes the cloth-giving ceremony. The understanding thus induced between the parties cannot be enforced for any length of time on either side, but is dissolvable at pleasure.

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Page 224.—"Among Brahmins of Southern India the women appear in public as in Europe. The Namburi women of Malabar are however an exception to this practice. They observe strict rules of seclusion. This was probably an imposition upon them by Parasu Rama, when he colonized the country with a tribe of Brahmins, men and women, from Upper India, and was anxious that they should not go back to their native land. This and numerous other restrictions of which mention has been made, at large, in another portion of this report, answered his purpose very satisfactorily by cutting off all sympathy with their own kith and kin in the far north, from whom they were estranged in manners, life and dress. Among other classes of the Hindu community seclusion is altogether unknown. The women appear in public; they enjoy in company with men the amusements of the theatre or public shows; visit the museum or the park; appear before native officers of Government and Courts of Justice; form the principal part in all the marriage processions; visit the temples of the Gods; and bathe with little secrecy or precaution in the river. So much for Hindu women in general.

"The Privileges of Women on this Coast.—In Travancore however they are on a much better footing than in any other Province of India. Women are here allowed to rule the country. During their reigns they preside on public occasions, interview with Foreign Ambassadors and State Officers and otherwise administer the affairs of the country. The peculiar law of succession and the nature of the marriage contract, which is simply another name for free love, render the females the sole proprietors of their household in which the males are as a matter of course—*non est*. This is the case in nearly half the number of houses in the country.

"Accustomed to bear the most important part in the management of the household, and flattered by the good fortune which surrounds her, the Nair lady is distinguished by an

air of dignity, politeness in manners, and freedom in her intercourse with the other sex, which when added to a little personal prepossession, and a few literary attainments, render the women of this coast so proverbially attractive.

"The Nair females are remarkable for their accomplishments. Reading and writing are essential with every respectable Nair girl. Vocal music, and occasionally practice on musical instruments, are also considered becoming qualifications, and are very generally acquired. If the freedom of women is an index of civilisation as we so often hear it stated, then Travancore is decidedly the most advanced country in the world, for here the women enjoy the greatest liberty possible. Of the total educated women in the country (5,377) 2,656 belong to this class. That is there are 119 educated in every 10,000 Nair women."

EXTRACT FROM McLENNAN'S "PRIMITIVE MARRIAGE."

(Ed. 1876, pages 147-148.)

"Of the Nair Polyandry, we have three accounts. The account in the Asiatic Researches (vol. v, page 13,) is, that among the Nairs, it is the custom for one woman 'to have attached to her two males, or four, or perhaps more, as they cohabit according to rules.'—With this account, that of Hamilton agrees, (Account of the East Indies, vol. i, page 308), excepting that he states that a Nair woman could have no more than twelve husbands, and had to select these under certain restrictions as to rank and caste. On the other hand Buchanan states (vol. ii, page 411,) that the women after marriage are free to cohabit with any number of men, under certain restrictions as to tribe and caste. It is consistent with the three accounts, and is directly stated by Hamilton, that a Nair may be one in several combinations of husbands: that is, he may have any number of wives."

(Note.—The article in the Asiatic Researches above quoted is by Mr. Jonathan Duncan, and bears date 1798. Mr. Duncan was President of the first Malabar Commission appointed in 1792, and was afterwards Governor of Bombay.—H. M. W.)

EXTRACT FROM "REPORT ON THE CENSUS OF NATIVE COCHIN"

TAKEN 20TH JULY 1875. BY A. SANKARIAH, B.A., DEWAN PEISHKAR.

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Page 37.—"The state of society among the Malabar Sudras is in some measure peculiar to it. At least, the economy of a Nair family differs from that of almost any other people in the world."

A family here consists of a mother and her offspring, and their descendants in the female line, at the head of which is the eldest male member called Tarawattil Kārnavan. The women pass through the religious rites of marriage in the same way as all other Hindus, but they are united then to a symbolical husband and not to a particular individual.

"Avoiding the miseries of widowhood on the one hand, and of the legal restraints imposed by the stronger sex of 'coverture' and 'conjugal rights' on the other, they live in a state of free love in the domicile of their origin. The freedom of choice and of divorce may be liable to abuse, but many a man is wont to make the concubine the companion of his life, and to treat her and the issue with unflinching kindness, as if the law and church had sanctioned the alliance, and placed the woman's person and property at his exclusive control."

The superiority of the Malabar Sudras over their cousins of the other parts of India is undisputed, whether in respect to make and complexion, or intelligence and manliness. This is clearly traceable to the comparative freedom and independence of the females, and their association with the Brahmins.

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Another advantage of the Marumakkathāyam system is seen in the happy state of union amongst brothers and sisters, which preserves the family property from division for successive generations. To use the words of a novelist, the chemical affinity which began in the cradle and strengthens with every year of life is not here dissolved by the introduction of that third element, which makes of the brother a husband, while the new combination casts out the old sometimes in a disagreeable effervescence.

Now-a-days some unreasoning prejudice seems to be setting against it which is doubtless due to the influence of the adherents of the rival system; and parents too often contrive to make provision for their children at the expense of the peace and comfort of their own Tarwads.

(Note.—According to Mr. Sankariah "the revival of the Kshatria families was effected by the connection of the Brahmins with their fair"; and the "Royal families of Cochin" (he remarks) "thus preserve their pure blood," i. e., as Buchanan more coarsely puts it, by the ladies "submitting themselves to be impregnated by Nambudris."—H. M. W.)

EXTRACT FROM "A HAND-BOOK OF TRAVANCORE."

Printed at the Keralavilasam Press, Trevandrum, 1881.

(Note.—This compilation is anonymous, but the author is believed to be a Nayar official.—H. M. W.)

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Page 111.—"Malayala Sudras who go under the broad name of Nairs of Malabar form the bulk of the nation numbering 440,932 persons. They constitute the agricultural portion of the population, the whole landed property of the kingdom being cultivated by them as tenants to the Namboori Brahmin land-lords who are known as the Jenmis of Malayalam.

"The majority of them are even to this day the tenants of the Jenmis who live remote from towns and cities and far away from the busy walks of life. They pay their customary homage and treat their Jenmi as liege lord.

"In Travancore, the Nairs are generally known by the name of Malayala Sudras. The term Nair is also of common occurrence.

"The different classes under this broad nomenclature are numerous. Neither the Brahmins nor the Sudras of Malabar are the aborigines of the land, but, as already observed, they were colonies brought here for peopling the newly reclaimed Kerala. Such innovations of customs and manners were introduced among them that they may be alienated from their brethren in their native land.

* Top-knot. "The most striking feature of dissimilarity is the position of the Kudumie,* which, with them, is on the crown of the head. Strong attachment to the land is the characteristic of the Travancoreans. A writer says that the Nair family or Tarawad consists of his uncles, brothers, sisters and sisters' children owing to the loose nature of the marriage contract which is almost a necessity induced by the practice prevailing in Namburi families of only the eldest male members marrying, the others having to seek wives from this class.

"I cannot but point out for the edification of the above writer that the family consists of uncles, brothers, sisters, &c., not on account of the looseness of the marriage contract, but on account of the peculiar law of inheritance imposed on them by the sage Parasu Rama. They justly honor and reverence this law as it is of Divine Origin and as all other nations do with the laws which are sacred to them. The so-called marriage among Nairs is as sacred as it is to all other nations.

"Again this learned writer proceeds to say that no man is able to look upon his wife's children as his own and hence he centres his interest and his affection in the children of his sisters whom he regards his own.

"The above statement again is as absurd as anything could be. Every Travancorean looks upon his children as his own, as is done by all the other nations. A little more experience among the respectable families would have convinced the writer of the absurdity of his statement. In all respectable families, a father, during his life-time, gives enough to his children. He loves his children as his own and he is able to look upon them as his own. If there be any doubt, that doubt is common to all other nations. In most families, after the father's death, the wife and children receive maintenance from his Tarawad. After his death, heirs to his property and to his person after death are his Anandravars. They have the sole right to all property left by the Karanavan (both uncle and elder brother are included under this term) whether ancestral or self-acquired. The funeral obsequies are also performed by the heirs in preference to sons who also in most places perform such rites conjointly. This system of succession intended at first as an innovation upon the customs of foreign countries is defended on the score of its Divine origin having been imposed on them by Parasu Rama.

"Though his wants are few and those generally such as can be easily satisfied, the Nair cannot be said to be parsimonious in his expenses. The construction of a house and the marriage ceremonies (tying of Tâli) of his nieces and daughters are the engrossing cares of every respectable Nair and oftentimes exhaust the earnings of a life-long labor of a poor family.

"Every Nair girl must go through this ceremony at an early age. After the day and the auspicious hour for the marriage have been determined upon, the erection of the marriage pandal commences, the decoration of which is in cases of affluent families magnificent, and forms an important item of the marriage expenditure. On the day of the marriage the relatives, friends and neighbours having arrived, the Tâli is tied round the girl's neck at the auspicious moment accompanied by the usual complement of drums beating and musicians playing, amidst the deafening halloos of the assembled women. The invited party are then given betel and nut in the order of rank and importance, and treated to a rich and varied banquet. The ceremony lasts four days, but the period of mirth and rejoicing varies with the respectability of the family. The 'Tâli' is necessarily the badge of married life and does (sic) possess the importance which it has in the eyes of foreigners. The person who ties it on the girl's neck is not her husband and cannot claim to receive her favours in after life. The Tâli must be tied either by an Eliathoo, Tiruvapaud or Cholia Patter, if the girl is of a very respectable family, or by any member of their own kindred who are known as Yenangar or Machambis. The Tâli tier receives suitable presents at the conclusion of the ceremony, and in some cases becomes her husband. If not, when she attains the age of puberty, her parents or uncles choose for her a husband and she accepts him. In respectable families the selection is circumscribed by restrictions of rank, wealth and importance. Even in poor families, no one below their own class is chosen. In token of this alliance, the girl receives cloth from the man in a silver Tambalum at an auspicious hour, and this is done in the presence of relatives and neighbours. This is called the cloth-giving ceremony. The understanding thus brought about between the parties lasts to the end—in all respectable families dissolution being of very rare occurrence. In cases where they are unable to procure suitable husbands they have recourse to the Numboories. It is only in towns, and among the lower orders, that the girl herself chooses her own husband and dissolves the union at her or his pleasure.

"In some cases cloth-giving ceremony takes place before the girl attains her age of puberty in which case her husband conducts the ceremonies in connection with the latter. It is also at his expense that the Valakappu and Punkala ceremonies in the 7th month of her pregnancy are performed. Nothing of the customs and manners of the Sudras can be gathered from what takes place in such large towns as Trevandrum, Quilon, Alleppy, &c. In such places very few respectable families are seen. The great bulk of them live like the Numboories in

country parts. Only personal observation and local experience can enable a writer to write on their customs. It is therefore a matter of no great surprise that learned gentlemen should write on such subjects and draw their conclusions (which are laid down as applicable to the whole class irrespectably) from the life of the dregs of the population in the towns.

"If a Numboori gives cloth to a Nair girl the alliance is not dissolved at their pleasure, but only at the death of either of the parties. The issues by such a marriage are brought up, supported and educated by the Namboori father himself. He looks upon such children with pride and gives them sufficient property for their support. Circumstances may bring about dissolution of marriage among Nairs. But this is no uncommon thing in other countries also. Among Pandya Brahmins marriages are often dissolved. Innumerable instances may be cited if necessary.

"The prevailing practice among the Nairs is therefore not subject to criticism as is often done by those of other castes.

"Both men and women wear a piece of cotton cloth 4 or 5 cubits in length by 3 in breadth which is just enough to be wrapped round. The upper cloth of males is a Nariathoo which is generally tied round the head when they walk out. Their women do not generally cover their bosoms while at home, except in respectable families, nor do they do so outdoors in North Travancore. Civilization is steadily advancing from the south, the effects of which are clearly discernible in Trevandrum, there being not one Nair girl here who will walk out without an upper cloth.

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"Malayala Sudras amount to 19 per cent. of the population. There are numerous sub-divisions among them, so nice and capricious that the men and women of one caste will not eat meals prepared by the members of another, nor sit for eating together in the same row, though there is no objection to eat in the presence of those of other castes."

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EXTRACT FROM WIGRAM'S MALABAR LAW AND CUSTOM.

Edition 1882—page 3.

"All European writers, Lubbock, Mayr, McLennan and others agree in the conclusion that the system of inheritance in the female line prevalent among the Nairs could only have originated from a type of polyandry resembling free love. The ancient rule was that the woman should remain in her own house and be visited by her husband, and that the eldest female in the house should be the head of the house.

"Time has brought modifications in the system, and in Malabar, though not in Canara, the eldest female has given way to the eldest male.

"The wife sometimes has a separate house provided for her, where she lives with her husband. Perhaps no stronger argument could be adduced of the existence of polyandry among the Nairs in ancient times than the fact that to this day the term *Son of ten fathers* is used as a term of abuse among them."

(Note.—Another very common term of abuse used by Mappillas to Nairs is "*drândé maganê*"=nobody's child.—H. M. W.)

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"But polyandry may now be said to be dead, and although the issue of a Nayar marriage are still children of their mother rather than of their father, marriage may be defined as a contract based on mutual consent and dissoluble at will. It has been well said that nowhere is the marriage tie, albeit informal, more rigidly observed or respected than it is in Malabar. Nowhere is it more jealously guarded or its neglect more savagely avenged.

"There are some who would argue that polyandry, if it ever did exist, was introduced by the Brahmans for their own selfish ends, and that the *Kaliyanam* ceremony which every Nayar girl performs before attaining her puberty, but which has no relation whatever to the real marriage, indicates a period when marriage was, as elsewhere in India, a religious institution.

"It seems to me that the *Kaliyanam* ceremony was probably introduced by the Brahmans. It is admittedly a mere formal ceremony. By it the so-called bridegroom incurs no liabilities and acquires no rights. I am quite ready to admit that, but for the Brahmans, all traces of polyandry would long since have disappeared, and that the Brahmans encouraged concubinage between the younger members of their family and the Nayar women for the purpose of maintaining the impartibility of their estates."

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Page 5.—"The Sudras willingly submitted their females to the embraces of the Brahmans, and the custom of securing Brahmin husbands for the females of the Royal families and petty chieftains of Malabar, continues to the present day."

(Note.—Mr. Wigram was District Judge of South Malabar from 1875 to 1882.)

EXTRACT FROM REPORT ON IMPERIAL CENSUS OF 1881, BY LEWIS McIVOR, C.S., 1883.

Vol. I.—Page 257.

"It was at one time the fashion to deny the name of marriage to the unions of the Malabar Hindus, but a more intelligent appreciation of the facts has exploded that slander."

(Note.—Mr. McIvor never served in Malabar, and it is not apparent what facts, elicited by the Census, he considered to warrant the above courageous utterance.—H. M. W.)

EXTRACT FROM "THE MANUAL OF MADRAS ADMINISTRATION,"

BY C. D. MACLEANE, MUS. DOC., M.A., C.S.

Edition 1885, Pages (111) and (17).

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(6). *The Nayars of the West Coast*.—This is the common appellation of the ordinary Dravidian middle class of Malabar. The greater portion of the land is in their hands. They hold most of the Government offices and they form the wealthy farmers, merchants and skilled artisans of the country. The reigning families of the West Coast are members of this caste. Nayar means lord, chief, or master. Amongst the Nayars there are several sub-divisions with their distinguishing titles and characteristics, and their respective gradations of caste pre-eminence. The Nayar customs with respect to marriage are of a most singular character. In early youth, the girl goes through the ceremony of marriage by having the "talee," or marriage cord, tied round her neck, but this is not followed by cohabitation. When arrived at a marriageable age, lovers present themselves, and the favoured person offers to the woman a cloth and other presents, and either resides with her, or visits her at intervals in her brother's house. This is called "giving a cloth and residing together" and is the only practical substitute for marriage amongst these people. The engagement is not binding upon either party longer than they choose and is readily dissolved. The woman is at liberty to dismiss the man, or the man to dismiss the woman, on easy terms. A settlement of accounts as to presents, expenses of the marriage, ornaments, &c., and a deed of separation drawn up and signed in the presence of four witnesses of the same caste dissolve the connection. Many of these alliances, however, are continued throughout life. This custom is evidently the survival of polyandry; a system first tolerated in the absence of a sufficient check on the woman, and then constituted

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a national custom with the attendant consequences. From the marriage customs arises the law of inheritance or Maroomakatayam, mentioned several times in these volumes. The children of a Nayar woman inherit the property, or rights, not of their father, but of their mother's brother. They are their uncle's nearest heirs and he is their legal guardian. So it is also in the succession to the throne in reigning families. In conjunction however with the system of descent "ab utero" is that of the undivided family, so that although the woman's son inherits, he only inherits his share in that undivided family, in other words his right to maintenance. As a further result of these two customs combined, it follows that with the last female a family ceases to have the power of continuance and with the last male thereafter dies out. Escheats to Government frequently arise from this. The custom of polyandry itself is regularly practised by carpenters, stone masons, and individuals of other occupations. This is usually done amongst brothers. Several brothers living together are unable to support a wife for each and take one amongst them, who resides with them all. The children are reckoned to belong to each brother in succession, in the order of seniority. The peculiar usages of the Nayars give to their females considerable social influence and liberty of choice and action. Most of them know how to read and write. This class of people cherish a most tenacious attachment to their native locality and country and are rarely known to engage in travel or to migrate to other parts of India. They were once trained to the use of arm, carried a sword and shield and were noted as warriors. They are exceedingly able in the management of business affairs.

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Page (17).—The Nayars themselves are a remarkable body. In the Hindoo system they are classed as Soodras, though they rank immediately under the Brahmans, the intermediate classes being here wanting. Indeed they are manifestly equal in dignity with the Kshatriyas of North-Western India. Their most peculiar characteristic consists in the arrangement with regard to females. These are married at ten years of age and have an aliment transmitted to them by their husband (*sic*), whom they must not however see or hold intercourse with; a single instance of such connection would be considered scandalous. They reside with their mother, and after her death with their brother; they are allowed and regard it an honor, to attract as many lovers as possible, provided they be of equal or superior rank. It is thus considered a ridiculous question to ask a Nayar who is his father. The only real parentage rests with the brother of the wife, whose children are considered as belonging to him, and to whom all his property and titles are transmitted; for the sister's children must be in one degree consanguineous, while the wife's children may not be in any.

EXTRACT FROM THE IMPERIAL GAZETTEER OF INDIA.

BY W. W. HUNTER, C.S.I., C.I.E., LL.D.

Vol. IX—p. 227—Ed. 1886.

"The marriage customs of the Nairs are in many respects peculiar. For a long time it has been supposed that polyandry was a national practice among them; but a recent writer on Malabar law and custom asserts that although the issue of a Nair (Nayar) marriage are still children of their mother rather than of their father, polyandry is almost extinct, and marriage may be defined as a contract based on mutual consent and dissoluble at will. He states that it has died out in North Malabar, and only traces of it are found in South Malabar. It still survives in parts of Cochin and Travancore. In Malabar the form that exists is found only where Brahmin or Namburi influence is strong, namely, in Nedunganad or Cherpulsherri. Even there, no woman has more than two husbands; in Travancore she may have several. Formerly there was no difference as regards number between Native States and British Malabar, and a Malayalam drama is extant which describes with great humour the quarrels between the five husbands of a Nair lady in British Malabar and their subsequent reconciliation.

"Of such a woman the *tarwad* (or residence of all the descendants in the female line from a common ancestor) is the home. Here she receives any man she pleases, the only restriction being that her lover should not be of lower caste than her own. In British Malabar two brothers never marry the same woman—a connection thought not incestuous among the polyandrists of Tibet; neither may a man marry his deceased brother's wife on pain of expulsion from caste; nor may he marry two sisters. In North Malabar, the *tarwad* women generally live with their husbands throughout the year, only occasionally visiting their *tarwad* homes. In South Malabar, among the less wealthy families, the women live with their husbands for only half the year, spending the other half in the *tarwad* home. In the case of a Rájá or petty chief, the wife does not leave the *tarwad* at all. She is visited there by the husband. The Nairs maintain an extraordinary respect for relationship by descent through females. Caste excommunication would inevitably follow marriage between the children of sisters, or indeed between relations in the female line who are members of the same *tarwad*."

EXTRACT FROM "THE MALABAR MANUAL."

Ed. 1887.

By W. LOGAN, Esq., S.C.

(This Officer served in Malabar for over 20 years, and was Collector of the District for nearly 13 years.)

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Page 134.—"The most characteristic custom of the Nayers is connected with their marriages. Every Nayar girl is married in one sense at a very early age. The *tali* is tied round her neck before she attains puberty, and is considered to be disgraceful in her relations not to have this ceremony performed before that event takes place. The tying of the *tali* is a great event in each household, and frequently several girls go through this ceremony simultaneously. When this can be managed it enables the family to make a greater display than they would probably be able to afford if there was a separate ceremony for each girl. The marriage pavilion is in the case of influential families very often magnificent in its decorations, —bright coloured rows of columns supporting gothic arched or Saracenic roofs, resplendent in tinsel and colours, with an extremely ingenious and pretty device of domes revolving slowly at intervals and showering down at appropriate moments sweet-smelling flowers on the guests and bridal party. The auspicious day and hour are carefully selected beforehand in consultation with the astrologers; friends, relations and neighbours all flock to the ceremony, and at the selected auspicious moment the *tali* is tied round the girl's neck amid much tom-tomming and shrill music accompanied by deafening shouts from the assembled people. Then follows the usual distribution of betel and areca nut, and the guests afterwards sit down to a banquet. The ceremony is prolonged over four days in the case of well-to-do families. The strange thing about it all is that the girl is not really married to the man who performs the *tali*-tying ceremony. In the case of good families the man selected for this duty is usually either an *Ilayattu*, or an east coast Brahman, and in the case of others a man of their own kindred. After the ceremony he receives a suitable present and departs. When the girl comes of age he cannot claim her as his wife, nor solicit her favours in afterlife.

"After attainment of the age of puberty the girl chooses her real husband of her own free will, though in this she is often guided by the opinions of her elders. The man she selects is called the '*Gunadoshakkaran*,' *gunam* being good and *dosham* being bad and *karan* being the doer. This designation may be exactly reproduced by the phrase from the English wedding service in which the mutual contract of the parties is 'for better for worse, for richer for poorer.' The ceremony of instalment of her husband is exceedingly simple. All that is necessary is that the husband should give, and that the girl should receive, a cloth in the presence of relations and friends. If the pair are dissatisfied with each other the woman,

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in like simple fashion, returns the cloth and their connection thereupon ends. Sometimes a woman accepts the favours of many lovers, but this is generally now-a-days scouted by all respectable people, and the fashion is daily becoming more and more prevalent for the woman to leave her ancestral home for that of the husband of her choice, although, as matter of law, the husband occupies no recognized legal relation involving rights and responsibilities in regard either to his wife or his children.

"The statement that the younger cadets of *Nambútiri* families live with Nayar women merely reproduces in English the Malayali mode of describing the married life of these people and of the Nayers. It is part of the theory that the women they live with are not wives, that they may part at will, that they may form new connections. This part of the Malabar law has, in the hands of unenquiring commentators, brought much undeserved obloquy on the morality of the people. The fact, at any rate of recent years, is that, although the theory of the law sanctions freedom in these relations, conjugal fidelity is very general. Nowhere is the marriage tie—albeit informal—more rigidly observed, or respected, nowhere is it more jealously guarded, or its neglect more savagely avenged. The very looseness of the law makes the individual observance closer; for people have more watchful care over the things they are most liable to lose. The absence of ceremonial has encouraged the popular impression; but ceremonial, like other conventionalities, is an accident, and Nayar women are as chaste and faithful as their neighbours, just as they are as modest as their neighbours although their national costume does not include some of the details required by conventional notions of modesty.

"In former times, however, there was perhaps a better foundation for the popular impression. One Sheikh Zin-ud-din, the author of a work which in a more or less abridged shape has a large circulation, chiefly in manuscript, in Malabar, noticed the Nayar custom of marriage as one which they possessed distinguishing them from other races. He wrote about the middle and latter half of the sixteenth century. He seems to have had exceptionally good opportunities for observing facts. He said that each woman had two or four men who cohabited with her, and the men, he said, 'seldom' quarrelled, the women distributing her time among her husbands just as a Muhammadan distributes his time among his women. Hamilton, too, in his 'New account of the East Indies' (Edinburgh, 1727) wrote:—'The husbands' of whom, he said, there might be twelve, but no more at one time, 'agree very well, for they cohabit with her in their turns, according to their priority of marriage, ten days, more or less according as they can fix a term among themselves, and he that cohabits with her maintains her in all things necessary for his time, so that she is plentifully provided for by a constant circulation.' 'When the man that cohabits with her goes into her house, he leaves his arms at the door, and none dare remove them or enter the house on pain of death.' When she proves with child she nominates its father, who takes care of his Education, after she has suckled it, and brought it to walk or speak, but the children are never heirs to their father's estate, but the father's sisters' children are."

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Page 143.—"In North Malabar the caste (*Tiyar*) generally follows the *Marumak-katayam* system of inheritance, while in South Malabar the descent of property is generally from father to son. Not unfrequently, however, two brothers, or more even, marry one wife. If she have but one son the child is fathered on the elder brother.

"Both men and women of the North Malabar caste are remarkably neat in appearance, although, like the *Nayers*, their clothing both of men and women, is extremely scanty; and they are besides extremely careful as to personal cleanliness. The head-quarters of the caste may be said to lie at and round the ancient European settlements of the French at Mahé, and of the English at Tellicherry. The women are not as a rule excommunicated if they live with Europeans, and the consequence is that there has been among them a large admixture of European blood, and the caste itself has been materially raised in the social scale. In ap-

Much of the matter seems to be drawn from the abundant spring of a lively imagination, but it is interesting to have the views of a French author on Nair customs, even if the authority for his facts is not always apparent.

M. Reclus says, (page 162):—"Until now, we have believed the joys of paternity the sweetest and deepest of all delights. Here are men to whom they are unknown. We have believed paternal love a natural feeling: it is merely an acquired idea. Marriage, elsewhere, is or has been the taking possession of the woman by the man. The custom of Malabar (known as the Marrou Mokatayoum) is an exception to the rule; the nuptials are here interposed only to emancipate the woman, and introduce her into the world. She takes a master to gain independence; with the contract of servitude in her hand, she acquires personal liberty. Provided she wears her *tali* round her neck, she is free of conjugal bonds.

"It is not the first time that a symbol has been seen to transform itself into its opposite, an institution that has changed its nature and reversed its significance.

"The emancipated wife lives with her mother, or at a pinch with one of her brothers, unless she prefers to set up house-keeping for herself. She intends to lead a merry life and unite herself with whom she pleases, except with her lawful husband. That would be a slip for which public opinion would never pardon her. The first introductions are made by her mother and maternal uncle, her two protectors. In the North of Malayalam, which has advanced further towards the paternal family, it is not considered suitable for one lady to have more than one gallant at a time. But in the South, the customs of which I am more especially describing, the more admirers a woman has the more she is esteemed—four, five, six, seven; but not more than ten, or twelve. Everything has its limits. Reciprocal propriety demands that each shall be privileged guest for twenty-four hours, a week, a decade, or half a decade. Does the king of the hour desire to keep away visitors, to be rid of intruders? He hangs up his shield at the door or sticks his sword, or his knife there.—THEVENOT, *Voyage V.*—Every one knows what is meant.

"And what is to be done beyond the service of the queen? What one pleases. A man on duty for the week in one group is free to solicit the same office in any others; he presents himself, is accepted or refused, goes and comes, departs and returns. Where there is restraint there is no pleasure. The share-holders in these companies of floating capital contribute each man his quota towards the expenses of the establishment."

If a woman is at liberty to have her dozen of cavaliers, the cavaliers in their turn are free to have as many mistresses, amongst whom they share their stock of clothing, arms, horses (*sic*) and personal possessions. When a girl returns to her favourite, a robe with which he has presented her, he understands that his visits are to cease, and seeks his fortunes elsewhere.

"Thus each woman is the wife of several men, each of whom has in his turn several mistresses."

After narrating the fable "how the plains at the foot of the ghauts emerged from the sea at the command of Vishnu, who bequeathed them to his friends the Brahmins," M. Reclus proceeds:—

"But how might this lofty aristocracy (the Brahmins) unite itself to Nairs, scarcely worthy to humbly kiss its hands?"

"The law of Manu enjoined upon every pious man the duty of having a son, that the males of his ancestors might be sustained by funeral sacrifices. The law does not enjoin several children, but permits them, saying that the younger ones are the issue not of duty but of pleasure.

"Well, our holy men, (the Malabar Nambudris) have devoted this supererogatory progeny to the salvation of the inferior classes. As the transmission of the priestly office is from the first born to the first born, they marry the eldest son according to the sacred rites. As for the younger sons they do not perpetuate the race, do not enter into 'lawful marriage,' but are good enough to contract temporary unions with 'strange women'; they honor some few daughters of the inferior race with their benevolence.

"A Brahmin will give offspring to a Nair woman; never a Nair to a daughter of the Brahmins.

"Great families would believe their importance impaired if each generation did not bring them an influx of consecrated blood. Gratefully, they accept of the services of junior priests, sons-in-law who come to furnish well-endowed uncles with heirs."

"Pedro Cabral recounts that at Calicut each of the two royal consorts received the attentions of ten Brahmins; a smaller number would have been beneath the royal dignity."

"Here the whole population solicits the Cuckoo. After the lesser nobility, village chiefs put in a claim, large proprietors will not be forgotten, still less the wealthy middle class. The men of God do what they can; it is enough."

"One of these Brahmins complained to Missionary Weitbrecht of having no less than ten wives on his hands."

"It was thus that the Brahmins continued to dominate, by means of religion, a people who had nevertheless succeeded in throwing off their political yoke. Their sons are princes; their bastards hold the royal sceptre."

(True Extracts.)

H. M. WINTERBOTHAM,
Collector of Malabar,
On Special Duty.

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APPENDIX II.

TO THE

REPORT

OF THE

MALABAR MARRIAGE COMMISSION.

(List of 474 persons to whom Interrogatories were sent.)

List of persons who sent in Answers to the Interrogatories of the Malabar Marriage Commission.

* Note.—The asterisk denotes that the individual was also examined in person before the Commission.

Serial No.	Name.	Taluk.	Amsam.	Description.	Caste.	Whether answers printed.	REMARKS.
1	Oyiti Raman	Chirakkal	Puzhathi	Pensioned Tahsildar	Tiyan.		Witness No. 49.
2	*Manikkoth Kannan Nambiar	do.	Azhikod	Law Student	Nayar.		do.
3	Kottiath Choyi	do.	Puzhathi	Municipal Councillor, Cannanore	Tiyan.		72
4	*M. A. Kunhi Kelappan Mannanar.	do.	Kanhiyari	Stani and Janmi	do.	Printed.	40.
5	Kariyan Ramunni	do.	Puzhathi	Pensioned Tahsildar	do.		
6	Rayimangalath Sridharan Thirumumbu	do.	Eramam	Janmi	Brahman		
7	Varikkaré Padinhare Vittel Chandu Nayar	do.	Kunhimangalam	Janmi: Tellicherry Taluk Board Member	Nayar.		1.
8	*Kottiath Ramunni	do.	Puzhathi	1st Grade Pleader, Tellicherry	Tiyan.	do.	38.
9	*T. Rama Poduvil	do.	Taliparamba	2nd Grade Pleader, Taliparamba	Ambalavasi.	do.	26.
10	*P. Kunhampu	do.	Puzhathi	do. Cannanore	Tiyan.		
11	V. P. P. Kannan Nayar	do.	Kunhimangalam	do. Taliparamba	Nayar.		
12	M. Krishnan B. A.	do.	Puzhathi	Malayalam Munshi, Presidency College, Madras	Tiyan.		
13	U. P. Damodaran	do.	do.	Sub-Registrar, Tamercherri	do.		
14	T. V. Anantan Nayar B. A. B. L.	do.	Azhikod	District Munsiff, Parappanangadi	Nayar.	do.	44.
15	K. Raman	do.	Palayad	Police Inspector, Cannanore	Tiyan.		
16	*Raman	do.	Puzhathi	Head Constable in charge of Land Customs, Mahe	do.		
17	Govindan	do.	do.	Deputy Tahsildar, Kuthuparamba.	do.		
18	unni	do.	do.	Sea Customs Superintendent, Badagara	do.		
19	do	do.	do.	Deputy Tahsildar, Tangacheri	do.		
20	do	do.	do.	Tahsildar, Ponnani	do.		
21	do	do.	do.	Deputy Tahsildar, Betatpudiyan-gadi	do.		
22	Nambiyar	do.	Azhikod	2nd Grade Pleader, Cannanore	Nayar.		24.
23	*Marar	do.	Puzhathi	2nd Grade Pleader, Cannanore	Ambalavasi		

23	Varikkaré Vadakké Vittel Chandu Nayar	Chirakkal	Kunhimangalam	Janmi	Nayar.		
24	Kannada Chirukandan	do.	Vellur	Tenant Farmer	Tiyan.		
25	P. Kunhi Raman	do.	Puzhathi	Ag. Inspector of Post Offices, Cannanore Sub-Division	do.		
26	*Valiya Vittel Raman Marar	do.	Malappattam	Tenant Farmer	Ambalavasi.		36.
27	Padinyaredathil Chindan Nambiyar	do.	do.	do.	do.		
28	Kaimal	do.	do.	do.	do.		
29	Tayil Kélu Nayar	do.	Kuttéri	Stani and Janmi	Nayar.		
30	Tayil Chirukandan	do.	Palikunnu	Janmi	do.		
31	Chirakkal Kovilagath Kerala Varma Valiya Rajah	do.	Puzhathi	Vakil, Munsiff's Court, Cannanore.	Tiyan.		
32	Ondén Raman	do.	Chirakkal	Head of the Chirakkal Kovilagam.	Kshatriyan.		
33	*Ayiliath Kuttyeri Anandan Nambiyar	do.	Puzhathi	Sheristadar, Chirakkal Taluk	Tiyan.		
34	*Mayil Manikkoth Komar Nambiyar.	do.	Irivéri	Janmi and Adhikari	Nayar.		27.
35	Vadakkumpat Kupattakkan Kammaran Nayar	do.	Kayaralam	Adhikari and Janmi	do.		29.
36	*Kotiyath Karathan Koran Vaidiyar.	do.	Kunhimangalam	Janmi	do.		28.
37	*Vengayil Kannan Nayar	do.	Anjarakkundi	Physician	Tiyan.		34.
38	*Manikkoth Krishnan Nambiyar	do.	Kuttur	Land-Lord	Nayar.		35.
39	*Payyunar Kunath Manayil Subramanian Thirumumbu	do.	Kuttiyattur	Janmi	do.		
40	Chetelcheri Thazhathidathil Othenan Nambiyar	do.	Payyantr	do.	Brahman.		25.
41	Kaliyath Kammaran Nambiyar	do.	Malappattam	Stani and Janmi	Nayar.		
42	*Erumpala Kammaran Nambiyar	do.	Kaliyath	Janmi	do.		
43	Kunhinakundi Kunyambu	do.	Kaliyasseri	do.	do.		
44	T. Kunhi Raman Nayar	do.	Puzhathi	Large Tenant Farmer	Tiyan.		
45	Vengayil K. Raman Nayar	do.	Azhikod	Judge, High Court, Trevandrum	Nayar.		
46	Kadanakoden Bdayankura Vittel Paithal Nambiyar	do.	Kuttur	Land-Lord (Anandaravan)	do.		
47	Kunhimangalath Manayil Subramanian Thirumumbu	do.	Cherukunnu	Janmi	do.		
48	V. Rairu Nambiyar B. A. B. L., M. C. Andy	do.	Payyantr	do.	Brahman.		
		do.	Mavilayi	High Court Vakeel	Nayar.		
		do.	Puzhathi	Revenue Inspector, Kottayam	Mukkuvan.		

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Serial No.	Name.	Taluk.	Amsam.	Description.	Caste.	Whether answers printed.	REMARKS.
49	* Kōrōth Rāmūnni	Kōttayam	Tellicherry	Retired Vakeel : Municipal Councillor, Tellicherry	Tiyan.		Witness No. 3.
50	* Kallāt Rāmūnni	do.	do.	Private means: Member of Taluk and District Board	do.		do. 10.
51	* Manakkādan Kūnyambu	do.	Kadirūr	Janmi, and Gurukkal (an "elder" amongst the Tiyan)	do.		do. 6.
52	* Manakkādan Rāmūnni	do.	Tiruvangad	Petition writer and head of Tarawād	do.		do. 18.
53	* Kōrōth Kannan	do.	Tellicherry	1st Grade Pleader, Tellicherry	do.		do. 4.
54	* P. Raman B.A., B.L.	do.	Kōttayam	High Court Vakeel, Tellicherry	do.		do. 15.
55	M. Otheua Menon	do.	Nittūr	Sub-Registrar, Payyoli	Nayar.	Printed.	
56	V. Krishna Menon	do.	Tiruvangad	Sub-Registrar, Pānur	do.		
57	C. Kannan L.M.S.	do.	do.	Civil Apothecary, Manjēri	Tiyan.		
58	* E. K. Krishnan B.L.	do.	Kōttayam	Sub-Judge, Calicut	do.		do. 58.
59	K. Raman	do.	Anjarakkandi	Revenue Inspector, Kurumbranād.	do.		
60	A. C. Kannan Nayar	do.	Tiruvangad	Sea Custome Superintendent, Kallai.	Nayar.		
61	M. Ramotti	do.	Kadirūr	Revenue Inspector, Chirakkal	Tiyan.		
62	C. K. Govindan	do.	Tellicherry	Tahsildar, Kōttayam Taluk	do.		
63	P. V. Sankara Menon	do.	Pinarāyi	Sheristadar, Palghat Taluk	Nayar.		
64	C. Choyi	do.	Tiruvangad	Revenue Inspector, Chirakkal	Tiyan.		
65	Mēluttīl Kunhi Kannan Gurukkal...	do.	do.	Tiyan "Elder"	do.		
66	Pulleri Ilath Kūnyambu <i>alias</i>						
67	A. K. Krishnan	do.	Pazhassi	Stāni and Janmi	Nayar.		
68	* Mādāvil Rāmūnni Vaidiyar	do.	Tiruvangad	Asstt. Superintendent of Sea Customs, Tellicherry	Tiyan.		do. 5.
69	Nārangoli Chirakkal Kunhi Sankaran <i>alias</i> Valiya Nambiyar	do.	do.	Janmi (Anandaravan)	Nayar.		
70	V. K. Kūnhambu Nambiyar	do.	Peringulam	Stāni and Janmi	do.		
71	Akkara Vīttīl Kunhi Raman Nayar.	do.	Tellicherry	District Board Member	do.		
72	* Ningillēri Kūnhambu Nambiyar	do.	Tiruvangad	Janmi	do.		
73	Kūtālī Thāzhath Kūnyi Rāman Nambiyar	do.	Kandamkundu	Janmi, and Adhikari of the Amsam.	do.		do. 12.
		do.	Kūtālī	Janmi	do.		

74	* Kaithēri Edathil Kōlasseri Kunhi Kannan Nambiyar	Kōttayam	Nittūr	Janmi	Nayar.		do. 11.
75	* Kizhur Edathil Kunhi Raman Vāzhunnavar	do.	Veliyambra	Stāni and Janmi	Sāmantan. Nayar.		do. 8.
76	Kavukkal Krishnan Nayar	do.	Tiruvangad	Janmi	Brahman.		
77	Nīrvēli Manniyath Jayanthan Bhattathiripid	do.	Kandamkundu	2nd Grade Pleader, and Municipal Councillor, Tellicherry	Tiyan.		do. 13.
78	* V. P. Kūnhambu	do.	Pinarayi	Janmi	do.		do. 14.
79	* Kanakathidathil Krishnan Vāzhunnavar	do.	Gannavam	Stāni and Janmi	Sāmantan. Tiyan.		do. 20.
80	* Mānikkathī Kēlan Gurukkal	do.	Mailanjanmam	Tiyan "Elder"	Nayar.		do. 19.
81	* Kūnhamvīttīl Raman Nayar	do.	Sivapuram	Janmi and Adhikari of Sivapuram.	Tiyan.		do. 21.
82	* Payyanādan Kunhi Kannan	do.	Dharmatam	Janmi	do.		do. 23.
83	* K. Krishnan	do.	Tellicherry	Sub Registrar, Cannanore	Nayar.		
84	Pattarath Valiya Raman Adiody	do.	Nittūr	Janmi	do.		
85	Kurungod Edathil Kunhi Chattu, <i>alias</i> Valiya Nayar	do.	Olavilam	Janmi	Tiyan.		
86	Kakkuzhi Bappu	do.	Tellicherry	Municipal Councillor, Tellicherry	do.		
87	P. Sukumāran	do.	do.	3rd Clerk, Sub-Collector's Office	Nayar.		
88	Ponmilēri Kōrōth Chandu Nambiyar	do.	Paduvilayi	Janmi and Adhikari of the Amsam.	Brahman.		
89	Thekke Ilath Pōnēri Padmanābhan Nambūdiri	do.	Tripurangōtur	Janmi	Tiyan.		
90	A. Chāthu	do.	Tellicherry	Huzur Sheristadar	do.		
91	T. Kanaran, B.A.	do.	Mailanjanmam	Head Master, Basel Mission High School, Tellicherry	do.		
92	Pachālī Chāthu	do.	Peringalam	Private individual	Nayar.		
93	A. Chāthu Nambiyar	do.	Nittūr	District Munsiff, Nādapuram	do.		
94	K. Rāmūnni Kurup	do.	do.	Sub-Registrar, Pānur	do.		
95	Kannan Menon	do.	do.	Rev. Inspector, Kurumbranad	do.		
96	* A. Narayanan Nambiyar B.A., B.L.	do.	do.	High Court Vakeel practising at Tellicherry	do.		do. 9.
97	* Pōvādan Cheria Raman	do.	Mailanjanmam	2nd Grade Pleader, Cannanore	Tiyan.		do. 22.
98	* A. C. Kannan Nambiyar	do.	Tellicherry	District Munsiff, Badagara	Nayar.		do. 50.

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No.	Name.	Taluk.	Amsam.	Description.	Caste.	Whether answers printed.	REMARKS.
99	Kāliyambath Kunhi Kannan Nayar.	Kurumbrañād	Viyūr	Kāriastan, Zamorin's Palace	Nayar.		
100	Ambrōli Anantan Vayidiar	do.	do.	Janmi and Physician	do.		
101	Mangūttīl Chāthu Kuttī Nayar	do.	Mūdādi	Janmi	do.		
102	Vayātātīl Chāthu Nambiyar	do.	Iringanur	do.	do.	Printed.	
103	K. Impichunni Nayar	do.	Chēmanachēri	1st Grade Pleader, Tellicherry	do.	do.	
104	E. Ambu Nayar	do.	Viyūr	Sub Registrar, Ponnani	do.		
105	M. C. Kannan Nambiyar B. A.	do.	Vellūr	Hd. Master, Municipal High School, Cannanore.	do.		Witness No. 69.
106	*C. Chāthu Nayar	do.	Palikkara	Malayalam Pandit, Government College, Calicut	do.		
107	K. Rāmuni Menon	do.	Viyūr	Deputy Tahsildar, Cannanore	do.		
108	K. V. Chāppunni Nayar	do.	Pāleri	Sheristadar, Ponnani Taluk	do.		
109	M. Rāmar Nambiyar	do.	Iringanūr	Revenue Inspector, Kurumbranād Taluk	do.		
110	T. C. Ryrū Kurup	do.	Azhiyūr	District Registrar, Chingleput	do.		
111	*Tirumangalathī Krishna Kurup	do.	do.	Janmi	do.		do. 47.
112	Kōttayāt Kōvilagath Cheriyyunni alias Udayavarnan Tungal	do.	Puthuppanam	Stāni and Janmi	Sāmantan.		
113	P. K. Kēlappa Kurup B. A., B. L.	do.	Mūdādi	High Court Vakeel, Tellicherry	Nayar.		
114	Vilangil Rama Kurup	do.	Pālayat	Janmi	do.		
115	Payornala Vallabhan Chāthan Raman alias Kūthāli Nayar	do.	Perambra	Janmi, and Stāni	do.		
116	T. Krishna Kurup B. A.	do.	Azhiyūr	Law Student, Madras.	do.		
117	Pāliyil Kannan Kidāvu	do.	Naduvannur	Janmi	do.		
118	Kalpathūr Raman Nayar	do.	Perambra	do.	do.		
119	Ayanchēri Kōvilagath Krishna Varma Raja	do.	Puramēri	3rd Rajah of Kadathanād	Sāmantan.		
120	K. Krishna Kurup B. A., B. L.	do.	Ayancheeri	High Court Vakeel, Tellicherry	Nayar.		
121	Vēngi Kunyuni Kidāvu	do.	Kārayad	Janmi	do.		
122	Kadathanād Edavalath Kōvilagath Ravi Varma Raja	do.	Puramēri	Head of a branch of the Kadathanād Kōvilagam	Sāmantan.		

123	Kadathanād Porlathiri Mānavarman Valiya Raja	Kurumbrañād	Kuttiapuram	Valiya Rajah of Kadathanād	Sāmantan.	do.	
124	P. Rairu Kurup	do.	Puthuppanam	Head Clerk, District Munsiff's Court, Payyanād	Nayar.		
125	Vadakkēdath Chāthu Nayar	Wynad	Pēria	Janmi	do.		
126	Vāzhathāttīl Kēlu Nayar	do.	Edavaka	do.	do.		
127	Kōzhiyottu Chāppan Nambiyar	do.	do.	do.	do.		
128	Mōkkottu Kōvil Raman alias Vānavar	do.	Thondarnād	Stāni and Janmi	do.		
129	Mangalassēri Anantan Nayar	do.	Vellannunda	Janmi	do.		
130	Vemoth Edathil Emmu alias Māppil Nambiyar	do.	Vēmōm	do.	do.		
131	Thōndara Chundappan Nambiyar	do.	Purakkadi	do.	do.		
132	Kuppathōd Nayar	do.	Kuppathōd	do. and Stāni	do.		
133	Tenamangalathī Chandu Nayar	do.	Kalpatta	Janmi	do.		
134	Chembrāt Chāttappu alias Panichāt Nayar	do.	Thondarnād	Janmi and Stāni	do.		
135	*Talakodi Madathil Koolu Kunhan Nedungādi	Calicut	Valayanād	Janmi and Tarawād Kāranavan	Sāmantan	do. 62.	
136	Bamblāssēri Shangunni Menon	do.	Kasba	Janmi	Nayar.		
137	Mangalassēri Ittikumaran Nayar	do.	Namvallūr	do.	do.		
138	Kallangadi Edathil Chandu Kidāvu.	do.	Namminda	Janmi and Stāni	do.		
139	Palakunnath Rāran Vīttīl Unnip-puran Nayar	do.	Kōvūr	Janmi	do.		
140	Nariyangal Talappana Mādhan Nambūdīri	do.	Chālūr	do.	Brahman.		
141	*Pētur Vāsudēvan Nambūdīri	do.	Kanniparamba	do.	do.		
142	Alavingal Manathānath Rama Kurup	do.	Perumanna	do.	Nayar		
143	Kinatinkara Krishnan Nayar B. A., B. C. E.	do.	Katchēri	Private Individual	do.		do. 70.
144	Māngāvil Puthenvīttīl Shangara Menon	do.	Valayanād	Municipal Councillor, Calicut	do.		

Serial No.	Name.	Taluk.	Amsam.	Description.	Caste.	Whether answers printed.	REMARKS.
145	Palamóli Nellipanam Vittel Chén-nan Nayar	Calicut	Tâmercherri	Janmi	Nayar.	Printed	
146	Padinhâre Kôvilagath Valiya Raja.	do.	Valayanâd	Head of a branch of the Zamorin's family.	Sâmantan		Witness No. 57.
147	*Erambapalli Kunjunny Nayar	do.	Cheruvannur	Janmi: Honorary Magistrate, Calicut	Nayar.		
148	Katayat Râman Menon	do.	Panniankara	Janmi	do.		
149	Pâlakal Râman Menon	do.	do.	do.	do.		
150	Kôzhipurath Kêlu Menon	do.	do.	do.	do.		
151	Karumathil Pokkâvil Karunâkara Menon	do.	do.	do.	do.		
152	Châthanath Govindan Nambûdiri...	do.	Tâmercherri	do.	Brahman.		Wants 4 years' time to send in his answers.
153	Mallisherî Ramunni Êrâdi	do.	Makkâda	do.	Nayar.		Wants 2 months' time to answer.
154	Pâderi Krishnan Nambudripâd	do.	Kunnangalam	do.	Brahman.		
155	T. M. Appu Ncdungâdi B.A., B.L.	do.	Valayanâd	1st Grade Pleader, Calicut	Sâmantan.		
156	B. Kamâran Menon	do.	Kasba	2nd Grade Pleader, Calicut	Nayar.		
157	K. Râmunni Menon	do.	do.	1st Grade Pleader, Calicut	do.		
158	B. Narâyanan Nayar	do.	Katchêri	Sub Registrar, Alatur	do.		
159	C. Gopâla Menon B.A.	do.	Valayanâd	Asst. Master, Mission High School, Calicut	do.		
160	*B. Kamâren Nayar	do.	Kasba	District Munsiff, Châvakkâd	do.		Witness No. 65.
161	V. Kêlu Êrâdi	do.	do.	do. do. Payyanâd	Sâmantan.		
162	C. P. Râman Menon	do.	Panniankara	Translator, High Court	Nayar.		
163	C. Râman Nayar	do.	Katchêri	Inspector of Police, Cherpaleherri.	do.		
164	B. K. Mâdhavan Nambiyar	do.	Kasba	Sheristadar, Calicut Taluk	do.		
165	P. Gopâla Menon	do.	Valayanâd	Vernacular Record Keeper, Huzur.	do.		
166	K. P. Râman Menon	do.	Panniankara	Sea Custom Supdt., Tântûr	do.		
167	V. Râman Menon	do.	do.	District Munsiff, Kawai	do.		
168	C. Gopâla Menon	do.	Valayanâd	Record Keeper, District Court, Calicut	Brahman.		
169	K. Vâsudêvan Nambûdiri	do.	Kôttuli	Janmi	Sâmantan.		
170	Êttan Raja, Padinhâre Kôvilagam.	do.	Valayanâd	A Sanskrit scholar and belongs to the Zamorin's family	Nayar.		
171	V. K. Râman Menon B.A., B.L.	do.	Panniankara	High Court Vakeel, Calicut			

72	Kâramvelli Kunhunni Kurup	Calicut	Makkâda	Janmi & Honry. Magistrate Calicut.	Nayar	Printed	
73	*Makkat Vâsudêvan Nambûdiri	do.	Koduvalli	Janmi	Brahman.	do.	61.
74	The Zamorin Maharaja Bahadur	do.	Panniankara	Zamorin of Calicut	Sâmantan	do.	
75	P. Govinda Menon B.A.	do.	do.	Deputy Supt., Census operations, Calicut	Nayar.	do.	75.
76	*C. Kunhi Raman Menon B.A.	do.	Kasba	Editor "Kêrâla Patrika"	do.	do.	
77	Nambanûr Azhakûl Unni Nayar	do.	Kârannur	Janmi	do.	do.	
78	Kizhakkêpat Rârappunny Nayar	do.	Beypore	do.	do.	do.	
79	K. Kôman Nayar B.A.	do.	Katchêri	Sub-Registrar, Kundotti	do.	do.	
80	Êrâlpâa or Êlaya Raja of Calicut...	Êrnâd	Kôttakkal	Second Raja of Calicut	Sâmantan.	do.	
81	*Môngandampulath Narâyanan Mûs-sad <i>alias</i> Tenayanchêri Êlayad...	do.	Vallikunnu	Land Lord	Brahman.	do.	81.
82	*Pûthêri Vêlayuden Nair	do.	Nallûr	Malapuram Taluk Board member and Janmi	Nayar.	do.	56.
83	*Pulâppure Govinda Menon	do.	Azhinhalam	Janmi	do.	do.	76.
84	V. Kannan Nayar B.A.	do.	Parappanangâdi	Law Student	do.	do.	
85	Tiruvâli Pannikottu Kôru Menon	do.	Tiruvâli	Janmi	do.	do.	
86	*Padinhârepat Govinda Waryar	do.	do.	Janmi and Adhikari of the Amsam.	Ambalavasi.	do.	88.
87	Manâzhi Narâyanan Mûssad	do.	Pazhanchanur...	Janmi	Brahman.	do.	55.
88	*K. Êrâsha Menon	do.	Neduva	2nd Grade Pleader, Parappanangâdi.	Nayar.	do.	77.
89	*M. Govinda Menon	do.	Azhinhalam	do. do. Manjêri	do.	do.	79.
90	*P. Kander Nayar	do.	Manjêri	Sub-Registrar, Malapuram	do.	do.	
91	P. Râmunni Menon	do.	Vâlakulam	Sub-Registrar, Andathôde	do.	do.	
92	P. Govinda Menon	do.	do.	Dy. Collector in charge of Escheats.	do.	do.	
93	*P. Karunâkara Menon	do.	Tiruvâli	Rev. Inspector, Walluvanad Taluk	do.	do.	
94	C. Krishnan Nayar	do.	Kizhumuri	Clerk, Malabar Collector's Office	do.	do.	
95	P. Krishna Menon	do.	Azhinhalam	Janmi	do.	do.	
96	V. Gôpâla Pishâródî	do.	Chêkkod	Sub-Editor of "the Hindu".	do.	do.	119.
97	*C. Karunâkara Menon B.A.	do.	Neduva	Tenant farmer	do.	do.	86.
98	Pattârumbil Kêlu Nayar	do.	Parappanangâdi	Janmi	Brahman.	do.	
99	*Channazhi Krishnan Mûssad	do.	Ponmala	Inspector of Salt and Abkari	Nayar.	do.	
200	P. Kônan Menon	do.	Mêlmuri	Revenue, Nagapatam	Sâmantan.	do.	
201	Êlaya Tirumulpâd of Nilambur	do.	Nilambur	Sthâni and Janmi	do.	do.	
202	Manjeri Kâranamulpâd	do.	Manjêri				
203	*Kolappurath Vêlôttare Thâmu Panicker	do.	Êrakam Mêlmuri	Janmi	Nayar.	do.	90.

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	Name.	Taluk.	Amsam.	Description.	Caste.	Whether answers printed.	REMARKS.
204	*Rama Nambi alias Páranambi	Ernád	Kizhumuri	Stháni and Janmi	Ambalavási.		Witness No. 82.
205	*Muttáyi Vélappa Menon	do.	Neduva	Janmi	Nayar.		do. 84.
206	K. Kannan Nayar	do.	Kizhumuri	School Master, Palghat	do.		
207	Payyanát Kunnath Chénnu Panikker	do.	Payyanad	Janmi and Taravád Káranavan	do.		
208	Rámunni Nayar	do.	Kizhumuri	Head Constable Badagara, in charge of Police Inspector's Office	do.		
209	O. Krishna Menon B.A.	do.	Nediyirippu	Head Clerk, Sub-Court, Palghat	do.		
210	Karumattil Gópala Menon	Ponnani	Chikkode	Janmi	do.		
211	*Patipurakkel Nānu Menon	do.	Náttika	Janmi and Palghat Taluk Board Member	do.		85.
212	Manhappilli Rama Pisháródi	do.	Triprangod	Janmi	Ambalavási.		
213	Kizhédath Krishna Menon	do.	Niramaruthúr	do.	Nayar.		
214	Perumbáyi Shangunni Menon	do.	Iringaprom	do.	do.		
215	Koláti Krishna Menon	do.	Veliyangod	do.	do.		
216	*Kuthámballi Krishnan Nambiyar	do.	Guruváyúr	Palghat Taluk Board Member	do.		
217	Panikóttu Erásha Menon	do.	Ánakara	Pensioned Taluk Sheristadar	do.		83.
218	*K. P. Achyuta Menon	do.	Chekkode	First Grade Pleader Palghat	do.		99.
219	*K. Govindan Nambiyár	do.	Guruváyúr	do. Calicut	do.		74.
220	V. Karunákara Menon	do.	Vadakkumpuram	do. do.	do.		
221	I. Gópala Menon	do.	Ponnáni	Sub-Registrar, Mankara	do.		
222	V. Govinda Panikker	do.	Vayilathúr	do. do. Betat Pudiangádi	do.		
223	U. Ittinikanda Panikker B.A.	do.	Ánakara	Translator, High Court	do.		
224	V. Sákthara Menon B.A.	do.	Valiyakunnu	Clerk, chief Secretariat	do.		
225	K. Kuthunni Menon	do.	Vadánappalli	Taluk Sheristadar, Ernád	do.		
226	K. Táchan Menon	do.	Pallappuram	Revenue Inspector, Palghat Taluk.	do.		
227	A. V. Govinda Menon	do.	Ánakara	Sea Custom Superintendent, Beypore	do.		
228	P. Sankunni Nayar B.A.	do.	Vatakkumpuram	Clerk, Malabar Collector's Office	do.		
229	Bláhayil Ammuni Nayar	do.	Náttika	Janmi and Stháni	do.		
230	Kózhikkóttakathittu Karunákara Menon	do.	Pallappuram	Janmi	do.		78.
231	Pallathól Shangunni Menon	do.	Chennara	do.	do.		
232	*Ulanát Kunhi Kóma Panikker	do.	Venkitangu	do.	do.		

233	Parathulli Thámu Menon	do.	Pallappuram	do.	do.		
234	Kizhakkémpullath Paraméswaran Mússad	do.	Triprangód	do.	Brahman.		
235	Eduanna Narayanan Sómayájjipád.	do.	Kódanad	do. and Vayidíkan	do.		
236	Pulikkézhá Váriyath Táchan Menon.	do.	Guruváyúr	do. Janmi	Nayar.		
237	*Anettikkara Akkithatí Achyutan Sómayájjipád	do.	Álangod	do. and Vayidíkan	Brahman.		80.
238	Manhapre Cháthu Menon.	do.	Pérur	do. Janmi	Nayar.		
239	P. P. Karunákara Menon.	do.	Pallappuram	First Grade Pleader, Calicut	do.		
240	Trikkidíri Krishnan Unni Nayar	Walluvanád	Trikkidíri	Janmi and Stháni	do.		
241	Punnasséri Nilakandan Nambi	do.	Perumudiyúr	Janmi and Editor 'Vitniyána-chintāmani'	Brahman.		
242	P. Kóman Menon	do.	Vellinazhi	First Grade Pleader, Angádipuram.	Nayar.		
243	C. P. Govinda Tarakan	do.	Perintalmanna	Second Grade Pleader, do.	do.		
244	*P. A. Krishna Menon	do.	Perumudiyúr	First Grade Pleader, Calicut	do.		64.
245	C. Govindan Nair	do.	Perintalmanna	First Grade Pleader, Angádipuram.	do.		
246	N. K. Cháma Menon	do.	Kulukkallúr	Sub-Registrar, Perintalmanna	do.		
247	C. Rámunni Menon B.A.	do.	Vellinazhi	do. do. Tirúrangádi	do.		
248	*P. Govinda Menon	do.	Máthédathu	District Munsiff, Betatnád	do.		60.
249	U. Achyutan Nair B.A.	do.	Mádamba	do. do. Nedunganád	do.		
250	P. Gópala Menon	do.	Máthédathu	Police Inspector, Álatur	do.		
251	P. Gópala Menon	do.	Mádamba	do. do. Calicut	do.		
252	T. Mádhava Menon	do.	Perumudiyúr	Revenue Inspector, Palghat	do.		
253	P. Krishna Menon	do.	Panamanna	Tahsildar, Ernád Taluk	do.		
254	K. Góvinda Menon B.A.	do.	Cherpálcherri	Head Clerk, Head Assistant Collector's Office	do.		
255	M. Kóndi Menon	do.	Perumudiyúr	Deputy Tahsildar, Tirúrangádi	do.		66.
256	*V. Cháppan Menon B.A.	do.	Kóthakurissi	Deputy Collector Calicut	do.		
257	Kuruváyur Narayanan Mússad	do.	Puzhakkáttiri	Janmi	Brahman.		
258	Kolathúr Ukkandunni Wariyar	do.	Kólabhúr	do.	Ambalavási.		
259	Trikkidíri Múppil Nayar	do.	Trikkidíri	Stháni and Janmi	Nayar.		
260	Tarakkel Erómu Menon	do.	Vallappuzha	do.	Ambalavási.		
261	Elayat Perunni Nayar	do.	Molanthúr	do.	Nayar.		
262	Nambiyáthiripád	do.	Cherpálcherri	Stháni	Sāmantan.		

No.	Name.	Taluk.	Amsam.	Description.	Caste.	Whether answers printed.	REMARKS.
263	*Panagát Narayana Menon	Walluvanád	Cherpalecherri...	Member District Board	Nayar.	Printed.	Witness No. 96.
264	Mangát Gópala Menon	do.	Srikrishnapuram.	First Grade Pleader Tellicherry	do.		
265	Parakát Athunni <i>alias</i> Valiya Nayar.	do.	Kuruvambalam.	Stháni and Janmi	do.		
266	Vallúr Manakkal Dámóderan Nam-búdiripád	do.	Muthédath Mā-damba	Janmi	Brahman.		
267	Váppála Kalathil Pangassa Menon.	do.	Kóthakurissi	District Board Member	Nayar.		
268	Dharmoth Panikker <i>alias</i> Thammé Mútha Panikker	do.	Trikkidrii	Stháni and Janmi	do.		
269	Cherukara Chiruman <i>alias</i> Mútha Pisharódy	do.	Perintalmanna	do.	Ambalavási.		
270	Vallapuzha Manakkal Ashta Múrthi Nambúdiripád	do.	Vallapuzha	Land Lord	Brahman.	do.	95.
271	*Kayarat Échera Menon	do.	Kadambazhi-puram	Janmi	Nayar.		
272	P. A. Shankunni Menon	do.	Perumudiyur	Deputy Tahsildar, Chávakkád	do.		
273	*K. Govinda Menon	do.	Pérur	Second Grade Pleader Temalpuram	do.		107.
274	K. R. Krishna Menon	do.	Srikrishna-puram	Retired Sub-Judge	do.		
275	C. Achutan Menon B. A.	do.	Velinazhi	Translator, High Court	do.		
276	V. Narayana Menon	do.	Kothakurissi/	Clerk, Census Superintendent's Office Madras	do.		
277	K. P. Krishna Menon	do.	Chunangád	Barrister-at-Law	do.		
278	K. P. Raman Menon	do.	do.	High Court Vakil, Madras	do.		
279	Olappanna Manakkal Paraméswaran Nambúdiripád	do.	Vellinazhi	Janmi	Brahman		
280	*Vatavatta Táppan Nayar	Palghaut	Puthúr	do.	Nayar.		106.
281	Alangát Krishnan Nayar	do.	Yákkara	Municipal Councillor, Palghaut	do.		
282	*Sékbaran Nayar	do.	Chittalanchéry.	Palghaut Taluk Board Member	do.		117.
283	Kannambra Raman Unni Nayar	do.	Kannanúr Páttóla	Stháni, Janmi and District Board Member	do.		
284	*Naidillath Gópala Menon	do.	Kizhakkétara	Janmi	do.		111.
285	Naduvilleadam Bhiman Achen	do.	Tarúr	Stháni and Janmi	do.		

286	Kóngót Valiya Nayar.	Palghaut	Kóngód	do.	do.	Printed	102.
287	*Kannan Unni Nayar	do.	Mundúr	Second Grade Pleader, Palghaut	do.		120.
288	*K. Gópálan Nayar	do.	Ayakád	First Grade Pleader, Palghaut	do.		110.
289	*V. M. Góvinda Menon	do.	Vadavannúr	do.	do.		199.
290	*K. Dámódera Menon B. A.	do.	Elappulli	do.	Brahman.		
291	T. K. Maládeva Iyer	do.	Puthúr	Sub-Registrar, Chéváyúr	Nayar.		
292	K. Dámódera Panikker	do.	do.	Sub-Assistant Inspector of Schools	do.		
293	V. Kesava Menon B. A.	do.	Elappulli	Calicut Range	do.		
294	M. Vythi Menon	do.	do.	Sheristadar, District Court Calicut.	do.		
295	U. V. Mádhavan Nayar	do.	Kottáya	Second Grade Pleader, Palghaut	do.		
296	C. Gópálan Nayar	do.	Koduváyúr	Sub-Judge, Tellicherry	do.		
297	M. Mádhava Menon	do.	Elappalli	Head Clerk, Chávakkád Munsiff's Court	do.		
298	K. Gopala Menon	do.	do.	Sheristadar, Wynád Taluk	do.		
299	K. Krishnan Unni Nayar	do.	Kannanur	Tahsildar, Calicut Taluk	do.		
300	T. Ananta Rama Pattar	do.	Páttóla	Janmi	Brahman.		
301	Ananta Narayana Iyer, B. A., B. L.	do.	Vadakkéthara	First Grade Pleader, Palghaut	do.		
302	Ragunátha Sástri	do.	Puthúr	Pleader, Palghaut	do.		
303	C. Kannan Nayar	do.	do.	Second Grade Pleader, Palghaut	Nayar.		
304	Nagésvara Roy, B. A.	do.	Vadakunthara	First Grade Pleader, Palghaut	Brahman.		
305	T. Gópálan Nayar, B. A., B. L.	do.	Puthur	Deputy Collector, Coimbatore	Nayar.		
306	Thunduc <i>alias</i> Edathara Valiya Nayar	do.	Vadakkunthara.	Stháni and Janmi	do.		
307	*C. M. Krishnan Nayar	do.	Edathara	First Grade Pleader, Palghaut	do.		
308	*Mannúr (Munnun) 3rd Nayar	do.	Páathulli	Stháni	do.		
309	C. Gópálan Nayar	do.	Tatukkasseri	Tahsildar, Chirakkal Taluk	do.		
310	Kuthiravattath Nayar	do.	Mankara	Stháni and Janmi	do.		
311	Tharavath Kuppándi Tharavanár	do.	Chólúr	Police Inspector, Angátipuram	do.		
312	O. Vāsava Menon	do.	Akathéthara	Clerk, Revenue Board Office	do.		
313	A. Raman Nayar, B.A.	do.	Mundúr	Sub-Editor to the "Argus"	do.		
314	M. Krishnan Nayar, B. A.	do.	Tarúr	Law-Student, Madras	do.		
315	C. Mádhavan Nayar	do.	Koduváyúr	Senior Raja of Palghaut	do.		
316	Sékharivarma Valiya Raja	do.	Akathéthara	High Court Vakeel, Calicut	do.		
317	K. Krishna Menon, B. A., B. L.	Cochin	Trichur	Translator, High Court, Madras	do.		
318	G. Paraméswaran Pillay	Travancore			do.		

Wants time to answer.
Witness No. 108.
do. 103.

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Serial No.	Name.	Taluk.	Amsam.	Description.	Caste.	Whether answers printed.	REMARKS.
319	T. C. Shangunni Menon	Cochin	Trichūr	Deputy Tahsildar, Quilandy	Nayar.		
320	A. Nānu Menon	do.	Chittūr	Deputy Tahsildar, Alattūr	do.		
321	P. Govinda Menon	do.	Trichūr	School Master, Cochin	do.		
322	K. V. Krishna Warier	do.	do.	Student, Madras	Ambalavāsi.		
List of persons who have not sent in Answers to the Interrogatories of the Malabar Marriage Commission.							
323	Ezlhuthan Poyilil Raman Nayar	Chirakkal	Eramam	Janmi	Nayar.		
324	Karakatidathil Rāppan Nambiyār	do.	Kānhilēri	do.	do.		
325	Chetichēri Thāzhathidathil Odēnan Nambiyār	do.	Malappattam	do.	do.		
326	Pāttathil Kunhamman Nayar	do.	Kurumāthūr	do.	do.		
327	Udayamādath Thazhatha Vittel Rāmarkutti Nambiyār	do.	Cherukunnu	do.	do.		
328	Mānikkōth Kammāran Nambiyār	do.	Azhikkōd	do.	do.		
329	Mungath Krishna Pishārōdy	do.	Chirakkal	do.	Ambalavāsi		
330	Mundōt Puliyampadappu Haridāsan Sōmayājpād	do.	Taliparamba	Vayidikan	do.		
331	Vēngaprath Bhattathiri Yatnyan Nambūdiri	do.	Kairalam	do.	Brahman		
332	C. Karunākaran	do.	Mailanjanmam	Deputy Tahsildar, Taliparamba.	do.		
333	M. Rāman	do.	Puzhāthi	Translator, Collector's office.	Tiyan		
334	U. T. Krishnan	do.	do.	Clerk, do.	do.		
335	U. M. Rāman	do.	do.	do.	do.		
336	K. Chanthan	do.	Iruvēli	do.	do.		
337	M. Kēlu Nambiyār	do.	Azhikkōd	do.	do.		
338	N. Rāmuni	do.	Puzhāthi	First Grade Pleader, Tellicherry	Nayar.		
339	T. Kunhi Rāman Nayar	do.	Kannapuram	Police Inspector, Taliparamba.	Tiyan.		
340	P. Bāppu	do.	Puzhāthi	Second Grade Pleader, Calicut.	Nayar.		
341	Kāmprath Kunhi Krishnan Nambiyār	Kottayam	Pānūr	Civil Apothecary, Ponnāni.	Tiyan.		
342	Chandrorōth Kunhi Chandu Nambiyār	do.	Pannivanmūr	Janmi.	Nayar.		

343	Palath Edathil Kunnummal Kunhi Krishnan Valiya Nambiyār	Kōttayam	Kārayād	do.	do.		
344	Ponniyath Akathōtta Raman Mumbunnu	do.	do.	Janmi and a Sthāni.	do.		
345	Chingōran Gvindan Nayar	do.	Kallai	Janmi	do.		
346	Mundayōdan Krishnan Nayar	do.	Tellicherry	do.	do.		
347	Pullanchēri Valiya Nambūdiripād	do.	Kōttayam	do.	Brahman		
348	Kannambath Vāsudēvan Nambūdiri.	do.	Chāvassēri	do.	do.		
349	Nellachēri Kōmath Kunhi Kōmapan Adiyōdy	do.	Puthūr	do.	do.		
350	K. Mannan	do.	Mahé	Deputy Tahsildar, Cherpalcherri	Tiyan.		
351	K. Kunhi Raman	do.	do.	Clerk, Collector's Office.	do.		
352	C. M. Anandan	do.	Tellicherry	do.	do.		
353	C. Narayanan	do.	do.	Clerk, Head Asst. Collector's office.	do.		
354	P. Krishnan	do.	do.	Head Clerk, Special Assistant Collector's Office.	do.		
355	C. Kanāran	do.	do.	Escheat Inspector, Ponnāni.	do.		
356	C. Krishnan	do.	do.	Head Clerk, Deputy Collector's Office, Calicut.	do.		
357	K. Karunākaran Nayar.	do.	Tiruvangād	Sheristadar, Palghat Sub-Court	do.		
358	P. Sumathi	do.	Tellicherry	Police Inspector, Quilandy.	Nayar.		
359	P. Kanaran	do.	do.	Member, Calicut Taluk Board.	Tiyan.		
360	C. A. Govindan	do.	do.	Municipal Councillor, Cannanore.	do.		
361	A. Govindan	do.	do.	do.	do.		
362	C. Kanāran	do.	do.	do.	do.		
363	C. Achutan	do.	do.	do.	do.		
364	Kōttayath Raja	do.	Mailanjanmam	do.	do.		
365	N. Krishnan Nambiyār B.A.	do.	Kōttayam	Kōttayam Rajah	do.		
366	P. Krishnan Nambiyār B.A.	do.	Kandam Kunnu.	Law Student	Sāmantan.		
367	C. Krishnan	do.	Nittūr	Clerk, Collector's Office.	Nayar.		
368	K. Govindan	do.	Mailanjanmam	Head Clerk, District Munsiff's Court, Tellicherry.	do.		
369	Puramēri Kōvilagath Sankara Varman Tamburān	do.	Tellicherry	Asst. Supt. of Sea Customs, Ponnāni.	Tiyan.		
370	Kizhakkōdath Kōvilagath Raja	Kurumbanād	Puramēri	Kadathanād Rajah.	Nayar.		
371	Avinlāt Nayar	do.	Pananyad	A member of the above family	do.		
		do.	Perambra	Janmi and Sthāni.	Nayar.		

No.	Name.	Taluk.	Amsam.	Description.	Caste.	REMARKS.
372	Kurukkát. Kunhi Paidal Kurup	Kurumbanád...	Ponmérí	Janmi.	Nayar.	
373	Erarjeri Illath Dámódaran Nam-budiri	do.	do.	do.	Brahman	
374	Murehilot Kunhi Ambu Kurup	do.	Ayanchéri	do.	Nayar	
375	Kómáth Góvinda Kurup	do.	do.	do.	do.	
376	Vannathánkandi Kélappan Nam-biyár	do.	Kóttappalli	do.	do.	
377	Pukkót Janamejayan Nambiyár	do.	Etachéri	do.	Ambalavási.	
378	Valappil Chakkrapáni Wariyar	do.	Méminda	do.	Nayar.	
379	Niraweli Ananda Kurup	do.	Arakkilad	do.	do.	
380	Makkát Kunhūnhan Nayar	do.	Mélati	Janmi	do.	
381	Thondipunathil Rárukutti Kidávu.	do.	Pallikkara	do.	do.	
382	Tekkédath Nayar	do.	Viyyur	Janmi and Stháni.	do.	
383	Attupurath Imbichan Vayidier	do.	do.	Native doctor and a learned man	Tiyan.	
384	Chengottéri Chandu Nambiyár	do.	Kuttiyadi	Janmi.	Nayar.	
385	T. Govinda Kurup	do.	Azhiyūr	Sheristadar, Walluvanád Taluk.	do.	
386	K. Ramar Nambiyar	do.	Badagara	Clerk, Collector's office.	do.	
387	K. Govinda Wariyar	do.	Kánhiléri	Second Grade Pleader, Quilandy	Ambalavási.	
388	T. Kannan Nair	do.	Viyyur	do. Nádápuram	Nayar.	
389	A. Imbichan Gurikkal	do.	Viyyur	Native Doctor and Tarawád Kára-navan	do.	
390	Beyppore Kóvilagath Valia Raja	Calicut	Beyppore	Beyppore Raja	Tiyan.	
391	Méppalli Krishnan Adithiripád	do.	Matavur	Janmi	Kshatriyan.	
392	Mánnalli Padmanábhān Mússad	do.	Támarasséri	do. and Calicut Taluk Board Member	Brahman	
393	C. R. Karunákara Menon	do.	Panniyankara	High Court Vakíl	do.	
394	Manniledathil Valiya Ittiráppunni Nayar	do.	Cháthamangalam.	Janmi and a Málikhána-holder	do.	
395	Palákunnath Koláyi Cháthu Nayar.	do.	Máyanád	Janmi and Calicut Taluk Board Member	do.	
396	V. Kunhi Ráman	do.	Nagaram	Clerk, Collector's office	do.	
397	K. Krishna Kurup	do.	Káranūr	Teller Currency Office	Mukkuvan.	
398	P. Kóndi Menon	do.	Valayanád	Accountant, Collector's office	Nayar	

399	N. Kóman Nayar	Calicut.	Katchéri	Assistant Inspector, Salt and Ab-kari Revenue, Tellicherry	Nayar.
400	Koláyi Cháthu Nayar	do.	Máyanád	Taluk Board Member, Calicut	do.
401	M. Cheriya Ittiráppan Nayar	do.	Cháthamangalam.	Member, Calicut Taluk Board	do.
402	T. M. Gópala Panikkar	do.	Katchéri	Municipal Councillor, Calicut	do.
403	K. P. Cháthukutti	do.	Kasha	Translator, District Court, Calicut.	Tiyan.
404	V. Narayana Menon	do.	Panniyankara	Sub-Registrar, Tándūr	Nayar.
405	M. Unni Erádi	do.	Makkada	District Registrar	do.
406	K. P. Góvinda Menon	do.	Panniyankara	High Court Vakíl, Madras	do.
407	C. R. Karunákara Menon	do.	do.	Retired High Court Vakíl	do.
408	C. Sankunni Menon	do.	Valayanád	Uncovenanted Assistant to the Special Settlement Officer, Ma-labar and Canara	do.
409	Beyppore Rajah	do.	Beyppore	Beyppore Rajah	Kshatrian.
410	Mullankizha Sree Kumáran Nam-budiri	do.	do.	do.	do.
411	Kuttipurath Vélú Panikkar	Errád	Puliyakód	Janmi	Brahman.
412	Appásséri Rámunni Panikkar	do.	Orakam Melmuri.	do.	Nayar.
413	Vellekkat Bhattachiripád	do.	Vallikunnu	do.	do.
414	Naduvath Subramanian Nambú-diripád	do.	Pôrūr	do.	Brahman.
415	Punnoli Kóréth Véláiyudha Menon.	do.	Wandūr	do.	do.
416	Kannanūr Elamadathil Rámianunni Nayar	do.	Mannūr	do.	Nayar.
417	Cháyiliath Rámunni Nambiyar	do.	Manjéri	do.	do.
418	Karukamanna Nilakandhan Mússad	do.	Payyanád	do.	do.
419	Parakkát Múppil Nayar	do.	do.	do.	Brahman.
420	Múlasséri Gópala Menon B. A.	do.	Kannamangalam.	do. and Stháni	Nayar
421	Pákkath Krishna Menon	do.	Kóttakkal	Law Student	do.
422	Amarampulath Valiya Tirumulpád.	do.	Kizhumuri	Janmi	do.
423	P. Kunhunni Menon B. A.	do.	Nilambūr	do.	Sámantan.
424	K. P. Ráman Menon	do.	Tiruváli	Clerk, Head Assistant Collector's Office	Nayar.
425	Valluvanátukare Vallabha Valiya Raja	do.	Azhinhilam	District Board Member, Malabar	do.
		do.	Mankada	Walluvanád Raja	Sámantan.

No.	Name.	Taluk.	Amsam.	Description.	Caste.	REMARKS.
426	*Varikkasséri Manakkal Nambúdiripád	Walluvanád	Sreekrishna puram	Janmi and Vayidkan	Brahman.	
427	Chorumukkil Manakkal Akkithiripád	do.	Karakkád	do.	do.	
428	Mannárgahut Nayar	do.	Mannárgahut	Janmi	Nayar.	
429	Molanhūr Nayar	do.	Molanhūr	do.	do.	
430	Etachōla Panikkar	do.	Kūnathara	do.	do.	
431	Kunnath Pangunni Menon	do.	Cherpaleheri	do. and Sthāni	Sāmantan	
432	Nedungáthiripád	do.	Vallappuzha	Clerk, District Board Office	Nayar.	
433	E. Shaugaran Nayar	do.	Chalavara	Revenue Inspector, Walluvanád	do.	
434	P. Gōvinda Menon	do.	Mannárgahut	Member, Malapuram Taluk Board.	do.	
435	M. Rāmuni Mūppil Nayar	do.	Perintalmanna	First Grade Pleader, Calicut	do.	
436	K. Achutan Nayar	do.	Puthūr	Vayidkan	Brahman	
437	Pudiyā Kalpāthi Isvara Dikshidar.	Palghaut				
438	Chandrasékharapuram Ananda Rāma Vādhayar	do.	Edathara	do.	do.	
439	A. N. Ananta Narayana Iyer B. A. B. L.	do.	Puthūr	High Court Vakīl practicing at Palghaut	do.	
440	P. S. Shēshu Iyer	do.	do.	Vakīl, Palghaut	do.	
441	P. K. Subramania Iyer	do.	do.	do.	do.	
442	*Kallankandath Gōvinda Menon	do.	Kāttussēri	do.	Nayar.	
443	Elayāt Achuta Menon	do.	Pallanchāthanūr	do.	do.	
444	Kunaramchitayath Rekkunni Achchan	do.	Kuzhilmanna	Janmi	do.	
445	Kanakani kandath Chāmi Mannādiyar.	do.	Pallanchāthanūr	do.	do.	
446	Malamal Nānu Nayar	do.	Kāttussēri	do.	do.	
447	Kōngót Karunākaran Nayar	do.	Ayakkād	do.	do.	
448	Kāmprath Ichara Menon	do.	Padinhārethara.	do.	do.	
449	Kunnamkumarath Chāppunni Menon	do.	Panangātri	do.	do.	
450	Perinjēri Parangōdassa Menon	do.	Pallāvur	do.	do.	
451	Panikkath Narayana Mannādi	do.	Kizhakkēthara.	do.	do.	
452	K. Unnāmi Nayar	do.	Ayakkād	Clerk, Collector's Office	do.	
453	P. Sankunni Menon	do.	Vadavannūr	do. Spl. Asst. Collector's Office.	do.	

454	V. Sankara Panikkar	Palghaut.	Puthūr	Revenue Inspector, Calicut Taluk.	Nayar.
455	M. Kesava Menon	do.	Mangalam	do.	do.
456	Pūmulli Manakkal Narayanan Nambūdripād	Ponnāni	Kōthachira	Janmi	Brahman.
457	Chorāthi Raman Mūssad	do.	Nagalassēri	Learned man	do.
458	Kayāprē Kanayūr Jāda Vēdar.	do.	Kizhumuri	Vayidkan	do.
459	Nambūdīri	do.	Rāyirimagalam.	do.	do.
460	Chunnulath Bhavan Sōmayājjipād.	do.	Vattamkulam	do.	do.
461	Amēttūr Narayanan Nambūdīri	do.	Tripurangōttūr	do.	do.
462	Pāveri Raman Sōmayājjipād	do.	Panangād	Janmi	Nayar.
463	Muthirakkal Ikkōma Panikkar	do.	Ponnāni	do.	do.
464	Itikkāt Karunākara Menon	do.			
465	Vayāvinattutaya Vilikēralam alias Vāsunni Nambīdi	do.	Irimbiyam	do.	Brahman.
466	Cheruchōla Narayanan Mūssad	do.	Anandāvūr	do.	do.
467	Tozhukkat Kunnath Kunhikuttan Nambiyar	do.	Kōtanād	Pensioned Sheristadar, Calicut Taluk	Nayar.
468	Vēlanjēri Vēllātt Sankara Menon.	do.	Kattipparathi	Janmi	do.
469	V. Krishna Menon	do.	Chekkod	Vernacular Head Accountant, Collector's Office	do.
470	K. Sankunni Menon	do.	Veliyangod	Revenue Inspector, Palghaut Taluk.	do.
471	Padanāt Krishna Menon	do.	Trikkandiyr	Municipal Councillor and Second Grade Pleader, Calicut	do.
472	M. Sankara Menon	do.		Registrar, Nilgiris	do.
473	P. P. Rāman Menon, B. A., B. L.	do.		High Court Vakīl, Madras	do.
474	K. Krishna Menon, B. A.	Native Cochin.	Pallapuram	First Grade Pleader, Calicut	do.
475	K. P. Sankara Menon, B. A., B. L.	do.		High Court Vakīl, Madras	do.

H. M. WINTERBOTHAM,
Collector on Special Duty.

APPENDIX III.
TO THE
REPORT
OF THE
MALABAR MARRIAGE COMMISSION.

APPENDIX III.

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63	V. A. Brodie, Esq., C.S.	District Munsiff, Mercara	396—401	For	
64	A. Ramaya Punja, B.A., B.L.		402—412	For	

Interrogatories circulated by the Commission.

QUESTIONS.

1. Amongst Nayar and higher castes can a man of a higher division have Sambandham in a lower division?
2. Is the same liberty accorded to a woman?
3. In what, if any, cases is Sambandham between different divisions altogether forbidden?
(For instance, do Nayar men and women of the Chârnata division form Sambandham with men and women of the Sûdra Nayar division and *vice versa*?)
4. If a man and woman belonging to different divisions, between which Sambandham is not customary, form Sambandham, does it subject them, to any and if so what, social penalty?
5. Can such Sambandham be validated by a Prâyaschittham? (Fine or other expiation).
6. What is the recognised boundary between North and South Malabar for caste purposes?
7. Do the Nayars of South Malabar form "Sambandham" with those of North Malabar, and *vice versa*?
8. Can a Nayar of South Malabar form "Sambandham" with a Nayar woman of North Malabar? If not, why not?
9. May the Nayar women of North Malabar cross to the South of the Kôrapuzha river?
10. Why are they prohibited from doing so?
11. What is the Tâli Kettu Kalyânam? Describe the ceremony.
12. Who should tie the Tâli? Has he a name in Malayalam?
13. Is it the custom for a number of girls, at the same time and place, to have their Tâli tied on by one and the same man?
14. Does the man who ties the Tâli thereby obtain a right to cohabit with the girl?
Can you explain why he should not do so?
15. If there is no such right, is there any prohibition to his afterwards forming Sambandham with the girl?
16. Have you personally ever known an instance of such a Sambandham?
17. When the man who tied the Tâli dies is there any pollution to the girl?
If so do all divisions recognise such pollution, or only some divisions? Name them.
18. Is the Tâli sometimes tied on by the girl's mother instead of by a man?
19. Must every Marumakkathâyam girl undergo the Tâlikettu ceremony before reaching the age of puberty?
Is there anything but custom to be pleaded in justification of this?

20. After Tali Kettu Kalyānam, when a girl desires to consort with a man, are any further formalities necessary?

If so specify them.

21. When a Nāyar lady forms Sambandham with a Nambūdiri, or a Pattar, (foreign Brahman) are the same formalities observed as when the Sambandhakāran is a Nāyar? If there is any difference, what is it?
22. Are the formalities attending Sambandham the same in North and South Malabar?

Are the formalities the same throughout North Malabar?

Are they the same throughout South Malabar?

23. Can a woman have Sambandham with as many men as she pleases at the same time?
24. Is this permitted or prohibited, and in either case where can such a permission or prohibition be found?
25. If a woman wishes to terminate the Sambandham can she do so?
26. Is any sort of formality necessary to dissolve the connection?

If so describe it?

27. Can a man have Sambandham in more than one house at the same time?
28. If he chooses is there anything to prevent it?
29. During Sambandham in whose house does the woman sleep and take her meals?
30. Is the custom the same in North and in South Malabar?
31. According to recognised custom should the man support the woman and her children during Sambandham?
32. Is it the custom to change "Sambandham" frequently, or is it the rule for one man and one woman to cleave together for life?
33. If a woman lives with her Sambandhakāran in his house, and bears him children, does he, or does he not, feed and clothe them?
34. If Anandaravans work for the Tarawād is any allowance made to them by the Kāranavan?

Do they often cultivate Tarawād land for a rent?

In such cases are they permitted to deal with the surplus, if any, at their pleasure?

35. Do Anandaravans generally work for their Tarawād, or do they try to earn something for themselves?
36. With their earnings do they support their wife and children, or do they hand over their earnings to their Kāranavan?
37. Is there such a thing as പുത്രാവകാശം (Putrāvākāsam = son's right) in North Malabar, amongst Nāyars and Marumakkathāyam Tiyars? If so, describe what it is?

Is there any practice analogous to it in South Malabar?

38. Is there any objection to providing a permissive marriage-law for Nāyars?*

* NOTE.—By inadvertence the words "and other Marumakkathāyam Hindus" were omitted, but the omission does not occur in the Vernacular Version.

If there are any objections state them?

39. If legal sanction is to be accorded to marriage, would you prefer to retain the customary form and make registration of the marriage evidence of its legal recognition, or substitute for it the subjoined form?

"The marriage shall be solemnized in the presence of the Registrar and of the three witnesses who signed the declaration. It may be solemnized in any form, provided that each party says to the other in the presence and hearing of the Registrar, and the witnesses, "I (A) take thee (B) to be my lawful wife (or husband.)"

40. Do the conditions of a valid marriage mentioned below differ from the Sambandham recognised in practice? If they differ state in what respects.

"Marriage may be solemnized under this Act between Hindus either or both of them following the Marumakkathāyam law of succession upon the following conditions:—

- (1) Neither party must, at the time of the marriage have a wife or husband living.

- (2) The man must have completed the age of eighteen years and the woman the age of fourteen years.

- (3) Each party must, if he or she has not completed the age of twenty-one years, have obtained the consent of his, or her, legal guardian to the marriage.

- (4) The relation of the parties must not be such in respect of consanguinity or affinity that according to any recognized custom, a marriage between them would be improper.

1st Proviso.—No such law or custom other than one relating to consanguinity or affinity, shall prevent them from marrying.

2nd Proviso.—No law or custom as to consanguinity shall prevent them from marrying, unless a relationship can be traced between the parties through some common ancestor, who stands to each of them in a nearer relationship than that of great-great-grand-father or great-great-grand-mother, or unless one of the parties is the lineal ancestor or the brother or sister of some lineal ancestor, of the other.

41. Mention any conditions which you would add or omit, together with your reasons for the suggestion.

42. What are considered according to social usage to be reasonable grounds for dissolving a Sambandham?

43. What is the existing usage as to the maintenance of Nāyar wives and their children?

44. What is your opinion as to the new rights proposed to be derived from a marriage as described below?

"(a) The husband shall be *ipso facto* the legal guardian of his wife and of children born to him before or after such marriage. He shall, however, forfeit such right if, without the concurrence of his wife, he becomes a convert to another religion.

(b) The wife and children shall retain their rights as members of their tarawād, and shall further be entitled to claim maintenance from the husband.

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(c) After the husband's death, the wife shall become the legal guardian of the children in her own separate right, but she shall forfeit such right if she becomes a convert, to another religion without the consent of the head of her tarawād. In such cases the guardianship shall vest in the head of the tarawād.

(d) If either husband or wife die intestate in respect of any of his or her separate or self-acquired property, the said property shall devolve on the survivor and children born to him before or after such marriage (if any) in equal shares, and, failing them, on the tarawād.

(e) It shall be lawful for such husband or wife being of sound mind, and not a minor, to dispose of his or her separate or self-acquired property by will; provided that the husband shall make sufficient provision for his wife and children. In case of default the wife and children shall have a right to so much of the property as will provide them with a suitable maintenance, with due regard to what they have already received from the husband.

(f) Property devolving on the survivor of a marriage or the children whether by inheritance or will, shall be deemed to be their self-acquired property."

45. Is Sambandham customary between the Nâyars in British Malabar and those living in Cochin and Travancore?

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MARUMAKKATHÂYAM MARRIAGE COMMISSION.

MEMORANDUM

BY

THE ZAMORIN, MAHARAJAH BAHADUR,
CALICUT.

In reply to a letter dated 11th April 1891, addressed to him by
H. M. Winterbotham Esq., Collector of Malabar, in connection
with the Malabar Marriage Bill.

*The origin of the Marumakkathâyam System now prevalent in Malabar, and
the authorities in support of the same, are given below :—*

The term Marumakkathâyam is used in the sense of the terms *Mâthrupârampariam* (succession from the mother), or *Kshêtrapârampariam* (succession from the ground, or receptacle). The term Makkathâyam is, in like manner, used in the sense of *Pithrupârampariam* (succession from the father), or *Bijapârampariam* (succession from the seed). "The successors come under two heads, successors in the male line and successors in the female line" (*Vyvahâramâlîka*). From the above authority, it is clear that there are two modes of succession viz., Makkathâyam, and Marumakkathâyam.

2. "The woman is considered in law as the soil, and the man as the seed" (*Manusmriti* IX Chapter): Hence those who follow the rule of succession through the female line are called the followers of *Mâthrupârampariam*, *Kshêtrapârampariam*, or Marumakkathâyam, and those who follow succession in the male line are called the followers of *Bijapârampariam*, *Pithrupârampariam*, or Makkathâyam.

In the *Jîmuthapâhatha* it is written :—

3. "The properties of those who have no son, daughter's son or daughter's grandson shall descend to the sister's children." According to this principle, even among the followers of Makkathâyam, the sister's children succeed to the estate in the absence of heirs in that line.

4. In the *Pâdmam Purâna* it is written :—"Having said so, he, as he was devoted to the performance of Yâgas from his boyhood and was destitute of issue, made his nephew heir to the throne. Hence the sister's son has a right to inherit the property in the absence of any other legitimate claimants." From this authority it appears that the king of Chola installed his nephew as he had no son of his loins.

5. I have pointed out in the preceding paras that the sister's children are entitled to succeed to the property only when there are no other claimants of the paternal blood. I now proceed to point out the reason why the sister's children are made the legitimate heirs to the property in preference to the sons in the land of Kêrala.

6. In *Manusmriti* Cap. IX it is written :—"In some places the seed of the male is preferred; in others the womb of the female."

This authority gives us to understand that in some places preference is given to Bijapārampariam, and at other places to Kshētrapārampariam. I state below the cases in which Makkathāyam is preferable to Marumakkathāyam, and *vice versa*. It is on the performance of a legitimate marriage that the male can claim the female as his exclusive property, and a legitimate marriage, according to the authorities quoted below, cannot be contracted between a male and female of different castes.

"He alone is a legitimate son, who is begotten on the wedded wife" 2 "To all such married men the wives of the same class only must perform the duty of personal attendance, and the daily business relating to acts of religion." It is only in cases in which the issue is raised upon a woman in whom marital property is obtained, by a marriage celebrated in the manner prescribed by the above authorities, that the principle of seed (Makkathāyam) is preferred.

"As with cows, mares, she-camels, slave girls, milch buffaloes, she-goats, and ewes, it is not the owner of the bull, or other father, who owns the offspring." The same rule holds good when a man begets a child upon another's woman.

According to this authority one who begets a child on an unmarried woman belonging to a different caste will not obtain the child. Again if a Brahman begets a son through lust on a Sudra female, that son is called a living corpse in law, (first, because he has no rights to inherit the property of his father, secondly, because he is not authorized to perform his obsequies: Manusmriti IX Chapter). The word *putra* (a son) means one who delivers his father from the hell called *put* (पुत). Again, "Men who have no marital property in women, but have sown in the fields owned by others, may raise up fruit to the husbands; but the procreator can have no advantage from it." We are to understand from this authority that if one sow seed in a field owned by others, one cannot claim the produce, and that it can only be claimed by the owner of the field. Just in the same manner issue begotten on a female owned by others is for the benefit of the mother, and her brothers.

This is the reason why I stated above that Marumakkathāyam is in some cases preferable.

7. The following passage occurs in a discourse between Garga and Yudhis-tira in Kērala Mahātmyam:—

"In this Kērala only one member of a Brahmin Tarawād shall marry. The eldest son shall marry in preference to others. It is not necessary that the females of Sāmanthans, Sūdras and others should observe the rule of chastity. But the rule of chastity should be strictly observed by the Brahmin females only. I truly say that the above rule need not be observed by the females of non-Brahmin castes." The authorities given above will clearly show that, according to Parasu Rāma, only the eldest son of a Brahmin family is permitted to marry, and that the other members may keep the females of lower castes, and that chastity should not be observed by non-Brahmin females. If a Brahmin beget a child on a low caste woman, he is not legally married; and he cannot therefore claim marital property in that woman. Such a child can only follow the Marumakkathāyam system and the son thus begotten should perform the funeral rites of his maternal uncle, just as he would do for his father: "thus in my country let the uncle be looked upon as the father and let the uncle's liabilities and assets descend to him."

From the above it appears that Parasu Rāma himself founded the system of Marumakkathāyam among the people who follow it in Kērala.

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8. The reasons why Parasu Rāma established in this country the system of Marumakkathāyam are too many to be stated in this connection. But I may however state here only the chief reasons which bear upon the present question. This land is reclaimed by Parasu Rāma from the sea and mountains, and is therefore called Malayālam,—*Mala* meaning mountain, and *āzham* = the deep,—and this fact is based on this authority viz., chapter 9, Khandapurānam. "The land of Kērala extending from Gōkarna to Cape Comorin is taken from the sea by Parasu Rāma. He also cut down the valleys of the Malaya and Sahian mountains, and reduced them to a level. The land between these two mountains is called Vidāra." From this authority it can be clearly understood that the land taken out of the sea is called Kērala; and the land taken out of the mountains, Vidāra. Palghat and Temalpuram come under the latter head. "Parasu Rāma was ruling over the land of Kērala for 88 Yugas (great periods)." From this passage which occurs in the chapter above quoted, it is clear that Parasu Rāma was the king of Kērala, and that it was he that brought Brahmans and other caste people from other parts and peopled them here. Seeing that these Brahmans were not willing to permanently settle themselves in this land, he, with a view to prevent them from returning to their native land, changed their customs, language, and costume &c. and gave them according to their merits Tarawāds, villages, dignities and so forth. It was ordained that Tarawād property should not be divided, as partition splits the Tarawād property, and thereby impairs the permanency thereof. If all the brothers have children dissension may often crop-up among them, which will lead to partition. It was therefore that he ordained that the eldest son alone should marry as stated in the 7th para.

9. "Eunuchs and outcastes are excluded from inheritance" (Manu, chapter IX). Although the word Eunuch, means one who is incapable of begetting a son, yet the term is equally applicable to a man who begets a child on a woman over whom he has no marital rights, as the child is not his own. But it is the issue of the elder brother who are entitled to perform the funeral rites of these younger brothers and to inherit their property, as according to Manu they are to be regarded as the sons of all the brothers.

10. "The gift of daughters in marriage by the sacerdotal class is most approved when they previously have poured water into the hands of the bridegroom, but the (marriage) ceremonies of the other classes may be performed according to their fancies." "The reciprocal connection of a youth and a damsel with mutual desire is the marriage denominated Gāndharva, contracted for the purpose of amorous embraces and proceeding from sensual inclination" (Manu, Cap ix). It is thus that the ancient Marumakkathāyam system became prevalent in Malabar and the authorities for it are those stated above. The following authorities will show that no one shall break the ancient customs and usages. "The observance of immemorial customs increases one's virtue, and virtues will turn away from those who do not observe those customs. This is declared to be the established rule of good conduct for all the four castes. A king should not urge his subjects to do things which are not consistent with the principles laid down in Smrithis and Sruthis, and he should chastise him who violates them. Whatever has been the custom in a Dēsa, Pura, Grāma or Town, should not be broken through. The rules that have been hereditary in a family or in a country should not be violated, simply because there is no provision in Shastras for the same. We must assume that customs and manners are based on the principles of Vedic texts, which are supposed to have

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been lost. Even virtuous deeds should not be done if they are not conducive to public good, and if they do not bring about one's happiness in the next world. A king should not urge on any body to such things, but should on the contrary prevent them. Custom is regarded to be the foremost among the Āgamas (revelations). The origin of all the virtues is Custom, and the eternal God is the lord of all the virtues". Upon this authority, Parāsara, Manu, Srīpathmia, Vyāsa and other Rishis have declared that immemorial customs and usages should be invariably observed, and that it is improper to introduce innovations at variance with them. I am therefore of opinion that the Marumakkathāyam System, now obtaining in Malabar, cannot be altered in the least degree. As a good deal yet is to be said in support of Marumakkathāyam System, you may be put in possession of such authority, if necessary, on direct communication with Kūdallur Nambudri, Varikkamānjēri Nambudri, Azhuvānjēri Tampurākkal, Cherumukkil Nambudri, Méppalli Nambudri and others.

(Signed). MĀNA VIKRAMAN ZĀMORIN,
Maharaja Bahadur.

A translation of the Sanskrit slōkās, of which the memorandum is full, was obtained through the Honorable Mr. C. Sankaran Nair.

H. M. WINTERBOTHAM,
Collector on Special duty.

ii. the liability of the husband, or father, to maintain his wife and children,

iii. an absolute right on the part of the person to will away his private property to his wife and children, or to whomsoever he likes.

As I have already shown, and as some of the recent decisions of the High Court would show, these are no new rights or usages now being introduced into the Malabar Law. Will has been known for years, and it has been very common for a dying Karanayan to declare, on his death-bed, to his Senior Anandiravan and the other members of his Tarawad, that such and such things, or so many rupees should be given to his wife and children, or to any of his favourite servants. The obligation of the husband or father to maintain his wife and children, when living with him, has also been long known and recognised; and in North Malabar and also in several parts of South Malabar, the Karanayan even now virtually transfers to the husband, or father, the guardianship of the wife and children, when he sends them to live in his (husband's) house. These three rights, if recognised as arising under a marriage solemnised under the proposed Act, will therefore be no new rights created under the Act, and, in my opinion, in making an optional Marriage Law of this sort, it would not be a wise policy to startle the people with any interference with their Property Law, unless it is clearly shown that the majority of them are in favour of such change.

As to clause (d), it may further be pointed out, that it is only proposed to provide, for such of the Marumakkatāyam Hindus as wish it, a form of marriage which the Law will recognise, and it would therefore follow, that one or more members of an undivided Marumakkatāyam Tarawad might marry under this Act and the others not. Under the clause (d) the separate or self-acquired property of any member so marrying, will descend to the surviving husband, or wife, and children born of such marriage, while the property of the other members, who do not so marry, will lapse to the Tarawad, and will, under the right of survivorship be liable to be enjoyed by the first-named member who marries under this Act, and whose property will go to his own children and not to the Tarawad. So far as I know, no case has been made out why such an unfair and invidious distinction should be made in favour of one member of a Tarawad, who takes the benefit of the Act, to the prejudice of the others who do not. I would therefore altogether drop the clause (d), and also the 2nd part of clause (e), as it goes further than the English Law, and because the recent decision in the Jackson case in England might well show, that there might be very good reasons for a husband even to refuse a bare subsistence to his widow.

By these remarks, I do not wish it to be understood that I am by any means in favour of the Marumakkatāyam Law of inheritance; and, if my private opinion be consulted, I would certainly say that it should never have existed at all. But seeing that it has existed so long, and cannot be interfered with, without causing a great revolution, it would be highly impolitic to make any change in that law, till it is wished by the majority of its followers, which I do not think is still the case. To make an innovation of the character suggested in clause (d), would be to introduce the thin end of the wedge to cut away the whole system of that law, which the people do not, as yet, wish the Government to do. If the Government would interfere in the matter of Property Law, the sooner the whole Marumakkatāyam law is done away with and the Hindu, or any other rational or natural law, introduced into the country, the better. But so long as they would not interfere in a matter of that character in the absence

of an application from the people, a piece-meal law of the sort suggested in clause (d) would only add to the confusion and disunion already existing in Malabar families. In my opinion, a law, legalising the marriage performed under this Act, with the rights of maintenance to the wife and children so marrying, and giving the right to dispose of one's private estate by will, will amply satisfy the present wants of the country, and in this there can be no grave complaint from the novelty of the thing. The practice among the Māpillas of North Malabar, who follow the Marumakkatāyam Law of inheritance, but still contract their marriages according to the rites of the Koran, would illustrate this view.

45. Yes, it is customary. In my opinion, a change in the Marriage Law of British Malabar, not assented to by the Rajahs of Cochin and Travancore, might prove troublesome to the people.

(Signed.) C. GOPALAN NAIR,
Sub-Judge, North Malabar.

MARUMAKKATHĀYAM MARRIAGE COMMISSION.

ANSWERS TO INTERROGATORIES

BY

M. R. RY. THE ERĀLPĀD, OR ELAYA RAJAH AVARGAL,
CALICUT.

(Heir Presumptive to the Zamorin Maharaja Bahadur;
Senior member of the Kottakal Branch.)

1. Yes.
2. A woman cannot have Sabandham with a man of a lower division, but can form Sambandham with a man of a higher division.
3. Among the Kiriyaṁ, the Sudras, the Chārnavaṛas, the Vattākātans, the Pallichāns and the Andūrāns, the first can have Sambandham with those of their own division and those below them. The males and females of the Chārṇa division cannot form Sambandham with those of the Sudra division. It is not customary.
4. The penalty is loss of caste. Their fellow caste people will not associate with them.
5. Cannot.
6. Korapuzha.
7. The Nayars of North Malabar go to South Malabar, and form Sambandham with women of a lower division. The Nairs of South Malabar do not form Sambandham with the women of North Malabar.
8. As a woman in South Malabar who has formed Sambandham with a man of her own division, is not prohibited from crossing Korapuzha, a man may take his wife with him when he goes to North Malabar, and thus has no necessity to form a Sambandham there with a woman of North Malabar.
9. She may not.
10. Prohibited originally by Parasu Rāma, and afterwards by the Native Rajas that subsequently ruled the Country.
11. It is on menstruation that females attain the right to cohabit with a male. If on menstruation a woman does not do so, according to Sastras she incurs the evil consequences which would arise from abortion. A girl has four stages according to her age and has an appropriate name at each stage. She is called Kanyā at 8, Rohini at 9, Gouri at 10, and Rajaswala afterwards.

According to this 'pramānam' (authority) the girl has to be disposed of in her 8th year, during the so called Kanyaka period which is before maturity. The Marumakkathāyam people also celebrate the Kalyānam before puberty. The Kalyānam is not a marriage (vivāham) which entitles the man who ties the tāli to lordship over her. It merely entitles the girl to a right to cohabit with a man. The tāli of the girl must be tied either by one of her own, or of a higher caste. The people feast the Brahmins and their own people as their means permit.

12. The person to tie the tãli differs in the case of different castes. In the Calicut palace it is tied by one of the Kodungalûr (Cranganore) royal family. Among Sãmandans, and Sudras of rank such as Karthãkanmar, by Kshatriyas, not belonging to the ruling families. Among Chãrnavars, by Nedungãdis; and among most of the rest of the Sudras by one of their own division. Those who tie the tãli are not called by any particular name, such as Bhartãvu (husband), or Manavãlan (Bridegroom).

13. Yes.

14. No. Because the ceremony is not a marriage (Vivãham) such as to give the man lordship over the woman.

15. If the girl desires it, she can form Sanbandham and cohabit with the man who tied the tãli, just as she can with others.

16. Yes. In the royal families of Cochin and Travancore it is mostly the case for the man who ties the tãli to form Sambandham with the female. I know many instances of such Sambandham having taken place in British Malabar.

17. Among the Sudra and Kiriya divisions, there is pollution. Among other Sudras, if a man of the same division who had been a Sambandhakkãran for a very long time, dies, his wife and children have pollution.

18. Yes. In poor families, as the members cannot afford to bring a man to tie 'tãli,' and to feast the people, the mother ties the tãli before a God. This is however very rare.

19. The answer to this question is included in the answer to question 11.

20. In certain places in South Malabar, when a girl is about to form Sambandham, the relatives and other required persons are verbally told of it and their consent obtained. Beyond this, no formalities are observed. In certain other places, when a man forms Sambandham with a woman of his own division, besides informing the relatives and feeding the Brahmins and distributing among them betel leaf &c., some charity is also given. In North Malabar this form of Sambandham is called "Pudamuri kalyãnam". They perform certain ceremonies on the occasion, the details of which I do not know.

21. The consent of the Kãranavan and others is obtained for the Sambandham. No other formalities are observed.

22. I do not know the custom that obtains in North Malabar. As I have in answer to question No. 20 stated the few differences in the formalities observed in South Malabar in regard to Sambandham, I do not repeat them here.

23. Yes. Provided she has the consent of the first Sambandhakkãran, the woman may arrange for Sambandham with others according to her discretion.

24. Yes. There is: *Vide Kãralamãhãtmyam*, chapter 49.

25. She can terminate the Sambandham only with the consent of her Kãranavan. She cannot of her own accord do so.

26. No formality whatever.

27. Yes.

28. If he chooses, there is nothing to prevent it.

29. In her own house. If however the Sambandakkãran is a great and rich man, and takes her to his own house, she sleeps and takes her meals in his house.

30. I do not know the custom of North Malabar.

31. If the woman resides in her house he has to pay for all other expenses save that of food, and if she resides in the house of the Sambandakkãran she is supplied with food from his tarawãd property, and the other expenses are paid for by the Sambandhakkãran from his self-acquisitions.

32. Those devoid of intelligence and affection often change Sambandham, and form new ones; but this cannot be said to be the general custom. The husband and wife ought to stick to each other for life; and they generally do so.

33. If the wife and children live with the Sambandhakkãran, his tarawãd supplies them with food, and he supplies their clothing and all other expenses.

34. It is customary for the Kãranavan to give a small allowance to Anandaravans who work for the tarawãd. In rare instances an Anandaravan takes tarawãd property on rent. In such cases the Anandaravan takes for himself any surplus over the rent.

35. Some do both.

36. Some maintain their family and children with their earnings; and some pay them to the Kãranavan.

37. I am not certain whether amongst Nayars and Tiyars in North Malabar the children have any right called Puthrãvakãsam. I have never heard or known of such a right in South Malabar.

38. Marumakkathãyam is the rule in the Kovilagams of Trevandrum, Cochin, Calicut, Chirakkal and Valluwanãd, and in these families no one except men of the higher castes, viz, Brahmins or Kshatriyas are allowed to form Sambandham with the females. This being so, it would be a matter of difficulty for these families to make use of a (marriage) law. It will not be objectionable to those who desire it to secure validity to their marriage, and to enact that a portion of their self-acquisitions should go to their children. From such a marriage it does not of necessity follow that *pulu* (death pollution) and *Srãdham* (funeral oblations) need be observed (by the sons?).

39. I don't approve of either way. Most Malayãlis consider that it is very disgraceful for females to go to public places. As Kãzis are appointed by Government, for the Mãpillas, I think, a high casteman may with advantage be appointed (as Marriage Registrar) to meet the wants of all castes.

40. I think there will be some differences, but until the Act is passed and begins to work, I cannot explain them.

41. Nil.

42. The prevailing practice is to break-off the Sambandham, if either party does any thing which disgusts the other, or if either of them leaves undone those things which ought to be done.

43. *Vide* answers to section 31.

44. *Vide* answers to section 38.

45. Yes.

Signed. ERãLPãD, or ELAYã RAJAH OF CALICUT.

[True translation as near as may be]

H. M. WINTERBOTHAM,
Collector on Special duty.

39. If it is desirable to convert the Sambandham among Malabar Sudras into a binding marriage the form now in vogue is best. If registration is necessary the best plan is to have three or four casté men elected by the people for (groups of) two or three amsams, to register marriages.

40. The marriage laws shown in the margin differ from the practice now in force. They are shown below.

- (i). The husband can have a wife at the time of his marriage, but the wife cannot have a husband.
- (ii). The girl should be 12 years old.
- (iii). No difference.
- (iv). Marriage should be impossible if there is any impediment in the shape of caste, or religious observance.

41. It is not clear whether the 41st question refer to the questions only, or to the whole of the Marriage Bill as proposed.

42. The causes of terminating a Sambandham are any acts which engender mutual aversion.

43. There is no recognised practice among Nayars to give maintenance to their wives and children. It is given in proportion to the wealth acquired; and often according to good will, and pleasure of the donor.

44. If marriage is legalized by the Act proposed, there will be some new rights. My opinion is given below:—

(a) If the wife and children retain their right to the tarawâd property as members of it, the Kâranavan should be their guardian: if not, in transactions connected with the tarawâd property the husband, or father, will have to be made a party, which will lead to endless troubles. If the husband, or wife, embraces a new religion without mutual consent, all right to the property should be forfeited.

(b) If the wife and children continue to be members of the tarawâd, the wife should only be entitled to such maintenance as is given by the husband according to his free will. She cannot force him to give what she likes.

(c) If the guardian be the person named by me in (a) the same person should be guardian under this clause also.

(d) If the husband, or wife, die intestate, half the property should go to the survivor, and the other half to the tarawâd.

(e) Wills made by all sane persons of proper age should be valid: but if the testator neglects to make by his will proper provision for survivor and children the properties should be divided as stated in (d). If the deceased be the wife the just share of her property should go to the husband and children, and if the deceased be the husband, the share should go to the wife and children.

(f) Needs no modification.

45. Some of the Nayars in Malabar, Cochin and Travancore intermarry.

(Signed) PADINYARÉ KOVILAGATHA VALIYA RAJAH.

[True translation as near as may be].

H. M. WINTERBOTHAM,

Collector on Special duty.

MARUMAKKATHÂYAM MARRIAGE COMMISSION.

ANSWERS TO INTERROGATORIES

BY

M.R. THE PADINYARÉ KOVILAKATH VALIA TAMBURÂN, Avargal,
(SENIOR OF THE WESTERN KOVILAGAM, A BRANCH
OF THE ZAMORIN'S FAMILY),
CALICUT.

1. Among those, who follow the Marumakkathâyam custom, a man of the higher class is allowed to make Sambandham with a woman of the lower class.

2. But certain classes of the Ambalavâsis (temple servants) are not allowed to have Sambandham with women of the Kiriya division (the highest class of Sudras in Malabar).

3. Certain classes of Nayars cannot form Sambandham with each other such as the Chârната, Sittakar, Vatakkât &c.

4. If persons, who, by custom, are prohibited from forming Sambandham, do form it, they will be forced to discontinue the Sambandham and be subjected to penalties and considered out-castes.

5. Even after making atonement, a Sambandham of the kind mentioned above, cannot be recognised.

6. The caste observances differ in North and South Malabar, the Kôrapuzha is the dividing line.

7. There are rare cases in which Nayars of North and South Malabar have contracted Sambandhams.

8. A Nair of South Malabar can form Sambandham with a Nair woman of North Malabar.

9. Really there is no objection to a Nayar woman from North Malabar crossing the Kôrapuzha.

10. The present prohibition to cross the Kôrapuzha originated in the supposition that foreign travel would cause people to break caste-rules. The prohibition was perhaps made by the former kings of the country.

11. The performance of the Tâlikettu-kalyânam indicates that the girl has attained marriageable age. It is in vogue with slight alterations both among the Makkathâyam and Marumakkathâyam people. As it is an auspicious act it is designated "kalyânam". The chief performance in it is the tying of the tâli at the Muhûrtam, with marriage rites and adorations to the Deity. The preliminaries take about two days and the whole thing occupies six days.

12. The tâli is tied among the Makkathâyam people by the father: among the Sâmandhans, Kshatriyas, and Nair chiefs,—by the Kshatriya Tirumulpâd: in some parts of South Malabar, by the Nedungâdis, and in other parts by the relatives: in North Malabar by the household priest, or Elayath, and relatives. There is no special name for the person who ties the tâli.

13. The Tâlikettu can be performed by the same man for one or more girls at the same time and place.

14. The person, who ties the tâli has no right to claim the girl as his wife.

15. The Tâlikettu neither creates the right nor the disability to form Sambandham.

38. Though the Act in contemplation is a permissive one, yet as many are likely to conform to the provisions of it, it is likely to bring about the evils enumerated below:—

(a) The disgrace the couples have to subject themselves to, by going to the office of the Registrar with their guardians and witnesses, instead of making the Sambandham at an auspicious time without any pollution.

(b) The difficulty and expenses the parties have to undergo in getting evidence if they have to obtain a divorce.

(c) If adultery is to be proved in a Court to obtain a divorce, parties will be encouraged to commit adultery.

(d) If Anandaravars spend their self-acquired money for their wives and children, Kāranavars will neglect the education of their Anandaravars.

(e) Even if parents be fond of their sons yet they would neglect their education, as the wealth acquired by the son will not come to them (the parents) nor to the (parents') other sons and daughters.

(f) A man even if born in a very wealthy family, if he has no private property of his own, will find it difficult to get a wife.

(g) Tarawāds will not be recruited, as hitherto, by the accretion of the self-acquisitions of the members.

(h) If the wife and children are to have equal shares in the property of the father, dissensions would soon arise among them to settle the share of each, which may end in law suits.

(i) If a person of a high class marry a woman of a lower class, and then fall sick, he will have no one to nurse him, for his tarawād people will neglect him as they get no share of his earnings and the (low caste) wife and children are incapacitated (for attendance upon him).

There are many authorities, as well as immemorial usage, to show that among the Marumakkathāyam people the right to property whether belonging to the tarawād, or self-acquired, and the right to offer the funerals cakes, belong to the Anandaravars.

VYAVAHARAMĀLA.

- 1 “ബിജഭക്ഷത്രാചിധയാ”
“ലോകപത്നം ലിധാസ്മതം”

There are two sorts of offspring in the world, one from the seed, the other from the ground.

MANU SMRITHI.

- 2 “ക്ഷേത്രഭൂതാസ്മതാനാരി ബിജഭൂതഃസ്മതഃപുമാൻ”

Succession through the woman is the ground: succession through the man is the seed.

and

- 3 “ബിജമേവകാചീതശ്രേഷ്ഠം സ്ത്രീയൊനിസ്സേവകത്രാചിതം”

In some places the seed is (considered) the chief element: in other places, the womb.

VYAVAHARAMĀLA AND KARTHYANA VACHANAM.

- 4 “യസ്യഭേശസ്യയോധകഃ പ്രപുതഃസാധുകാലികഃ”
“ശ്രുതിസ്മൃതിവിരോധേന ഭേശഭുക്തസ്സുച്യതേ”
“ഭേശജാതികലാനാച യോധകഃപ്രാകപ്രവൃത്തിതഃ”
“തഥൈവതൈപാലനീയാപ്രജാഃപ്രകുദ്യതേസ്വഥാ”

That country will be glorious which follows immemorial usage without offending against tradition or sacred writ. Whatever be the ancient customs for each country, caste and tribe, they should be cherished. If they be set at naught troubles will fall upon the people.

MARUMAKKATHÂYAM MARRIAGE COMMISSION.

ANSWERS TO INTERROGATORIES

BY

M. R. Ry. CHIRAKKAL KOVILAKATH KERALA VARMA VALIA RAJAH, Avargal,
RAJAH OF CHIRAKKAL,
NORTH MALABAR.

1. Yes.
2. No.
3. Sudra Nayar men may form Sambandham with women of the Chârnnathu (ചരന്നതു) Division; but men of the latter class cannot form Sambandham with women of the Sudra Nayar division. Inter-Sambandham is further forbidden between members of the following sections of the Sudra Nayars themselves :—
 - 14 Illams beginning with Kambiyam Valappu,
 - 3 Illams beginning with Kunniyur,
 - 2 Illams beginning with Thêvanthrôn,
 - 2 Illams beginning with Thevathrôn,
 - 2 Illams beginning with Mukkâdan.
4. It subjects them to social penalty. Such persons will not be admitted into society. This is the penalty.
5. It cannot be validated by a 'Prâyaschitham'.
6. Korapuzha.
7. The practice as to Sambandham is not reciprocal. The Nayar men of North Malabar form Sambandham with Nayar women of South Malabar.
8. A Nayar of South Malabar cannot form Sambandham with a Nayar woman of North Malabar.

There has never been such an instance.
9. They may not.
10. —
11. This is a ceremony which girls between 9 and 11 years of age have to undergo. The 'Tâli' is tied by one of the same caste or by a Brahmin, and the occasion is celebrated with feasting and much splendour.
12. The custom varies with different sections in this respect.

The person who ties the tâli is not known by any special name in North Malabar.
13. Yes.
14. He does not; because there is another ceremony to effect Sambandham.
15. No objection.
16. I have known of no instance.
17. There is no pollution.
18. No.
19. Yes, Tâlikettu ceremony must be gone through before the girl reaches the age of puberty. There are cogent reasons for it.

16. I have not heard of an instance in which the person who tied the tãli has become the husband.

17. If the person who tied the tãli dies, there is no pollution to the girl.

18. In some places, the mother of the girl does tie the tãli.

19. The performance of the tãlikettu kalyãnam for all Marumakkathãyam girls before they reach the age of puberty is the proper thing. It is in conformity not only with the practice, but also with the ruling in the Shastras. People who do not observe this practice are subject to *prãyaschitham* (a fine as an atonement).

20. When, after tãlikettu, a girl desires to take a husband, an auspicious day is fixed on which the Kãranavars, relatives and friends of both parties meet together at the house of the girl, and with marriage ceremonies, begin the Sambandham.

21. In case a person of high caste forms Sambandham with a Nayar woman, the same practice is followed.

22. There is no difference in North and South Malabar in the practice of forming Sambandham.

23. A woman cannot have more than one Sambandhakkãran at the same time.

24. It is objectionable.

25. A woman is at liberty to terminate the Sambandham.

26. When a Sambandham is to be broken off both parties have to intimate their wish to their respective karnavars, who dissolve the Sambandham.

27. Males are allowed to have Sambandham with more than one woman at a time.

28. There is nothing to prevent this.

29. During the period of Sambandham, the parties can live, at either of their houses according to their pleasure.

30. The practice is the same in North and South Malabar.

31. According to custom it is not obligatory for a man to maintain his wife and children, but if the latter live with the husband in his own house, he is bound to support them.

32. It is not a practice among respectable people to change the Sambandham often: but it is not obligatory to continue it till death.

33. If a woman lives in her own house with her husband, and if children be born to him, he is not bound to maintain them: but in the instance mentioned in para 31, he must.

34. The Anandaravars are not remunerated if they work for the maintenance of the tarawãd. Often they obtain tarawãd lands on rent, and dispose of the excess of the produce, according to their will.

35. The Anandaravars work for the maintenance of the tarawãd as well as for themselves.

36. The Anandaravars give their earnings to their Kãranavars, or utilize them in supporting their wives and children, or spend them in any way they please.

37. In North Malabar, the property given to a person by his father is called "son's share" or "*Putrãvakãsam*"; but in South Malabar it is called "Achchan Koduthatu," or "father's gift."

(c) between families differing in social status,

(d) between the high castes and the low castes—

Such inter-marriages set at naught all caste and family distinctions.

41. As the proposed legislation is quite unnecessary I have no suggestions to make.

42. Adultery, want of agreement, incurable disease, barrenness &c., are considered reasonable grounds for dissolving a Sambandham.

43. The wife and children are maintained by the Tarawãd to which the husband belongs, or by the husband himself if the Tarawãd has not sufficient funds to meet the charge..

44. (a) Practically both the husband and the Kãranavan are at present the guardians of the wife and children. It would be prejudicial to the well-being of the wife and children to relieve the Kãranavan of his share of the responsibility.

(b) Practically the wife and children enjoy the support of the husband at present. It would lead to numerous suits and dissensions to make it compulsory.

(c) It is not advantageous to make the widow the sole legal guardian of the children.

(d) Litigation will increase and Tarawãds will go to ruin, and it will cause strife between the sons and nephews.

(e) There is no objection to the power of making Wills being legalised.

(f) No objection.

45. North Malabar people cannot form Sambandham with those to the South of Kôrapuzhá. I am not aware of the custom prevailing elsewhere.

(Signed). KÊRALA VARMA RAJAH.

(True translation as near as may be).

H. M. WINTERBOTHAM,

Collector on Special Duty.

20. Yes, several preliminary formalities such as the examination of horoscopes, making gifts, fixing an auspicious day and hour for the union, giving of cloth, and several other things have to be gone through by the bride and bridegroom, their fathers, Kāranavans and other relations.

21. The same formalities are observed, the only difference being that the Nambudiri, or Pattar, concerned does not take food at the bride's house.

22. No. They differ. The formalities are the same throughout North Malabar.

23. No.

24. It is prohibited, and the prohibition is founded on authority.

25. She cannot.

26. Yes. The husband is to come to the woman's house with his castemen and declare the dissolution formally.

27. He may.

28. There is no objection.

29. Either in her own house or in her husband's.

30. Yes.

31. Yes, according to his means.

32. Dissolution occasionally takes place in case of disagreement between husband and wife. There is also the practice of cleaving together for life.

33. The husband feeds and clothes them according to his position and means so long as he lives.

34. An allowance is made by the Kāranavan. The Anandaravars do cultivate Tarawād land for rent, and may deal with the surplus as they please.

35. Both the customs are prevalent.

36. Do.

37. There is. When house, paramba, paddy lands &c., are given to wife and children, such voluntary gift made by husband and father is known as Puthrāvākāsam in North Malabar.

Probably some practice analogous to it exists in South Malabar also.

38. Yes. There is objection. Disagreement and dissensions between members of the family and others, ruin of tarawād property, and numerous other evils would be the result of forsaking the customs observed from time immemorial.

39. As legislation is unnecessary to make marriage binding, neither registration of marriage nor the procedure proposed, as specified in the question, is required.

40. (1) A man having his wife living may form Sambandham with another woman.

The woman cannot do likewise.

(2) There is no such restriction.

(3) The consent of the parents of the parties and of all their kinsfolk is necessary, whether they be above or below 21 years of age.

(4) The provisions referred to in clauses (1) and (2) admit of inter-marriage,—

(a) between persons belonging to the same *Kudumbam* (family),

(b) with a member of a *Kiriyam*, in cases where such Sambandham is prohibited,

Marumakkathayam Marriage Commission.

Answers to Interrogatories

BY

M. R. RY. ETTAN TAMBURAN AVARGAL,

Padinyârê Kovilagam.

(NOTE.—This gentleman is a member of the family of the Zamorin Maharajah Bahadur, and is a learned Sanskrit Scholar.)

1. Amongst Nayars and other higher castes who follow Marumakkathayam, a man of a higher division can have Sambandham in a lower division. This is sanctioned by Yāgya Valkya Smṛiti, Manu Smṛiti, Parāśara Smṛiti, &c. In Yāgya Valkya Smṛiti it is stated thus :—

(Purport of Sloka.)

“A Brahman can form Sambandham in the three lower castes, namely, Kshatriyas, Vaisyas and Sudras, and a Kshatriya in the two lower castes next under him &c.” Therefore it is clear that higher caste people can form Sambandham in the lower divisions.

2. The same liberty is not accorded to a woman, because a woman can form Sambandham only either in her own division or in a higher one. The children of a man of higher caste by a low-caste woman are called Anulōmans (Anulōmam=anu+rōmam: going with the hair i. e. not against the grain); children by a woman of his own caste are named Samajāthi putras. If on the contrary a woman of high caste has issue by Sambandham with a man of low caste, they are known under the name of Prathilōmans (Note—going against the grain). The Anulōmam issue are considered as of pure blood while the Prathilōmam issue are regarded as base.

(Sloka) From Yāgya Valkya Smṛiti

“A son born to a Brahman woman by a Kshatriya is called a *Sūtha*; likewise the son of a Brahman woman by a Vaisya is called a *Vaidēhaka*, and by a Sudra, a *Chandāla*. These (three are) excluded from all *Dharma*. The son of a Kshatriya woman by a Vaisya is called a *Mūgadha*, and by a Sudra, a *Kshatha*. The son of a Vaisya woman by a Sudra is called an *Apōgava*. The son of a *Karani* woman by a *Māhishya* is called a *Rathakāra*. Those born from Prathilōmam and Anulōmam are to be known respectively as impure and pure.”

It is in accordance with these principles we say that the above concession is not extended to women.

3. There are certain divisions among Nayars between whom no Sambandham can be formed. Vattekātt Nayars and Pallichāns cannot have inter-Sambandham. Like these divisions are the Nayars known as Kāvil Ambalavāsi and Urāli Nayars. There are many other similar divisions. Moreover no Sambandham can be formed between any two of the following divisions namely Vattekātt Nayar, Urāli Nayar, Pallichāns, Kāvil Ambalavāsi Nayar. This is accounted for by the assignment in former days by Parasu Rama, and divers great men, to each of these divisions, of a particular profession and by the differences in custom which they established.

4. If a man and woman belonging to different divisions between which Sambandham is not customary, form Sambandham, they would be liable to social punishment, which consists in expelling them from society by their caste people, on occasions of great feasts and festivities, such as Tāli-kettu Kalyānam.

5. Such Sambandham cannot ordinarily be validated by Prāyaschitham.

6. It is a well-known fact that Kōrapuzha is the boundary which separates South Malabar from North Malabar so far as caste observances are concerned.

7. The Nayars of South Malabar do not generally form Sambandham with those of North Malabar and *vice versa*.

8. There would be no objection whatever to a Nayar of South Malabar forming Sambandham with a Nayar woman of North Malabar, but impediments to this arose, I think, partly owing to the restrictions imposed by the Rajahs of South and North Malabar, who were at enmity in former times, and partly to the difficulty experienced by people in getting from a distance accurate information regarding the caste, whenever they wanted to effect a Sambandham, and the like causes.

9. There exists no absolute objection to a Nayar woman of North Malabar going South of Kōrapuzha. The causes which led to this prohibition appear to me to have been :

(1) The restrictions laid down by the two Rajahs as described in the foregoing answer.

(2) If the women were allowed to travel as freely as they pleased, they would enter into all sorts of connexions forbidden by caste regulations and customary usage, which would undermine caste observances, and would remove caste distinctions, so much so that all classes would be reduced to the same level, and lead to other similar evils. It is clear from the following quotation from Bhagavatgītha that if the women fall and become degenerated it would be productive of enormous evil.

(Purport of Sloka.)

“O! Krishna! from the increase of vice (even) family (chaste) women become sinners. O! descendant of Vrishni (Krishna)! when women are bitten (corrupted) confusion of castes is the result. The wages of this confusion will be hell even to the race of such as destroy the purity of families, for their forefathers will sink into hell, being deprived of *Pinda* (funeral cake), *Udagam* (holy water) and *Kriya* (funeral rites). By these vices of the destroyers of families, which produce mixtures of castes, the long established religious observances of castes and of families are up-rooted.”

10. It is unnecessary to give an answer to this question as it is obvious from the answer to question No. 9.

11. Tāli-kettu kalyānam is a ceremony somewhat akin to the marriage (Vi-vāham) rite of the Makkathāyam people, but among the latter the man who ties the tāli (or accepts the hand of the woman) becomes the husband of the girl. As Parasu Rama forbade to the women of this Kēralam, which is the land of Parasu Rama, the observance of chastity, it is not necessary that he who ties the tāli should, as already stated, become or remain husband of the girl. It has been ordained by Parasu Rama that in Kērala, Marumakkathāyam women need not be chaste, and that non-observance of chastity should entail no evil. Vide chapter 48 of Kērala Mahātmyam:

“Among the folk of this land, in this my country, among all castes, among all Sāmantās, and among all other women likewise, let there be no chastity. But as for the wives of Brahmans and of *Dwijas* (twice-born classes) let the rule of chastity stand in regard to them; with other residents let there be no rule of chastity. Behold I declare the truth.”

I will now briefly speak of the Tāli-tying ceremony. When the girl attains her proper age for this ceremony, her Taravād people, in consultation with their kindred, fix an auspicious day for the ceremony. They then make arrangements for celebrating the event in a manner befitting their circumstances. Three days prior to the appointed day, they begin the celebration by the performance of preliminary formalities such as placing rice in the palm of the girl. On the tāli-tying day they feast the Brahmans and distribute gifts to them. And at the auspicious moment the tāli is tied by a man qualified under the caste rules for the purpose.

12. The man tying the tāli is different for different castes. For instance, Kshatriyas have Brahmans: Sāmantans get Kshatriyas to do it; and among higher divisions like Kiriyaathil Nayars, the ceremony is performed by a fellow caste man or one of the Elayad division. Among some of the Nāduvāzhis it is generally done by Kshatriyas. Nedungādis do this for Agathittaparisha. For the rest of the Sudras, men of their own caste perform the rite. Though there is not a common name for the tāli-tying person, in some places he is occasionally called Manavālan.

13. It is customary to have the tāli tied for a number of girls at the same time and place. This generally takes place in cases in which the people have the ceremony performed by the members of a select and respectable family with certain dignities attached thereto. When the members of that particular family are few in number, and the girls to be invested with Tāli many, the necessity for the practice of having one man for a number of girls is apparent.

14. The person who ties the tāli does not thereby obtain an enforceable right to cohabit with the girl, nor is there any objection to his cohabitation with her. Under the principles enunciated in Kērala Mahātmyam, which I have already set out in para 11, Marumakkathāyam castes created by Parasu Rama in this Kērala are exempted from the observance of chastity, and are thereby guilty of no sin. And it is this that has led to the absence of an enforceable right in this respect.

15. There is no prohibition to his forming Sambandham in the usual manner with the girl and then cohabiting with her.

16. I have known instances in which the persons who tied the tāli have become the husbands of the girls.

17. Generally there is no pollution to the girl when the person who tied her tāli dies. The Pushpagans and in some places, the Kiriyaathil Nayars observe such pollution.

18. Occasionally the tāli is tied by the girl's mother, instead of by a man. This is generally done by those who cannot, for want of means, afford to celebrate it according to established customs.

19. The Tāli-kettu ceremony among Marumakkathāyam people should be undergone before the girl attains her puberty. To justify this statement there are recognised authorities besides the long standing customs observed throughout the country.

20. Further formalities when a girl desires to consort with a man after Tāli-kettu kalyānam are necessary, such as, giving intimation of the matter to their kindred and obtaining their consent, appointing a day for the Sambandham, conducting feasts on the day according to their circumstances, and then completing Sambandham between the man and the woman.

21. When a Nayar woman forms Sambandham with a Nambūdiri or a Pattar it is not usual to observe the same formalities as are observed when the Sambandhakāran is a Nayar. When the Sambandhakāran is a Nayar, feasting and special cakes and sweetmeats according to customary usage are provided. When the husband is a Nambūdiri or a Pattar, such specialities would alone be absent.

22. I understand that the formalities attending Sambandham are almost the same in North and in South Malabar.

23. A woman of respectable Tarawād cannot have Sambandham with as many men as she pleases at one and the same time.

24. Vide answer to question 23.

25. If a woman wishes to terminate Sambandham there is no objection to her doing so, but it would not be quite becoming (virtuous) if it is terminated without proper reasons.

26. There are some formalities to be observed to dissolve a Sambandham. The grounds of the intended dissolution should be placed before proper persons concerned, and intimation of the dissolution should be given.

27. A man may have Sambandham in more than one house at the same time. He is not prohibited from so doing. This is sanctioned by Smritis and Purānas.

28. The answer to question No. 27 will suffice.

29. According to Marumakkathāyam during Sambandham the woman has her bed and board in her own house.

30. It appears that the custom is almost the same in North and in South Malabar.

31. According to custom the man is not bound to support the wife and children during Sambandham; but he should give cloths and oil according to his means.

32. It is not the common custom to change Sambandham frequently. This is done only when there are reasonable grounds. I have seen many persons remaining as husband and wife till death.

33. When a woman lives with her Sambandhakāran in his house and bears him children, the father provides food and clothing for the children, only so long as they are in his house. At other times when they live in their own (mother's) house they should be maintained from the Tarawād.

34. If the Anandaravans work for the Tarawād, the Kāranavans would grant some allowance as they please. In some places in certain Tarawāds the Anandaravans cultivate Tarawād lands on pāttam. In such cases they are permitted to enjoy the surplus, if any, just as they please.

35. The Anandaravans generally work for the Tarawād but there are Anandaravans who work for their own private advantage.

36. There are Anandaravans who support their wives and children with their own acquisitions. There are also those who give whatever they earn to the Kāranavan to be applied for the welfare of the Tarawād.

37. I am not well aware of the existence of such a thing as Puthrāvākāsam in North Malabar among the Nayars and Tiyans who follow Marumakkathāyam.

38. There are objections to making a law, even though it be not compulsory, for legalising a form of marriage among the Marumakkathāyam Hindus. The grounds of objection are as follows:—First, it would be opposed to the present custom which has been observed equally by all Hindus who follow Marumakkathāyam from time immemorial. Secondly, the noble families having dignities and prerogatives attached to them, the ladies of which cannot take anything from their husbands, will neither flourish nor prosper in consequence of the male members of such families following, as may be expected in course of time, the proposed marriage system. Thirdly, dissensions between the members of the Tarawād will increase as a necessary consequence of this. Fourthly, it will open the way to increase of litigation and unnecessary waste of property. Fifthly, the women who marry under the proposed law would come to find that all kinds of property left by their rich husbands after their death would be theirs. These women would not be under any restraints (such as prevail in Makkathāyam) in remarrying and living in luxury after the death of their husbands. These circumstances may tempt adulterous women even to wish for the death of their husbands, and hence great evils are to be apprehended. Sixthly, Marumakkathāyam people cannot secure (Urdhagathi) salvation of soul after death by the performance of obsequies by their sons. In such circumstances if the properties are to be transferred to other Tarawāds, namely to the sons under the proposed law, the Anandaravans would be dissatisfied with their Kāranavan and the result would be an obstacle in the way of getting salvation through them. Seventhly, when a father lies sick on account of some disease or other, his sons of a lower caste and of different Tarawād would not become useful to him. In such cases only the Anandaravans would be serviceable to him. And lastly, many other circumstances which might produce evils to the people in general.

39. If legal sanction is considered necessary for Sambandhams, to secure evidence of validity of marriage, I would propose to have it registered before some person elected by the people from the respective villages, either a Brahman or two Nayar Commissioners selected from the respectable Sudra Tarawāds.

40. It is clear that the conditions of a valid marriage differ widely from the Sambandham recognised in practice.

41. This I am unable to answer without the Bill.

42. The reasonable grounds according to social usage for dissolving a Sambandham are:—

(1) Incurable disease such as leprosy, (2) Misconduct, (3) Ill-feeling between the wife's and husband's people.

43. The existing usage as to giving maintenance for Nayar wives and children is simply to give them cloths, oil and other things, except food expenses.

44. I record no opinion as to the new rights incidental to the proposed form of marriage.

45. I am not aware whether intermarriages are permitted between the Nayars of Malabar Proper, Travancore and Cochin.

(Signed) ETTAN TAMBURAN.

(True translation as near as may be.)

H. M. WINTERBOTHAM.

MARUMAKKATHÂYAM MARRIAGE COMMISSION.

ANSWERS TO INTERROGATORIES

BY

M. R. RY. MANA VARMA RAJAH AVARGAL,
KADATHANÂD—PORLATIRI RAJAH.

33. In Malabar there is at present a marriage law according to the custom that has the force of law. There is no necessity for making a law in accordance with the present Bill. By a law of this sort, the few that follow it are permitted to act against the law of the country, and the Society to which they belong, and there will be occasion for the existence of contrary systems of marriage and customs, not only in the same country and society, but in the same family, and consequently there will be room for disunion, strife, and litigation, among the members of the same Tarawâd. In addition to this, in the case of the Kâranavan giving higher education to the Anandaravans by means of Tarawâd funds there will be a stop to it, by fear that his motive in educating them might be frustrated as the acquisitions of the Anandaravan by means of his learning might not be used for the benefit of the Tarawâd. And so in the course of time there will be occasion for the stoppage of the advancement of learning in the country.

44. In this Section, the law regarding the succession to property is the thing that gives great room for complaint to the people. This system of succession is entirely opposed to the Marumakkathâyam system. The permissive nature of it will in practice be found delusive and it will in course of time become an engine to destroy Marumakkathâyam by the root. As long as Marumakkathâyam remains the form of succession in the country to establish another form of succession is contrary to the justice of the Government, and in trying to discredit the Marumakkathâyam system, which has the force of law, there is no greater justice than in trying to change the form of succession of the other Hindus. The Marumakkathâyam system is just as reasonable and legal as the system of succession prevalent among the other Hindus. The only difference is that in one the succession is in the father's line while in the other it is in the mother's line. If the form of succession advocated by the Bill is introduced it will, like the marriage, create adversity, disunion, dissension and consequent litigation and loss of property in the Tarawâds, and it will entirely destroy the joint property system and the indivisibility of property which the natives of other countries long for and are striving to establish in their midst. If it is desirable that wife and children should get something more than what is now given to them it is sufficient if the Malayalis are given the power to dispose of their self-acquired property by Will.

(Signed) MANA VARMA RAJAH.

[True translation as near as may be].

H. M. WINTERBOTHAM,

Collector on Special duty.

MARUMAKKATHAYAM MARRIAGE COMMISSION.

ANSWERS TO INTERROGATORIES

BY

M. R. Ry. AYANJERI KOVILAGATH KRISHNA VARMA RAJAH, Avargal,
RAJAH OF KADATHANAD.

1. Yes.
2. No.
3. Yes, but Urâli (Masons), Râvâri (Traders), Kusavan (Potter), Vânian (Oil monger) these cannot inter-marry.
4. Yes. They will be excommunicated.
5. Cannot.
6. The river Kôrapuzha.
7. As a rule they do not intermarry.
8. Not objectionable; though not now in practice.
9. No.
10. Interdicted by the then reigning prince.
11. It is a preliminary rite to marriage. It is a mere tying of the "Tâli" on the neck of the girl at the auspicious time declared by the "sâstras".
12. It is done by a male of the same caste, or by a man of a higher caste.
13. Yes.
14. No: cohabitation takes place only after "Sambandham".
15. No.
16. Yes. It has been in practice in the royal families of Cochin, Travancore and Kolathiri (Chirakkal).
17. No.
18. Such a custom has not come to our notice.
19. The investiture of the Tâli, before puberty is compulsory. Custom is at the bottom of it.
20. Yes. The customary ceremony of "pudamuri" should be performed.
21. Nayars should place the cloths in the girls' hands; but Nambudris and Pattars (other Brahmins) do not.
22. The whole of North Malabar follows the same custom.
23. No.
24. ———
25. Yes. She can.
26. No formalities, except reliable intimation.
27. Yes.
28. No objection.

29. Either in her own house, or with her husband. Both usages are to be found.

30. The difference is only in degree. South Malabar females in most cases live in their own houses.

31. The husband maintains his wife and children when they live with him.

32. Divorce takes place very rarely. Man and woman live in wedlock till death separates them.

33. Yes. When in his house.

34. They are remunerated. They hold lands on Pâttam (rent) from the Tarawâd. They can do what they like with the profit.

35. Both practices are followed.

36. Both practices are followed.

37. It has not come to our notice.

38. To pass a law according to the present Bill, is quite against the wishes of the Hindus who follow "Marumakkathâyam", for this law will in course of time upset "Marumakkathâyam" altogether. Hence people will violate the existing rules and customs, and sink into sins recited in the sâstras.

39. "Sambandham" as it now stands requires no law to make it as valid as marriage. It would be enough if Courts admit the validity of "Sambandham" as enjoined by the "sâstras."

40. (1) Yes. "Sambandham" as it is now, allows a husband to marry another female during the life-time of his wife.

(2) It is enough if the girl is 12 years old.

(3) Kâranavans' consent can never be dispensed with.

(4) The two provisoes as indicated in the fourth clause, are against law and custom. The members of one Tarawâd, however distant they may be, can never intermarry, neither can they marry into lower castes.

41. In our opinion, no marriage law is at all necessary.

42. Jealousy and adultery are the main causes.

43. The husband maintains the wife and children so long as they live in his house.

44. These privileges are certainly conducive to the welfare of "Makkathâyam," and quite derogatory and ruinous to the interest of "Marumakkathâyam."

45. We are not aware of it.

(Signed). ÂYANJËRI KOVILAGATHA KRISHNA VARMA RAJA,

[True translation as near as may be].

H. M. WINTERBOTHAM,

Collector on Special duty.

99

MARUMAKKATHÂYAM MARRIAGE COMMISSION.

ANSWERS TO INTERROGATORIES

BY

M. R. Ry. VALLAPUZHA MANAKKAL ASHTA MÛRTHI NAMBÛDRIPÂD Avargal.

A WEALTHY NAMBÛDRI LAND-LORD,

WALLUVANAD TALUK.

1. Of the eight forms of marriage viz., Brahman, Ârshwam, Daivam, Prâjavathyam, Âsuram, Gândharvam, Râkshasam and Paisâcham, Manu has prescribed Paisâcham to Sudras, and therefore there is no objection to Sudras intermarrying, if the parties like between castes which do not pollute one another by touch.

2. A woman of a higher division cannot accept a man of a lower division as husband. Such a connection is repugnant in the eyes of the Shastras.

3. All sections among Nayars cannot intermarry. At present there are six sub-divisions of caste amongst Nayars who have no pollution by touch and who can enter the temples. They are (1) Kiriya, (2) Sudra, (3) Chârnathu, (4) Vattêkât, (5) Athikurissi and (6) Pallichân. Of these six castes (men of) the first viz Kiriya can form Sambandham with (women of) all the other sub-divisions, and the Sudras (in like manner) with the next four sub-divisions. Each of the remaining 4 sections can only have Sambandham within its own pale.

4. There is social penalty in case of Sambandham prohibited in para 3. For instance if a man of a lower division form Sambandham with a woman of a higher division, the women and her offspring descend to the division of the man, and are repudiated by her tarawâd.

5. There is no Prâyaschitham in the case of a Sambandham formed within prohibited limit mentioned in para 4; nor is any Prâyaschitham in force in such cases.

6. Kôrapuzha.

7. The practice is of rare occurrence.

8. There is no objection to a Nayar of South Malabar forming Sambandham with a Nayar woman of North Malabar, provided that the caste rules are not infringed.

9. The Nayar women of North Malabar are not prevented from crossing to the South of Korapuzha.

10. I have heard it said that the practice had its origin in the feud that existed between the Rajas of the Nediyruppu (Zamorin) and Kôlathiri dynasties.

11. Tâlikettu Kalyânam means the tying of tâli round the neck of a girl. An auspicious hour is fixed for the purpose, and the friends and relatives of the girl's family are feasted at a banquet, attended with entertainment according to the circumstances of the family.

12. The tâli is to be tied by a youth who goes by the name of Pilla (bridegroom) till the ceremony is over, after which he is not generally called by that name.

13. If the man who ties the tâli be one of the same caste, it is usual for him to tie the tâli to a number of girls. The practice obtaining among the members of the Kiriya caste is that the tâli is tied by a Tirumulpâd to a number of girls, one after the other, the feet of the Tirumulpâd being washed afresh at each time.

14. The man does not obtain any enforceable right to cohabit with the girl by mere reason of his having tied the tâli.

15. There is nothing to prevent the man from forming a Sambandham with the girl provided she, her mother and her Kâranavans (*sic*) consent to it.

16. I know of a few cases.

17. Pollution is not observed by the girl on the death of the man who ties the tâli.

18. It is sometimes the practice among Nayars for the mother to tie the tâli.

19. The Tâli-kettu ceremony must be performed prior to the girl attaining her puberty. It is observed in accordance with the local usage, and the authority of the Shastras.

20. When Sambandham is to be formed subsequent to the Tâlikettu ceremony, certain formalities of the sort described in answer 11 are indispensable however small may be the scale.

21. When a Brahmin forms Sambandham with a Sudra woman the same formalities are observed as are mentioned in para 20.

22. Under the system of Sambandham observed in North Malabar, the bride and bridegroom invite their friends and relations, who accordingly attend the ceremony bringing with them pudavas (cloths) and money according to their means. These are kept in front of the *Nirapara* (full measure of paddy, or rice) and *Asta-mangalyam*, (the eight auspicious articles) placed in the pandal erected for the ceremony. After the feasting &c. is over the bride's father takes a pudava and delivers it to the bridegroom's mother, who requires the bride to wear it. Then a Vattêkât Nayar comes forward, cuts off one end from the cloth thus worn and gives it to the bridegroom to be worn by him. The bride then washes the feet of the bridegroom, and presents him with chewing material. Hand in hand the bride and the bridegroom go round the lit lamp, and the Ashtamangalyam, and take their seats in the inner court-yard. After this the bridegroom partakes of the milk conjee served by the Enangan, and at the same time serves the bride three times with the conjee out of his dish. None of these formalities obtain in South Malabar.

23. This is against respectability, and Manu Smriti in particular which says that "whatever woman forsakes her husband and commits fornication with another, will be born a bitch, and remain so so long as the sun and the moon exists." In the Vâsishta it is also laid down that "any false woman who commits adultery will be born in the womb of lower animals, and will suffer great misery."

24. If she does so it is by following her own inclinations, and not with the authority of any Sruthi, Smriti, Purâna or Itihâsa (tradition).

25. If the wife is dissatisfied with the husband on several grounds, she is competent to divorce him. But she ought to obtain the consent of her mother and Kâranavans (*sic*).

26. In order to dissolve a Sambandham it is sufficient if the woman in the presence of her Bandhus (relations) tells the man the reasons for her discarding him.

27. It is permitted to a man to have more than one wife at the same time. But respectable men do not do so as it is opposed to their respectability and social status.

28. There is nothing to hinder it.

29. She takes her meals and sleeps either in her own house, or in that of her husband, as best pleases her.

30. Almost the same in both places.

31. If the husband loves the wife and children he supports them when they live with him. For this purpose the husband must have self-acquisition.

32. The husband divorces the wife when she by chance falls sick of long lingering diseases, and when she conducts herself contrary his wishes. It is not proper to divorce without any cause whatever.

33. When the wife and children live in the husband's house in amity with him, he maintains them.

34. Anandaravans generally ought to work for the good of the tarawâd in consideration of getting their meals &c. at the tarawâd expense, and beyond this nothing is customarily given to them from the tarawâd as a compensation. There is no objection to their taking the tarawâd lands on rent just as other tenants do and appropriating the surplus to their own use.

35. The Anandaravans interested in the welfare of the tarawâd generally work for its well being.

36. With their private earnings the Anandaravans generally contribute to the tarawâd, and also support their wives and children.

37. I am not aware of any thing called *putrâvakâsam* (son's right) in North Malabar, nor is there any thing similar to it in South Malabar. Manu Smriti has "Just as the offspring of the cow, the mare, the camel, the female slave, the milch buffalo, the she-goat, the cuckoo cannot belong to those that begot them on the mother, even so is the case with children begotten upon strange women". It is evident from the text that Marumakkathâyam Sûdras have no *putrâvakâsam* among them.

38. (a) In the Mahabharata in answer to a Yaksha's questions Dharma-putra says "Each man has his own notions of right and wrong, and the Vedas contain passages contradictory to one another; nor is there a single sage whose opinion is considered to be of the highest authority. The principle of right and wrong lies in a cave. Hence the only means of knowing what is right and what is wrong is by finding out how great men have acted."

This lays down the great principle that we would be doing what is right if we followed the rules of conduct prescribed by great men.

(b) It is a very dangerous attempt to introduce among the Sudras the system of Makkathâyam in the place of Marumakkathâyam—a system ordained for the Sudras by the 16 famous sovereigns *viz.* Sagara, Bharata, Sibi, Yayâti, Mândhata &c., who had ruled the people in accordance with the Sastras in the early Yugas of Krita, Trêta and Dwâpara, and who had understood the Smriti of Manu, Yâgyavalkya and others in accordance with the interpretations put on them by Vasista, Suka, Nârada, Vyâsa, and other Bramha Rishis, and by Viswamitra and other Raja Rishis.

(c) The ancients have not prescribed to the Sudras the system of Makkathâyam. The reason for this was that when rules of conduct were pres-

cribed for the several castes, the duty of "causing the satisfaction of desires of persons of the castes above him" was assigned to the Sudra, as the very term 'Sudra' indicates. A Sudra is more particularly bound to serve the Brahmins. For the Smriti says "Sudras are the servants of Brahmins," and "The Sudras' appointed path to heaven is serving the Brahmins." Hence it is clear that the Sudras are servants of Brahmins. In the Anusāsaniga Parvam of the Mahabharata, Bhīshma says that to the servile women, and dancing girls, conjugal fidelity is not prescribed in any of the three worlds. Hence the practice of Brahmins, Kshatriyas and Vaisyas having sexual intercourse with servile women is in accordance with the Sastras. But a Sudra may marry only a Sudra woman. If a Brahmin wished to have sexual intercourse with a Sudra's wife the Sudra would be bound to gratify the wish. This is plain from the following passage taken from Vālmīgi Ramāyanam where Risyasringa says "It is the duty of a servile man to be serviceable to the Brahmins in their bathing, eating, travelling, having sexual intercourse, lying down, and other acts." It is clear therefore that a Sudra cannot be sure of the true parentage of the children born of his wife. Hence the Sudras cannot follow the rule of Makka-thāyam.

(d) "It is mentioned in Vasistham that he who saves (the father) from the 4th debt (*i. e.* the debt owing to the Manes) and from the hell called 'Put' is called the *son*." Hence it is clear that a Sudra cannot inherit to his father.

(e) In Viduravākya in the Mahabharata is a sloka which plainly says that "among the servile class the nephew is entitled to perform obsequies."

I am therefore clearly of opinion that the present proposal to do away with the Marumakkathāyam system at the instance of persons who are ignorant of, and who totally disregard, the Vedas and the Sastras, who are prejudiced and who argue upon no sound principle whatever, is the first grievous act of coercion exercised by a sovereign over the people in the Kali Yuga.

42. Vide answer to question 32.

43. The husband usually contributes a sum at his discretion towards the maintenance of his wife and children living in his house. Food expenses are not given.

45. Such Sambandhams are customary.

Questions 39, 40, 41 and 44 are not separately answered as the answers elsewhere given contain the information therein sought.

(Signed.) VALLAPUZHA MANAKKAL ASHTA MŪRTHI NAMŪDRIPĀD.

(True translation as near as may be.)

H. M. WINTERBOTHAM,

Collector on Special duty.

Marumakkathayam Marriage Commission.

Answers to Interrogatories

BY

M. R. RY. KOLATHUR UKKANDUNNI MUPPIL WARIYAR AVARGAL,

LAND LORD.

1. Yes it is quite common.
2. No, it is not allowed. When the man belongs to a higher and the woman to a lower division, the Sambandham is termed *Anulōmam*, and *Prathilōmam* when the opposite takes place. Of these two forms, *Prathilōmam* involves loss of caste.
3. As above. The highest division amongst Nayars is Kiriya, and men belonging to that division are permitted to have Sambandham with all the lower divisions. As regards Sūdran, Chārnathu, Pallichān, Anthār, Vattekkāt and Athikurishi, they follow certain hereditary professions, and in consequence occupy an inferior position in the social scale. Each division speaks of its profession as superior to the rest, and therefore intermarriages between such divisions are not customary. The Sūdra division has to serve the Brahman. It is its appointed occupation and peculiar caste service. Deriving their superiority from this fact, men of this division form Sambandham with the five lower divisions, while the lower divisions are not permitted to have Sambandham with the Sūdras and the Kiriya division.
4. Transgression is of two kinds; *drushtam* (seen) and *adrushtam* (unseen) (Expiable and non-expiable?). Mere violation of the common practice is *drushtam* transgression. When the violation becomes sinful through persistence, it is non-expiable transgression. Non-expiable transgression is altogether to be put away, while expiable transgression can be satisfied by an atonement. Sexual intercourse within the Nayar Caste, is not *adrushta* transgression: hence it can be atoned for by penalty. The penalty may be purificatory, either of the mind, or of the body, and designed to convince the transgressors of their guilt. This will suffice.
5. Is answered by the 4th Answer.
6. Kōrapuzha is the boundary of North and South Malabar, as regards caste observances.
7. North Malabar Nayars have Sambandham in South Malabar. South Malabar Nayars are not known to have formed Sambandham in North Malabar.
8. Yes; he is permitted. North Malabar Nayars do not allow South Malabar Nayars to form Sambandham in North Malabar, merely because they are not fully acquainted with the Nayar castes in the South and their tribal distinctions.
9. There is no objection to doing so.
10. There is a tradition that when the Mapillas first came to Malabar, they waited upon the Zamorin, and requested that they might be given eight dwelling houses, and women to be taken as their wives. The Zamorin complied with their request by permitting them to dwell in any eight houses they liked, and to marry the

women of these households. When the Kôlathiri Rajah of Chirakkal heard of this unwarranted concession, he prohibited the females of his territory from crossing Kôrapuzha on pain of losing caste. The restriction on the movements of the females of North Malabar may therefore be said to have been imposed from that date. As far as my knowledge of South Malabar Mapillas goes, I may mention that they trace their origin to one of these eight houses. And documents or grants given to them contain a reference to such origin.

11- *Tâli-kettu Kalyânam* is the investiture of the matrimonial thread about the neck of a girl by a man at an auspicious moment. As this is a joyful event, relatives and friends are invited for the occasion, and are feasted. Kettle-drums and music form a most conspicuous part of the programme. The bridegroom, remains with the bride for three days, and on the fourth day, after they have bathed and partaken of food, he cuts into two the garment of the bride.

12. The Tâli should be tied by a man. He is spoken of as the *Manâlan* (bridegroom) till the cloth is cut and given on the fourth day. The close of the Kalyânam terminates the Sambandham (connexion) between the bride and bridegroom.

13. When the Manâlan is from one's own caste, each girl must have a separate Manâlan. Amongst some Nayars, Kshatriyas, such as Kols and Tirumulpâds perform the tali-tying ceremony, and in such cases more than one girl may have her Tâli tied by one Manâlan.

On the ground of the privilege (of polygamy) that the descendants of Kshatriyas, who are of royal blood, inherit, this practice is only followed where the bride belongs to certain Nayar divisions possessing some *Sthânam* (entitling them to a Kshatriya husband.)

14. With the tying of the Tâli, the virginity of the girl ceases, and she attains womanhood, and he who introduces her to that state, is first entitled to cohabit with her. He parts with that right on the fourth day by the ceremony of cutting the piece of cloth for her. If he declines to cut the cloth no one can cohabit with the girl except with his consent.

15. Is answered by the answer to the 14th Question.

16. Yes—there are such instances.

17. A form of pollution is observed by the girl at the death of the man who tied the Tâli. It is not invariably observed every where. The reason of observing the pollution is to carry out the idea, which the girl has, that the man who tied the Tâli is her husband. If she omits the observance, she is not thereby defiled. It is observed by all divisions in these parts. When the man who tied the Tâli happens to belong to another section, pollution is not observed.

18. I am not aware of any such custom.

19. Tâli-kettu must precede the attainment of puberty. If owing to a particular cause the ceremony is not performed before the attainment of puberty, an atonement is made, and Tali-kettu is performed somehow or other. But this is only in extreme cases of an unavoidable nature. It is not merely a local usage. The period of Kalyânam is the same amongst all classes. Tâli-kettu must be done with the period of maidenhood, whenever that may be. Maidenhood passes away with the attainment of puberty after menstruation. Tali-kettu is forbidden, and it is only in extreme cases that it is permitted with penalties. This is prescribed by the

marriage ordinances. Cohabitation with a *Kanyagâ* (immature girl), and performance of Kalyânam after the attainment of puberty, are equally forbidden amongst all classes. Malayâla Brahmans alone are exempted from this law of prohibition with regard to marriages after the attainment of puberty. Sankarâchâriar made the exemption for them basing it on some Smritis, when it was found that, under the law permitting only the eldest son to marry, it would not be practicable to perform marriages of daughters during virginity.

20. No formality is necessary. As however it is a joyful occasion, relations and friends are invited and feasted, and other marks of rejoicings are usual.

21. The formation of Sambandham does not necessitate the performance of any ceremony at all, and it makes no difference whether the Sambandham is sought by one of the same, or of a higher caste.

22. I do not know what the practice is in North Malabar. It is all the same throughout South Malabar.

23. A woman is not forbidden from consorting with more than one man. It is not, however, customary as it is viewed as unbecoming.

24. For the Marumakkathâyam people, who reckon their descent through the female line, there is no objection to any cohabitation which does not contaminate the female element. Hence the absence of such prohibition.

25. Yes. She can.

26. No formalities need be observed. The party that seeks separation has merely to say that the alliance is at an end.

27. Yes. He can.

28. There is no objection to his doing so.

29. In her own Tarawâd. At pleasure she can live with her Sambandhakâran in his house, and she often does so.

30. I do not know what the practice is in North Malabar.

31. The woman's Tarawâd has to maintain her and her children. At the same time, it is only proper that the husband should meet her expenses, and he does actually do so. He cannot, however, be compelled to do it.

32. The man and woman remain as husband and wife during the continuance of mutual love, but they may divorce each other, when enmity arises between them.

33. He may do just as he pleases. There is no objection.

34. If the Anandaravans work for the Tarawâd, agreeably to the wishes and directions of the Karanavan, he (the Kâranavan) defrays all their expenses. In some Tarawâds, Anandaravans do manage Tarawâd lands on Pâtam, but the tenure is subject to conditions such as usually circumscribe leases to other tenants; and the profits of cultivation, if carried on with their self-acquisition, can be appropriated by them.

35. The Anandaravans usually work for the benefit of the Tarawâd. Some however, pursue their special avocations, such as farming, Government service &c, and make private acquisitions thereby, but this is not against the interest of the Tarawâd.

36. The self-acquisitions of Anandaravans are used in the maintenance of wife and children; the surplus remains under their control during their life time, and is, after their death absorbed in the Tarawād property. But when the Tarawād property is found insufficient for meeting the Tarawād expenses, the acquisitions of the Anandaravans are made over to the Tarawād from time to time.

37. There is no such local custom in South Malabar, and I cannot say precisely what it is in North Malabar.

38. Legislation in respect of marriage is not only unnecessary, but objectionable. If Makkathayam is to exist side by side with Marumakkathayam, in the same Tarawād, it will be a powerful cause of dividing the house against itself. When a man marries (under the Act), he will be viewed with suspicion by other members of the Tarawād as one determined to give all his acquisitions to his wife and children. They thus become opposed to him. In process of time, the man becomes the Kāranavan of the Tarawād and what injury the dissension between him and other members, will do to the Tarawād, cannot be described. The gradual increase of such members marrying (legally), would deprive the Tarawād of their support for its well being, and thus tend to its dissolution.

It is also objectionable on religious grounds. Succession is of two kinds *viz.*, (1) from the seed, or father, and (2) from the soil (which receives the seed), or mother. Of these, Makkathayam is succession through the male, and Marumakkathayam, through the female. The obsequies of Marumakkathayam people are performed by those who come in the female line, and for those belonging to divisions superior to the Nayar caste, such obsequies are accompanied by Mantrams. They do not perform the funeral rites of their fathers. Makkathayam requires the performance of father's funeral rites (by their children). They must go through such rites, with or without Mantrams. Without Mantrams, the rites lose their efficacy, and are as if none were performed at all. Mantrams are extracts from the Vedas, the production of holy Rishis, with reference to the requirements of each caste. Hence they cannot be made now. At the anniversary of the deceased, where Srāddha is performed with Mantrams, the manes should be invited to the spot, and the rites performed. The Mantram-bound souls would never attend, unless invited by the recitation of such Mantrams, and rites performed without their presence are inefficacious. At marriages, it is the *Mantram* and *Hōmam* that bring about the relationship between husband and wife. Even if such relationship is brought about, it is the right of performing funeral rites that gives to the wife and children, the right to inherit the property of the husband and father respectively. When such right of participating in the performance of obsequies does not exist, inheritance of property does not exist either. Relationship through the female has greater weight than that, through the male. If any man beget a son on a woman, that son cannot belong to the man. If one sow seed in another's land, the sower cannot say that the crop raised is from *his* seed, and therefore his. The crop would belong to the land-owner. According to this Shastra, to those higher classes who form Sambandham with recitation of Mantrams, marriage (under the Act) would be impracticable, and hence there is difficulty on religious grounds, both in the way of performing a father's obsequies, and in the way of marriage.

39. As registration is for securing evidence of marriage, it seems to me that the best way to do it would be, to treat the ordinary Sambandham as marriage.

Marriage is a rite which should be solemnized in the midst of one's kindred, and people of the same caste, but not amidst people of another sect. If the Registrar happens to be a Mussulman or Christian, or lower-class Hindu, the completion of the rite before them, would be objectionable on religious grounds, and would be disagreeable to the man and woman to be married. Moreover, there is nothing to be gained by having the marriage performed before the Registrar.

40. Yes, they differ. The differences have been pointed out in the answer to the respective questions. A man and woman cannot marry, unless both belong to the same caste. If the provision, that the Act will apply where one of them is Marumakkathayam be upheld, it would follow that a Malayalam Brahman could marry a Nayar woman; that a Vattekkāt Nayar could marry a woman of the Kiriya division &c. This would subvert the present practice, and give the son of a Brahman by a Nayar woman the right of performing the obsequies of a Brahman which is against custom, or the ordinary rules of caste, besides being an inexpiable transgression. Hence it is altogether objectionable.

(i) "During such married life &c" requires amendment so as to admit of marriage again at any time after the *first* marriage. If this is not made clear, it may happen that either the husband or wife may be the victim of some incurable disease or lunacy; or that the continuance of the relationship as man and wife is mutually distasteful, and any legal inviolability in the way of their separation, would lead to life long misery. Such cases should be provided for.

(2) As puberty is generally attained before completing the 14th year of age provision should be made for the solemnization of marriage in the year just preceding that of the possible attainment of puberty.

1st proviso: This is objectionable. The answer to this is given in 40.

2nd proviso: I am not quite clear as to what this means. I cannot therefore give any answer.

41. As I am of opinion that legislation in the matter is unnecessary, I have no opinion to offer regarding what may be omitted from, or added to, this Bill.

42. Disagreement between the husband and wife is all that is necessary for separation.

43. This is answered by the answer to the 31st question.

44. It may be ascertained from the answers to the various questions.

(a) The woman and her children are members of her Tarawād and not of the husband's. They have a right to ask for their maintenance from the Tarawād. Their guardian is therefore the Kāranavan of that Tarawād.

(d) This is answered by the answer to 44. (e).

(e) As it must be consistent with the Marumakkathayam law of inheritance, testamentary disposition of property cannot be permitted. A portion for the maintenance of the wife and children should alone be given from the acquisitions of the deceased husband, and the rest should go to the Tarawād, for the reason that even where there is self-acquired property, they can claim maintenance from the Tarawād. Even were the property self-acquired, it would, after the death of the person acquiring it, only go legally to the Tarawād and the deceased should have no power to change the course of its natural devolution.

(f) Is answered by (e).

45. Yes, there is.

(Signed) UKKANDUNNI MUPPIL WARIYAR

True translation as near as may be.

H. M. WINTERBOTHAM,

Collector and Commissioner.

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MEMORANDUM

BY

M. M. RY. C. TIRUVENKATACHARIAR B.A. B.L.

Dewan of the Native Cochin State.

TRIPOONITURAH,
10th June, 1891.

My dear Sir,

In reply to your letter of the 11th April, I enclose a Memo. containing my answers to the questions put by you as regards the Malabar Marriage Bill. These are my individual opinions as a private gentleman. I know of no native work or official report containing information regarding marriage customs or sexual relationship in the Marumakkatayam castes.

I remain,
Sir,
Yours faithfully,

(Signed) C. TIRUVENKATACHARIAR.

To

H. M. WINTERBOTHAM, ESQUIRE, C. S.,
Collector of Malabar, on Special Duty.

Question I.—Whether the introduction of the Law into Malabar will benefit or prejudicially affect the people of the Cochin State. If so, how?

1. To this question my answer is that most of its provisions will prejudicially affect Cochinites. I shall state my reasons in full.

The bill chiefly tries to engraft the Makkatayam system on the Marumakkatayam system, if not to substitute the former for the latter. The bill is no doubt said to be a permissive one, and it is alleged that those who do not like to follow it need not do so. But if once the bill is passed it will become almost compulsory. Some of the English-educated Malayalee gentlemen, who hold respectable posts under Government, or who occupy other respectable positions, will register their marriages, and then non-English educated gentlemen too will follow them, though they do not know whether the measure is good or bad. They will consider that it must be good as it is accepted by those whom they regard as their superiors in every respect. Malayali ladies will begin to consider that marriage registration is the only proper thing to be done, and they will not accept husbands who are not willing so to register and proclaim to the world that they are married. Thus, in the course of a few (say ten) years, almost all Malabar marriages will become registered, or, in other words, the people will become Makkatayees. Is such a substitution of Makkatayam for Marumakkathayam desirable, or advantageous, has to be considered. This is a question difficult to be solved. Each system has its advantages and disadvantages. Unless

the superiority of Makkatayam over Marumakkatayam is established beyond all doubt, it is not, in my opinion, expedient or proper to substitute the former for the latter. I do not think Makkathayam is superior to the other. On the contrary I am inclined to give the superiority to Marumakkathayam.

Under every system of Law which I know of, inheritance chiefly follows blood relationship. The nearest blood relation is the first heir to the property of a person. Makkatayees consider a son to be the nearest blood relation, while Marumakkathayees claim this relationship for the nephew. A man cannot be always sure of his father, and hence a son may at times have no blood of his putative father in his veins. But a nephew will never be an alien in blood to his maternal uncle. The brother and sister being born from the same womb, the issue of the sister is connected by blood with the brother *i. e.* his maternal uncle. Thus the first heir under Marumakkathayam will always satisfy the law by being a blood relation, while the first heir under Makkathayam law may sometimes fail to satisfy it. Hence if blood relationship is to be taken into consideration as regards inheritance, Marumakkathayam is more appropriate than Makkathayam.

It is argued that Marumakkathayam proceeds against nature and compels a man to give his property to one for whom he can have little or no natural affection. "Nature" and "natural" are relative terms. "Natural affection" is the result more of habit and associations than of any thing inherent in man. Every system of law has its own peculiarity which may appear absurd or unjust to one following another system of law. Makkathayam Hindu Law gives all the property to sons in preference to daughters. When sons, grandsons or great-grandsons exist, the daughters get nothing. It may be asked whether this is just. The daughter is as much the issue of the father as the son. Then why not give the daughter too a share of the father's property? Again, Mahomedan Law gives the daughter half the share of a son. Is this again just? Why not give her a share equal to that of the son? Again where the law of primogeniture prevails, all but the eldest son get nothing. Is this not very partial? It would not be prudent to suggest a change of the Hindu, Mahomedan or other laws as they seem to be thus partial. The framers of the Marumakkathayam Law made the nephew the first heir, as he is the nearest blood relation. That he is such relation is doubtless true. So the Law must be allowed to remain and it must not be objected to as partial or unnatural.

The one principal advantage of Marumakkathayam Law is the continuity of wealth in Tarawads. Malabar families continue wealthy for a very long time, at least longer than families following Makkathayam, as the prohibition of partition permits them to keep their property intact. If the Makkathayam is introduced, it will bring in its train the mischievous system of partition, and impoverish Malabar as it has done the eastern coast. The bill under consideration will, if passed, introduce Makkatayam, at least as regards ladies whose marriages are registered. If there are 4 ladies in a Tarawad and each of them is married by a husband who registers the marriage, and they inherit properties from their husbands, they will each form a family of their own consisting of each lady and her issue. Owning such separate property, they cannot live in commensality, and they will have to divide the Tarawad property by mutual consent. Thus the Tarawad system will not only be annihilated, but the newly formed families will not have as much property as the old Tarawads, and property will be frittered away.

I may also refer to what may be called the religious objection to the bill. It proposes to give all the separate and self-acquired property of the father to the wife and children. These latter may, in some cases, be of a lower caste than that of the father, and they cannot then perform the funerals of the father. According to the religious practices of the Malayali, the nephew performs the funerals of his maternal uncle and even undergoes dhiksha (mourning) for a year. If the gentleman who dies leaves only separate or self-acquired property, the nephew will have to meet the expense, and undergo the trouble, of the funerals, without inheriting any portion of the property. He cannot refrain from performing them, for, unless he does so, he will not become purified. Every religious Malayali will like that his nephew should perform his funerals properly so that his soul may obtain salvation. Can we expect a nephew to perform his uncle's funerals for the sake of religious merit alone? Hence if the bill is to be passed at all, it should be considered whether it would not be prudent to lay down that a portion of the self-acquisition or separate property will descend to the Tarawad and cannot be willed away. In this connection it will not be amiss if I mention an observation made to me by an intelligent Nayar graduate friend of mine. He said that if the bill were passed there would be no one to educate Malayali male children. The Tarawad Karnavan would not then educate them, because he knows that their self-acquisitions cannot be claimed by the Tarawad. An Anandaravan can sue his Tarawad Karnavan for maintenance, but no Anandaravan, however wealthy his Tarawad, can compel the Karnavan to educate him; much less to give him English education. The father would not also educate his son, as he knows that any property acquired by him (the son) will go to his (the son's) wife and children and not to his (the father's) wife and children. There is a good deal of force in these remarks as Marumakkatayee fathers are not, and cannot be, in the same position as Makkathayee fathers. The latter consider a son necessary to relieve them from the miseries of Put, and in their eyes a son's son or a son's grandson is equally efficacious with the son for performing oblations to their souls and manes. Hence a Makkatayee father has great interest in educating his son, but not so the Marumakkatayee father. In his case there is no religious tie between him and his son, who in many cases may be of a different and lower caste. His son's son is a perfect stranger to him, and may belong to a third and still lower caste. The religious consideration which operates strongly in the mind of the Makkatayee father is absent from the mind of the Marumakkatayee father, and therefore the result prophesied by my friend may come to pass, and the Malayali boy may find himself abandoned to his fate by his Karnavans and by his father.

One advantage of the Makkatayam system is said to be that it encourages individual industry. Each member of a Makkatayam family can get his share separated from the common stock and he becomes himself the head of a family with his wife and children depending upon him for support. He is therefore obliged to be industrious, while the Marumakkatayee who is sure of his board and lodging from his Tarawad is said to have no incentive to work. These may be the natural results to be expected from the two systems of the Law, but it is found in practice that many Marumakkatayees are as industrious as, if not more industrious than, their brethren of the Eastern Coast. The impoverishing effect of the Makkatayam system which I have already commented on, far outweighs the advantages above referred to.

According to the marriage system prevailing among the Nambudiri or Malabar Brahmans, only the eldest son marries and the junior members consort with ladies

of lower castes. These Nambūdiri gentlemen will not relish the idea of registering marriages. If they do not agree to register the marriages, no Nayar lady will accept them for husbands. Are they all to remain bachelors? When a change is sought to be introduced into the law of a large country we must see that no portion of the population of that country is injuriously affected by such change. The proposed change will seriously affect the Brahman population—a not insignificant factor. Can such a change be allowed? I find from long experience that the Nayars are, as a rule, more intelligent than Sudras of the Eastern Coast. Can this not be the result of the permission given by Parasurama for younger sons of Nambūdiris to consort with Nayar ladies? If so, will it not be a suicidal policy on the part of the Nayars to urge for this Bill?

As regards the provisions for divorce contained in the Bill, I must say that the Hindu mind will revolt at the idea of a resort to a public tribunal for settling scandalous family differences. The present system of divorce on mutual consent (carrying, as it does, with it social stigma on the wrong-doer) will be more relished by the Malayalis than one which compels them to make shameful, and humiliating disclosures before public Courts.

The prevalence of two contradictory and conflicting systems of inheritance in one and the same family (as will become the case if the proposed bill is passed) will cause a good deal of confusion. Properties following the Makkatayam law of inheritance and those following the Marumakkatayam may and will devolve on one and the same person, or persons, and may get mixed up together, thus becoming a fruitful source of dispute and of almost endless litigation. If the bill is to be passed at all, the provisions regarding the succession to father's property by the wife, sons, and daughters, will have to be given more in detail. Whether such properties will become common to the wife and children; whether they can effect a partition of it among themselves; whether or not the property will descend by survivorship if they remain undivided, to which family the property will revert if all of them die intestate and without issue (whether to the family of the husband whose property it originally was, or to the family of the wife who inherited it). These and other matters will have to be carefully detailed before the bill is made law. The prevalence of two different systems one in this State and one in Malabar, will seriously and injuriously affect the people of this State, at least those who have connections in Malabar.

Question II.—Have you observed amongst the educated, or any fraction of the Marumakkathayam castes symptoms of a revolt against the custom which prevents a man from bequeathing his self-acquisitions to his wife and children, which gives his wife and children no claim to maintenance from his separate property; and which allows any one to commit adultery with his wife with impunity?

Answer II.—I beg first to take objection to the sweeping assertion contained in the last sentence of this question. As far as I know, there is no custom among Marumakkathayam Hindus, which allows any one to commit adultery with a man's wife with impunity. Social punishment follows the adulterer and adulteress unless the husband condones the offence. The social stigma is very great, and ladies discarded for having committed adultery find it difficult to secure other husbands. It is natural for man to resent against a law which prevents him from bequeathing his self-acquisition as he pleases. Makkathayam Hindus were, till recently, not satisfied as they did not get this power. So also are many of the English educated gentlemen of Mala-

bar, not because they are prevented from bequeathing to their wives and children, but because their liberty in the disposal of their own gains is affected. But I cannot say whether they are for giving the wife and children a claim for maintenance from the husband. Testamentary power as regards a fixed portion of the separate or self-acquired property can no doubt be given to Marumakkathayam Hindus, and I think it ought to be given. This alone will for the most part obviate the necessity of passing a law to legalize marriages. I am not for giving them power to will away the whole of their self-acquisitions—for, as I have pointed out above, their Tarawad is under a religious binding to perform their funerals.

Question III.—Would a way of escape from these customs be welcome or not?

Answer III.—I doubt whether the country will welcome a change in the Marriage Law.

Question IV.—And on grounds of morality is there or is there not occasion for reform?

Answer IV.—I answer this question in the negative. I have already observed that the Marumakkathayam custom is not so bad as to allow adultery being committed with impunity. We generally meet with happy couples and happy homes. No doubt there are black sheep and adulteries are committed, but they are not more common than among Makkatayees, nor are they so numerous as would be expected by one who is carried away by the general, but false, belief that marriage ties are very loose here. Adulteries are at times condoned, but not to a greater extent than in other castes and countries. The people seem to be content and happy under the present system, and I do not see any reason for a change. A reform on the lines of the proposed Bill, which requires a marriage to be registered before a registrar, will not, I believe, meet with the approval of members of respectable Tarawads. They would not like the idea of young ladies and gentlemen being taken, or going, before registrars and declaring before them, in the presence of witnesses, that they are willing to marry each other.

(Signed) C. TIRUVENKATA CHARIAR,

Tripuniturah, 10th June, 1891.

MARUMAKKATHAYAM MARRIAGE COMMISSION.

MEMORANDUM.

BY

M. R. RY. A. SANKARIAH AVARGAL, B.A., P.F.H.S.*

DEWAN PEISHKAR,

COCHIN.

1. Take Lakshmi to be a member of the Kilakkêpad Tarawâd, and Krishnan to be a member of the Vaddakkêpad Tarawâd.

The present religio-social law is that Lakshmi and her children have religion, communion, domicile and rights of property in Kilakkêpad Tarawâd only, and therefore they are subject to the care and control of the elders of that Tarawâd. So also, whatever may be the personal wishes of Krishnan, his Vadakkêpad can only regard him as a member and heir of that Tarawâd, bound to serve secularly and religiously for its welfare. The sexual attachment between Lakshmi and Krishnan is called "Sambandham" as distinguished from religious marriage, or conjugal rights. Often the parties to the Sambandham are so widely different in caste that the man must bathe after contact with the woman, before he can pray or take his food. The utmost love and friendship may exist; but religious and legal ties are out of place.

2. The follies of blind love and selfish speculation are many and various. Often Tarawâd men and women, abjuring their Tarawâd rights and obligations, become converts to Christianity, or Mohammadanism, or Brahmoism, and are married as these religions prescribe. And this straight-forward course is alike welcome to the Hindu community as well as to the missionary creeds. The couple marrying under a new Makkathâyam law for Hindus, must stand out at any rate as a new caste without relapsing into the Marumakkathâyam Tarawâd. There is a class of High Sudras, or Umbalavâsees, called Nambiars, who give away some of their girls for ever as Makkathâyees and retain some as Marumakkathâyees. The Nayers and others can do so without a Government Law, which after all makes them neither Makkathâyee nor Marumakkathâyee, but meddles with voluntary attachments and separations in a community hitherto innocent of scandalous litigations, connected with adultery, divorce and bigamy.

3. The Malabar Marriage Law proposes to preserve the status of Lakshmi and Krishnan in their separate Tarawâds, and yet to create legal rights between them and between Lakshmi's children of Kilakkêpad Tarawâd, and Krishnan of Vadakkêpad Tarawâd. It is simply a law to enable Krishnan to play false to the Tarawâd name he bears, and to enable Lakshmi to swindle him of his acquisitions, for there is no communion in religion and domicile between them aimed at by, or possible under, the new bill. This communion on earth affects the communion with ancestral Pitris according to the Hindu religion and belief. Will the new law "gather" Lakshmi and Krishnan to the abode of their uncles, mothers and sisters?

*President Founder of the Hindu Sabha.

or Lakshmi and Krishnan to any Pati-lokam? Worldly agnostic legislation should not blindly override the temporal interests and religious feelings of the people. What is Lakshmi or her Tarawâd to do if Krishnan neglects to visit her after registering the marriage?

4. Lakshmi has already had her marriage sacrament in her Tarawâd without reference to Krishnan, and her acceptance of Krishnan is primarily to beget heirs to her or her Tarawâd, and not to Krishnan or Krishnan's Tarawâd. And for that primary object, as well as for the secondary object of better treatment and greater advantages, she has accepted Krishnan; and so she may accept Raman of Thekkêpad, in the place of or in addition to Krishnan. It is the feeling of monopoly, or the belief in the religious good of joint co-operation, which regards conduct against the monopoly or the religious belief as *immoral*. There is no such monopoly or religious belief in the present constitution of Malabar Tarawâds. Should the British Indian Government create new feelings, and defeat the primary and secondary aims of Lakshmi, and make Krishnan obnoxious to his own Tarawâd and jealous towards Lakshmi, Krishnan and Lakshmi will not be half so solicitous to please each other after the registered contract as before it.

5. There is no such thing as Malabar law; for, the Marumakkathâyam law called by that name largely prevails in Cochin and Travancore, and in all India. The Dêva Dâsees of all the temples in all India observe the same Hindu law of female (or Kshêtra) Pradhânam.* The ancient and just principle of Hindu scripture and law is that fidelity to the bed is the correlative of fidelity to religious service, where the wife is merged in her husband for such service, and that otherwise it is a matter of option and self interest. The greatest practical fidelity to the bed is found indeed in some women of the Dêva Dâsi or Marumakkathâyam families, and the greatest derelictions in some women of the highest Brahmin ranks. But secular laws to enforce fidelity among the former by instituting a non sacramental marriage, or among the latter by a fresh sacrament, are not worth the serious consideration of Government. Marital rites, bonds, and rights belong properly to twice-born classes for purely religious considerations, to perpetuate those classes and their duties. In the other castes of the Hindu community the healthiest, wisest, and most accomplished men and women belong to the Marumakkathâyam, and the hybrid sections, rather than to the Makkathâyam sections.

6. Do Christians approve of valid, binding marriages under any permissive law without religious services and priestly blessings? Do Budhists, or Brahmos have them? Why are the Marumakkathâyam Hindus considered to be fit subjects for irreligious experiments disparaging to Hinduism and the Hindus? Surely English rule is not glorified by supporting a number of Atheists bent upon subverting their religious and family systems. Unless a respectable number of respectable elders of social, religious and family status make a demand, the Legislature ought not to move in any socio-religious matter of this kind. Otherwise those who are discontented with their caste and creed must give them up as the Brahmos have done and form their own. A marriage tie without priests, gods and Pitris to bless it, and without merger in pollution domicile and religious ceremonies, is not worthy of Hindus of even the Chermar and Pariah castes. An irreligious law for lust-blind men and purse fond women requires neither Commission nor evidence. There is no Hell of "Put" from which Krishnan is to be saved by Lakshmi's son; and no pollutions, ceremonies, and dharmams for the benefit of his soul which Lakshmi and her son of Kilakkêpad are bound to do in preference to his relatives

* Kshêtra—Pradhânam=Superiority of the ground (over the seed sown in it.)

of the Vadakêpad. All this belongs to the Ecclesiastical department, and reforms from within must precede all recognition by the Civil Law. If it is enough that one of the parties to the proposed pseudo-marriage tie is of the Marumakkathâyam family, then the law will simply corrupt the impulsive and fool-hardy members of existing Makkathâyam families, while it is disastrous as already pointed out to the unity and welfare of Marumakkathâyam families both here and beyond the grave. If there is to be a Permissive Bill at all in favor of Makkathâyam, it should apply to all females including the Dêvadâsis of all India, who now follow Marumakkathâyam, and who will give up their present status and obligations with solemn Makkathâyam, ceremonies as determined by their priests.

A. SANKARIAH, B.A., P.F.H.S.

Dewan Peishkar,
Cochin.

LETTER
AND
Answers to Interrogatories
BY
M.R.Ry. P. GOVINDA MENON AVARGAL, B.A.,
Deputy Superintendent of Census,
CALICUT.

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CALICUT,
15th May 1891.

FROM
M. R. Ry.

P. GOVINDA MENON AVARGAL, B.A.,
Dy. Superintendent of Census Operations,
CALICUT.

TO
H. M. WINTERBOTHAM, ESQUIRE, C.S.,
Collector of Malabar, on Special duty.

Sir,

I have the honour to acknowledge the receipt of your circular, dated 4th April, 1891, inviting opinions on certain points touching the recent proposals of the Honorable C. Sankaran Nair in regard to the system of marriage and inheritance obtaining among Hindus following the Marumakkatayam Law. I am sorry that, owing to pressure of office work, I was not able to submit the following remarks earlier.

2. The questions on which my opinion is asked are:—

(1) Is it desirable to pass a Permissive Law enabling Hindus under the Marumakkatayam, or Aliyasantanam, Law to contract a marriage such as the Law will recognise.

(2) Is it desirable that the said Hindus should be given the power of disposing of their self-acquired property by will.

3. I shall answer the last question first.

It is but just and fair that all persons should, so far as the conditions of the community in which they live permit, be allowed to do as they like with the fruits of their own labour. The legal recognition of separate property is in all civilised societies an incentive to individual exertions, and does thereby benefit the community. Further the right of individual ownership induces thrift, which is so essential to the well-being and prosperity of a community. It is therefore highly desirable and expedient to allow every person to hold, and dispose of, his self-acquired property as he thinks best.

The idea is not a new one to Hindus governed by the Marumakkatayam Law. "It is unquestionably the law of Malabar that self-acquisitions made by a member, male or female, of a Tarawad, are the separate property of the acquirer who is fully entitled to hold, encumber and dispose of them *during his lifetime* by sale, gift or marriage." All that is now sought is to extend the application of the existing law to property of which a man may die seized. The law as it now stands permits a man to give away his self-acquired property to whomsoever he likes, without leaving a pie to be inherited by his Tarawad. It is the mere accident of his death prior to any such disposition of his property that gives the Tarawad a right to what is so left by him. The enactment of any law therefore which enables a man to have his wishes, in regard to the disposition of his property, given effect to in the same manner after as during, his lifetime, cannot be an injustice to the Tarawad, or an infringement of the existing rights of any person. On the other hand, it

is but just and proper that the law should permit a man to make his own arrangements for the devolution after his demise of property over which he has absolute control during life, but which either through motives of prudence and self-preservation, or for want of sufficient forethought, he does not part with so long as he is alive. It will also be a great convenience and satisfaction to the owner if he has not to divest himself during life of all his earnings, in order to provide for those dear and near to his heart.

4. It seems clear from what is stated above that no vested rights will be disturbed by the proposed change. Under the existing Law the Tarawad can claim only such portion, if any, of the self acquisitions of a member as has not been alienated by him *inter vivos*. The proposed legislation would limit the claim to such portion, if any, of which he dies intestate. In both cases the extent of the claims of the Tarawad is determined by chance, and the Tarawad cannot reasonably complain of having been deprived by legislation of what it was sure to get otherwise.

5. It may be said that the grant of testamentary power to the Hindus under the Marumakkatāyam Law is a death-blow to the Tarawads governed by that Law. Such Tarawads will in future fail to receive any additions to their property, as the working members will will away their earnings to persons outside the Tarawad. There will also be a tendency for the so-called self-acquisitions to encroach upon the Tarawad property. The result will be the dismemberment of every Tarawad in the course of a few years, and the substitution of a system of inheritance by wills instead.

If it be so, it is in my opinion a consummation devoutly to be wished for. If there be such a strong current of feeling against the Marumakkatāyam Law that the people will not hesitate to avail themselves of any loophole that they may find to escape out of it, I say that that feeling should be respected; and any legislation that would safely bring about the wishes of the people will do nothing but good to the country. But it seems to me that such a feeling does not exist, and that the fears of those who may augur the immediate dissolution of the existing Tarawads are groundless. There are controlling forces of society which are at work even among savages. "The pressure of public opinion compels men to act according to custom which gives the rule as to what is to be done, or not done, in most affairs of life." "In England the power of wills has become so great that in theory a man may leave his property to whom he pleases; but practically this is kept within bounds by moral feeling and public opinion, which condemn it as an unnatural act for a man to strip his own children to endow a stranger or a hospital." Such being the case in a country of change and progress, there is no reason to suppose that in a custom-ridden country like Malabar, the testamentary power will be used by the generality of the people prejudicially to the interests of those who, by the custom of the country, are considered to have a moral claim to a share in the property of the testator.

6. It seems to me that in any legislation on the subject the definition of self-acquired property is a point to be carefully considered. We must have in the first place a clear conception of what is, and what is not, self acquired property. I do not know whether the connotation of this expression has been clearly laid down by judicial decisions. If it has been, there should be no difficulty in embodying in the proposed enactment a definition, or an explanation, of the nature of the property that will be affected by it. The absence of any such definition or explanation will, I fear, lead

to endless difficulties and unceasing litigation. I read in Mr. Ramachandrier's 'Malabar Law' that the law ordinarily presumes that any property not shown to be separate is joint. It also appears that "property acquired by any member of a Kovilagam is in accordance with the principle recognised in the case of joint Hindu family presumed to be the common property of the Kovilagam until it is proved that it has been acquired otherwise than with the aid of the common fund." "A karanavan who is in possession of the family funds will be presumed to have made all acquisitions with them and for the benefit of the corporate body. The presumption is strong in the case of a karanavan against self-acquisition." The burden of proof in a question touching self-acquired property will, therefore, lie on him who asserts that the property is self acquired. It may not be difficult for the acquirer to prove his self-acquisition, but the case is different with the legatees of such property, who are not likely to have the same facilities, or knowledge of facts, to produce the requisite proof in such cases.

In this country the sources of self-acquisition are not at present many. Hardly any of the followers of the Marumakkatāyam Law are engaged in extensive trade or large industries. Land is the chief means of subsistence and of profit. In fact it may be regarded as almost universally true that a Malayali acquires property only in one of two ways, viz.,

1. By holding and cultivating land.
2. By employment, public or private.

In the first case it will be hardly free from doubt whether the property was not acquired with the aid of the common fund of the Tarawad, and can be considered as self-acquisition. In the second case the question always arises how far the property may be regarded as the gains of learning acquired with the aid of Tarawad property, and therefore legally claimable by the Tarawad. Thus the bone of contention will in almost every case be present. In this over-litigious country a moot point of law is a premium on litigation, and if no clear idea of self-acquired property is offered by the enactment I am sure that every Will made under its sanction will be contested in courts. The legislature will, in my humble opinion, act wisely in leaving as little in such matters as possible to the discretion of the courts.

7. As regards the first of the two questions quoted in para 2, I have no hesitation in answering it in the negative. Legislation without a real object in view is pernicious: what then is the object of the proposed Bill? Referring to the statement of objects and reasons that accompanies the Honorable Mr. Sankaran Nair's Bill I find that that Bill was intended to carry out one of the suggestions made by a committee that was appointed in 1884 to consider Mr. Logan's Report on the Land Tenures of Malabar. This committee appears to have based their recommendation for the enactment of a Marriage and Succession Law for Malabar on the belief that "there is a consensus of opinion among the majority of those interested that the time has come when a permissive form of marriage should be provided for Hindus following the Marumakkatāyam Law of succession." This is indeed a startling announcement. It can hardly be that the consensus of opinion has reference only to the opinion of

- * 1. Raja Sir T. Madhava Rao.
2. Mr. W. Logan.
3. " A. Wigram.
4. " P. Karunakara Menon.
5. " C. Sankaran Nair.

the two Malayali members of that committee of five gentlemen. If it refer to the public of Malabar, it is a pity that no mention was made of the means taken by the committee to gauge the opinion of the public. Subsequent events

have proved that the so-called consensus is not a fact, which does not require proof.

Why, the commission which is now going to sit would of course have been unnecessary if the statement that such consensus of opinion existed, were regarded as of unquestionable accuracy.

8. Looking then to the speech of the Honorable C. Sankaran Nair while moving for leave to introduce his Bill into the Legislative Council, I find that the object of the Bill was then stated by him in these terms. "The effect of the law is such that our wives are concubines and our children bastards in a Court of Law, and the necessity therefore for a Bill to legalise marriages, and to provide for the issue of such marriage, seems apparent." This is certainly very strong language to use and it behoves one to see how far the Honorable gentleman was justified in using it.

9. I would here premise that in discussing the matrimonial status of Malayalis, strangers do frequently evince a disposition of mind akin to that of the person who is reported to have defined orthodoxy by saying that "orthodoxy is my doxy, heterodoxy is your doxy." Partiality to one's own customs and manners makes one forget that other people may live as contented and happy as one-self under different customs and manners in which they are born and bred up. Witness the travelers' accounts of strange races, especially when the latter happen to be inferior to them in point of civilization. In the case of Malabar it must be remarked that the isolated nature of the country, and the uncommunicative and reserved disposition of its inhabitants, added to its peculiar laws of inheritance and of property in land, have given birth to numerous wild and ridiculous stories about the country and its people. A Telugu graduate of the Madras University hailing from the Northern Circars once consulted me, in all earnestness, as to the best mode of reclaiming a relative of his who had left Madras on a visit to Malabar, and who was therefore given up by his friends and relations as lost. He (the graduate) was under the impression that a portion of Malabar, covering about half its entire extent, was peopled solely by the fair sex and that strangers of the opposite sex, who visited the country, were enthralled there for life by female witch-craft. No wonder that these queer notions, coupled with the common error of measuring other peoples' corn by one's own bushel, made strangers conclude that there was no such thing as marriage among Malayalis. It is sad to find that even the High Court Judges of former days fell into this popular error. The Honorable C. Sankaran Nair bases his statements above referred to mainly on certain remarks passed by the High Court in a judgment of 1869. The High Court said "the relation is in truth not marriage, but a state of concubinage into which the woman enters of her own choice, and is at liberty to change when and as often as she pleases." The prominence here given to the supreme will and pleasure of the female refers to a state of things which does not obtain at present, and which so far as my information goes, did not exist within the memory of living man. In fact in former days the will of the senior male member of a Tarwad was, in domestic matters, even more powerful than it is now. Then the displeasure of the Karanavars of either party to a marriage meant a dissolution of the marriage tie. No wedding took place without the consent and intervention of the elders of the family, as the formalities attending a wedding even at present, clearly show. The Karanavars did not hesitate even to belabour their sisters and nieces who acted against their will or contravened their orders. Mr. Chandu Menon's novel "Indulekha" gives a vivid and true picture of the subordination of the will of the females of a Tarwad (excepting of course anglicised Indulekha) to the will of the senior male, a state of things which obtains throughout Malabar.

10. The fact is that the theory of succession prevailing in the country misled all. But theory differs wholly from practice. Mr. Lewis McIver remarks in an article on Malabar, the materials for which were furnished by Mr. Logan, and revised by Sir W. Robinson, "A Malayali woman does not exchange her ancestral home for that of her husband: the husband comes and lives with her; children do not cling to the families of their fathers, but to those of their mothers. Property passes not from father to son, but from mother to daughter. Thus far the pure theory: but experience, probably at an early date, proved the necessity, and time has developed the custom, of the eldest male member of the family managing the property of his sister and he is succeeded by his sister's son."

11. The High Court considered the sexual relation existing in Malabar not as marriage but as a state of concubinage. What then is marriage? Does it consist in tying a *tali*, or putting on a ring, in joining hands by a priest, or the recital of certain mantrams, the entry of names in a register, or the execution of a deed of settlement? I think not. Marriage is the union of man and woman, entered into with the intention of continuing the same till the end of life, and which is celebrated in accordance with formalities prescribed by the community in which they live, and is recognised by such community. The devolution of property from father to son is not a necessary concomitant of marriage, although the one follows the other in most of the civilised communities of the world. Dr. Tylor in his interesting treatise on Anthropology remarks. "It seems to us a matter of course to reckon family descent in the male line, and this is now put in the clearest way by the son taking the father's surname. But in lower stages of civilization, on both sides of the globe, many tribes take the contrary idea as a matter of course. In most Australian tribes the children belong to the mother's clan, not the father's: so that in native wars father and son constantly meet as natural enemies. Chiefship often goes down in the royal mother's line, as among the Natchez, who had their sun temples in what is now Louisiana. Yet this widespread law of the female descent, deep as it lies in the history of society, had been so lost sight of among the ancient civilised nations, that when Herodotus noticed it among the Lykians, who took their names from their mothers and traced their pedigrees through the female branches only, the Historian fancied this was a peculiar custom, in which they were unlike all other people."

I would, therefore, with all deference to the High Court of 1869, submit that no rights of property need be founded on a sexual relation to entitle it to the honor of being styled marriage. To say then that "our wives are concubines and our children bastards" is a gross mistake due to the ignorance of the conditions of the society in which we live. It is not unlikely that with the better knowledge of the real state of things now obtaining, and on a correct representation of facts the High Court of the present day may hold that the sexual relations existing among the Hindus following the Marumakkatayam Law are as well entitled to be called marriage as those obtaining among any other people. What is wanted therefore is a correct representation of facts at the proper time and place, and not any revolutionary change in the existing form of marriage.

12. Intelligent and observing strangers have already grasped the situation, Mr. Ramachandra Iyer of the Statutory Civil Service, who was some time the Subordinate Judge of South Malabar observes in the introduction to his manual of Malabar Law. "This ceremony which is called Potamuri generally take place after

the girls attain age, and though not celebrated on the same scale of grandeur as Kéttu Kalyānam yet it is attended with all the solemnity and publicity of a marriage. Potamuri, or Kidakora, is marriage in the proper sense of the term, and it is akin to the Gandharva form of marriage recognised by the shastras, and which has its foundation upon the mutual love and consent of the parties, and this form is as good as any other form of marriage. In the Potamuri ceremony the castemen and relations assemble, and in their presence the bridegroom presents a suit of clothes to the bride, and after treating the guests of castemen to a banquet, and distributing money among Brahmans, the couple retire to the bed-room. This ceremony corresponds to the nuptial or consummation ceremony observed by non-Malabar Brahmans and other Makkatāyam Hindus. Even a Nambudri wishing to form an alliance with a Nair woman is required to observe the Potamuri ceremony, and publicly pass for her husband, and any Nair woman conceiving and bringing forth children before openly taking a husband in the manner above stated is outcasted with her children. In the face of these customs how can one say that there is no marriage among Nairs?" A similar opinion is expressed by Mr. Lewis McIver in the article on Malabar which he wrote for the Imperial Gazetteer.

13. Is it then because the present form of marriage breeds immorality, or is otherwise defective, that a change in form is desired by some Malayalis? Nobody who has the slightest pretension to a knowledge of society as it exists in Malabar and in foreign countries can justly say that the sexual morality of Marumakkatāyam Malabar would compare unfavourably with that of her Makkatāyam neighbours. In his article on Malabar referred to already, Mr. Lewis McIver observes, "The statement that the younger cadets of Nambudri families live with Nair women, merely reproduces in English the Malayali mode of describing the married life of these people and of the Nairs. It is part of the theory that the women they live with are not wives, that they may part at will, that they may form new connections. This part of the Malabar Law has, in the hands of unenquiring commentators, brought much undeserved obloquy on the morality of the people. Tippu in his pompous and inflated history denounced it as shameless and sinful; and such authorities as Temple and Wilks have countenanced this view. The fact is that although the theory of the law sanctions freedom in these relations, conjugal fidelity is very general. Nowhere is the marriage tie albeit informal, more rigidly observed or respected, nowhere is it more jealously guarded, or its neglect more savagely avenged. The very looseness of the Law makes the individual observance closer; for people have more watchful care over the things which they are most liable to lose. The absence of ceremonial has encouraged the popular impression: but ceremonial, like other conventionalities, is an accident, and Nair women are as chaste and faithful as their neighbours; just as they are as modest as their neighbours. Although their national costume does not include some of the details required by our conventional notions of modesty." Similarly Mr. Ramachandrier speaking from personal experience gained in the country, states in his Manual of Malabar Law, "There is no truth in the general condemnation that the ties of matrimony are not respected in Malabar. The giving and accepting of cloth is the essential of the contract, and this is what takes place at Potamuri ceremony. But in the generality of cases the wife remains in her own Tarawad, is maintained there, and is visited there by the husband, and the children become members of her, and not of the husband's, Tarawad. These anomalies of married life, and especially the fact of a few Nair Tarawads of a low order in

Nedunganad adopting the Polyandrous system to the utter contempt of their brethren there and elsewhere, have no doubt contributed to create an unfavorable impression among strangers as to the Nair women's fidelity and loyalty to their husbands; but it may be observed that constancy of love and attachment to one husband are virtues as much respected among Nairs as among any other community, although the want of permanence in the marriage tie may lead to derelictions resulting in separation at the will of either party." Of course, there are men and women who abuse the privileges given them by the custom of the country, and who behave themselves in a way in which no respectable person would behave, and which is disapproved by the community. Such persons are found in all societies and among all nations. No law can reach them. For was it the want of a law that engendered the corruption described in the horrible disclosures made by General Booth of the Salvation Army in his plea for the fallen women of London? There are certain classes of people even among the most highly civilised nations, who have not the least rudimentary conception of propriety in sexual matters and who are certainly not the samples of the sexual morality of a nation. It is not to the slums of London, where you may find a man who would sell his wife for a glass of beer that you should look for a standard of the morality of the English nation, nor is it the nobleman debauchee, married or unmarried, who would not scruple to seduce the beloved wife of his neighbour, that should be taken as an example to illustrate the condition of the marital relations obtaining in a country.

If it be asserted that whatever immorality exists in sexual matters among the followers of Marumakkatāyam Law is caused by their peculiar marriage customs, I would answer that there is no truth in the statement. If marriage laws can improve the sexual morality of a people, what accounts for the innumerable scandals in married life which we find disclosed *ad nauseam* in the society journals of London, and in the proceedings of the Divorce Courts? If sexual morality can be rigidly enforced by laws there should be no difficulty in dealing with the problem of crimes resulting from enforced widowhood, which is exercising the minds of educated India. The writer of a recent article in the Fortnightly Review on "morality among Russians" describes the sexual morality prevailing among all classes of that people. The picture there drawn of Russian Society, both high and low, is a dark and unenviable one. Surely Russians have Marriage Laws, and Christian Marriage Laws too!!

14. Instances may be multiplied to show that civil laws are utterly helpless in the matter. It is my humble opinion that the morality of a people can be effectually governed only by social laws. In fact people are guided in such matters chiefly by what is called the moral sanction as distinguished from the legal. It is a stock argument of those who are in favour of "legalising marriages" as they call it, that if society be considered able to exercise an adequate check on matrimonial offences there is no reason why other offences as those against person and property, cannot be left to the control of society and the Penal Code struck off the statute book. These men seem to forget the fact that there are different degrees of criminality, and that a lie cannot be placed in the same category with murder or theft. It is not all moral offences that are recognised by the Penal Code, and I for one am inclined to think that the omission of offences against marriage from the statute book would not in any sensible degree affect the morality of the people.

15. One defect in our marriage customs is said to be that neither the marriage nor the divorce is attended with grand ceremonials, religious or secular. The union, it is said, amounts to no more than a casual relation terminable at the will or

caprice of either party. It is true that the priest has very little to do in our marriages. In the generality of cases, of course, the blessings of Brahmans are invoked by the payment of *dakshina* on occasions of wedding. But the omission of this formality is not considered serious. I believe that in ancient days no religious rites accompanied marriages among Sudras anywhere, and that the religious ceremonials obtaining at present on marriage occasions of the Sudras of the East Coast, have resulted from the aping of the manners of the Brahmans, which took place as Sudras began to rise from the position of slaves, which ancient Laws assigned to them. This view seems to be supported by the arguments in the case reported in VIII. M. H. C. R. 138. It is there stated, "In former ages the Brahmans did not legislate for Sudras; for Sudras there are no mantrams, no peculiar marriage ceremonies, no ceremony for divorce; the woman may be superseded at her husband's pleasure, and she may leave her husband when she pleases." The statement, however, that our marriages are not accompanied by any ceremonial whatever misrepresents facts. The form no doubt differs in different parts of the country. But everywhere the following features are recognised and followed:—

- (1) The marriage is arranged for by the elders of the two families.
- (2) The astrologer is consulted as to whether the union would prove auspicious.
- (3) The bridegroom proceeds to the house of the bride on the day appointed accompanied by his kinsman and friends, and taking with him present for the bride in the shape of clothes, or betel and nut.
- (4) The relatives and friends of the two families are feasted on the night of the wedding.
- (5) The wife is taken to the house of the husband by the female relatives of the latter, on an auspicious day. After a few days' sojourn in the husband's house, she is presented with some jewels and taken back to her mother's house. After this ceremony is concluded and not till then, the wife may go to her husband's house whenever she pleases.

I should not be understood as saying that the non-observance of the above formalities is considered to render the marriage null and void. Solitary instances here and there may be cited to show that even without these formalities men and women do become, and pass publicly for, husbands and wives. But such cases are not considered respectable, and are in fact only exceptions that prove the rule.

It is true that no particular formality is required to effect a divorce. But in general the elders of the family are informed of the separation, and of the cause thereof. There is also a certain degree of social disapprobation attaching to divorce on insufficient grounds, but I must admit that the disapprobation is not sufficiently strong to deter the occurrence of such divorces. This is a defect in our marriage customs which is no doubt liable to some abuse, but the only effectual and safe remedy for it seems to me to lie in the hands of the society. An indissoluble marriage is in these days of progress and enlightenment an anomaly, and any measure calculated to effect such a marriage is a retrograde step. The intervention of the Law Courts in divorce cases will, as sure as anything, prove a curse, as the working of such a system among other nations clearly show. Besides the proverbial glorious uncertainties of law, there are considerations of expense and publicity which deter even the

most injured of individuals from bringing to book an erring wife or husband. The domestic unhappiness and misery which follow can best be imagined. Society is the best judge in such matters, and all that is wanted is a strong and sound public opinion on the subject. So far as I know, public opinion in the matter has of late been gathering strength, and we may hope that with the spread of education it will at no distant date be fully developed.

15. An instance generally cited of the evil results of our marriage customs is the liberty which the Nambûdiri land-lords are said to take with the Nayar women of their dependent tenants in the rural tracts, and much capital is made out of this allegation by the advocates of a Marriage Bill. I for one do not think that the evil complained of is the outcome of the peculiar form of marriage prevalent among Nayars, and can be extirpated by any modification of that form. It must be remembered that in all ages and in all climes men of wealth and position, if evil disposed, find little difficulty in circumventing the object of their machinations. It is an open secret that there are officials on the East Coast, holding high and responsible positions under Government, who are a terror to husbands within their jurisdiction, and instances are not wanting where Zamindars and Rajas use their power over their tenants and dependents successfully in satisfying their lust. It is not therefore the peculiar marriage customs of Malabar that allow the land-lords of this agricultural country such freedom among the women of their dependents as they are said to have, and no Marriage Law can deprive them of that freedom so long as they remain masters of the soil.

16. But the real secret underlying the present agitation for a Marriage Bill is a desire to effect a change in the existing law of succession. This is plainly put in a petition which I understand has recently been sent up to Government by some Malayalis. The system of inheritance now obtaining is said to be unnatural, and the first instalment of a change is sought in the shape of a bill legalising the devolution of self-acquired property from father to son. I do not mean to discuss here the merits and demerits of the Marumakkathayam Law of inheritance. That this Law did in ancient days immense good to the country goes without saying. But old Laws working under new circumstances are apt to produce results which those who framed them never foresaw. It worked smoothly enough so long as the Karanavan held supreme sway, and his word was law to the junior members of the Tarawad. But times are changing and individual freedom and liberty, bordering on license, are the order of the day. The result is continual bickering between the Karanavan and his Anandiravars. A change in the Law of succession is supposed by some to bring peace to the country; but the practical question arises how such a change can be brought about without a revolution, as the Marumakkathayam system enters into, and is closely interwoven with, the religious, domestic and social life of a Malayali. We are at present, however, concerned only with the question of making a provision for one's wife and children. I do not see the necessity of a bill for this purpose. It is a false cry that on the death of a man, who has made no provision for his wife and children, these are turned into the streets helpless, and are left to starve. Those who say so forget the fact that the wife and children belong to some Tarawad which is bound to, and does, maintain them. Some Malayalis point out the hardship of the children of a poor Tarawad having no claim to the property of their rich father, but it must be remembered that there are also corresponding cases of the children of rich Tarawads having poor fathers, and that rich fathers are not after all so abundant

in the land as may be supposed. The Honorable C. Sankaran Nayar's bill deals with the claims of wife and children only to a man's self-acquisitions. As a matter of fact Malayalis, who can boast of any self-acquisition, do make provision for their wives and children and the only difficulty at present is in respect of cases where men die without making any such provision. The grant of testamentary power to Malayalis will, I believe, remove this difficulty, and that is in my opinion all that is wanted at present. There will still be men who would agree that provision should be made by law to cover cases of intestate property: but such cases will certainly be very rare, and it is not possible for any legislature to anticipate and provide for every such contingency. It must not also be forgotten that there will obviously be very great difficulties in administering a double law of inheritance in the same family.

17. For the reasons stated above, I am of opinion.—

(1) That the form of marriage obtaining among Marumakkatāyam Hindus is not one which the law cannot recognise.

(2) That the non-recognition of it by the courts hitherto was a mistake due to ignorance, and perhaps misrepresentation.

(3) That if the courts still refuse to recognise it, the happiness and welfare of Malayalis will not in the least be affected thereby.

(4) That the evils which are fancied to be the result of the present form of marriage are not really so, but are produced by other causes, which nothing but the united will of the community and a strong public opinion can remove.

(5) That a change will only put Malayalis in the position of the ass in the proverb, which ran from place to place for what appeared to be better pasture from a distance, but which turned out to be no better than what it left, and thus starved all day.

(6) That a marriage bill is not only unnecessary and uncalled for, but will, if inflicted on the people in the shape in which it is now proposed by some, cause the greatest unhappiness and suffering to which they are at present strangers.

(7) That a permissive bill is worse than a compulsory one in as much as to the evils of the latter it adds that of confusion.

(8) That if it be proved that the Marumakkatāyam Hindus do at present suffer from evils arising from their marriage customs which nothing but legislation on the subject can remedy, a half-hearted measure like the permissive bill that is contemplated, can do no good, as it will not touch those who alone, if at all, need be bound by any laws.

I have the honour to be,

Sir

Your most obedient servant,

P. GOVINDA MENON.

Dy. Superintendant of
Census Operations

Answers.

1. The general rule is that a man of a higher division may have *Sambandham* in a lower division. The exceptions are *Veluthédan*, *Velakkatra* and such like divisions, whose touch is pollution even to the Nayars of higher divisions. Generally speaking, *Sambandham* between a higher and lower division is seldom formed with the consent of the Tarawad, as the wife can have no admission to the kitchen of the husband and can be of no use in the domestic duties of the husband's Tarawad.

2. Women can consort only with men of equal or higher divisions, and never with lower.

3. Among Nayars the real test as to whether *Sambandham* between two divisions is permissible will be found in the answer to the question whether the females of the two divisions may eat together. Where the touch of the members of one division entails pollution on those of another, *Sambandham* between those two divisions is absolutely forbidden.

4. *Sambandham* formed in contravention of recognised rules, stated above, subjects either or both of the parties to social excommunication.

5. Such a *Sambandham* can never be validated by a *Prāyaschittham*. But a renunciation of the marriage, followed by a *Prāyaschittham* would in most cases entitle the excommunicated party to re-admission to caste.

6. In certain caste matters, *Korapuzha* is generally spoken of as the boundary between North and South Malabar.

7. Generally speaking, Nayars of North and South Malabar intermarry.

8. A Nayar of South Malabar may marry a Nayar woman of North Malabar. But such cases are not frequent or numerous owing to the difficulty which North Malabarians, whose knowledge of the outside world is comparatively speaking very limited, feel in ascertaining the real caste of a man of South Malabar. Where such caste is known beyond dispute, as for instance in the case of Kārapalli Kurups, intermarriages are allowed and do take place.

9. The Nayar women of North Malabar are not generally permitted to cross to the south of *Korapuzha*.

10. The reason alleged for the prohibition is simply custom. But I believe the custom originated in the days of the mortal feuds which existed between the reigning families of Kolattiri and Zamorin in the last century, when the subjects of the former feared that their females might be dishonoured if they entered the territory of the Zamorin. This grew into a custom which, like many other customs, now appear arbitrary and unreasonable, because it has lost its sense by lasting on from the state of life to which it properly belonged. It is significant that old ladies of North Malabar are not prohibited from crossing to the south of *Korapuzha*, on pilgrimage or for other purposes.

11. A pretty correct description of the *Tāli-kettu Kalyānam* will be found in paras 32-33 of the introduction to Mr. Ramachandra Iyer's Manual of Malabar Law, and at pages 134-135 of Mr. Logan's Malabar Manual.

12. The *Tāli* is tied in some castes by a man of the same caste, in other by a Nambūdiri, and in others by a man of higher caste deputed by the Raja, who is acknowledged as its lord by the caste. The man is called *Manālan* in some parts

13. It is the custom for a number of girls of the same Tarawad and, in the case of the poor, of the same caste, to have the *tāli* tied at the same time and place but not by the same individual.

14. The man who ties the *tāli* does not, at any rate in this part of the country, obtain thereby a right to cohabit with the girl. The reason is that *Tāli-kettu Kalyānam* is not regarded as marriage.

The word "Kalyānam" means simply an auspicious ceremony, e. g., *Tiranda Kalyānam*, *Kuri Kalyānam*. Whatever might be the origin of this *Kettu Kalyānam* and whatever analogies it might possess to the marriage ceremonies obtaining among other Hindus, it goes without saying that in its present state it has no more meaning than an analogous ceremony which is observed by the Coorg people and is thus described in the Coorg Manual. "On an auspicious day, fixed by the village astrologer, all the children of the village, both females and males are gathered together at a public place and amidst general rejoicings, and in the presence of the assembled villagers the ears of the children are bored by the village goldsmith. When this ceremony is concluded the children are declared competent to marry. No boy or girl may choose a wife or husband until he or she has gone through this ceremonial."

15. There is no prohibition so far as I know, to the *Manālan* marrying the girl on whose neck he has tied the *Tāli*.

16. I have never known such an instance.

17. When the man who tied the *Tāli* dies, there is no pollution to the girl, so far as I know. But I am told that in certain classes of Nayars, and especially when the *Tāli* is tied by a man of the same caste, the girl should bathe on hearing of the death of the man who tied her *Tāli*.

18. It appears that in the case of the poor the *Tāli* is sometimes tied on by the girl's mother in the presence of the village, or tutelar, deity.

19. Every Nayar girl must, under pain of excommunication on default, undergo the *Tāli-kettu* ceremony before reaching the age of puberty. I do not know if there is anything but custom to be pleaded in justification of this.

20. After *Tāli-kettu*, there are certain formalities to be observed for the wedding. These will be found described pretty accurately in paras 34-35 of the introduction to Mr. Ramachandra Iyer's Manual of Malabar Law. In many parts of South Malabar betel leaves and nuts, take the place of the cloth mentioned by Mr. Ramachandra Iyer.

21. When a Nayar girl is given in marriage to a man of a higher caste the same formalities are observed, with the exception that the bridegroom does not join in partaking of the feast that is provided in the house of the bride.

22. I do not know much of the form of wedding obtaining in North Malabar. In South Malabar there may be local peculiarities in minor details, which are of no importance.

23. A Nayar woman can have *Sambandham* with only one man at a time.

24. Any deviation from this rule is marked by Society with the stamp of disgrace. I do not know if there are any texts that can be quoted in support of the rule. Custom is generally the guide in such matters.

25. There is nothing to prevent a woman terminating the *Sambandham* when she likes, except the fear of social disgrace and self-interest.

26. In this part of the country, the only formality required in dissolving the connection is to let the elders of the families know that it is severed for reasons stated. In some cases, if the husband or his Tarawad, do not send the usual presents to the Tarawad of the wife for *Onam*, *Vishu* and *Tiruvatira (Ardra)* or if on sending, the latter refuse to accept them, the union is treated as severed.

27. A man may marry as many women as he pleases.

28. It is not generally considered disreputable, and there is nothing to prevent it.

29. During the continuance of the marriage union, the woman lives either in her own Tarawad or in that of her husband. The latter is the case in the majority of instances, so far as I know.

30. I do not know if the custom varies in North and South Malabar.

31 and 33. According to recognised custom, the husband or his Tarawad must provide clothes, oil and other necessities for the wife when she lives in her mother's house, and must also feed her and her children when they live in his house. Failure to do this is deemed a sufficient cause for dissolving the union.

32. It is the rule for one man and one woman to cleave together for life.

34. An *Anandiravan* working for the Tarawad is given maintenance on a scale suited to the means of the Tarawad, but according to the will and pleasure of the Karanavan. There are cases of their cultivating Tarawad land for rent. In such cases they are not worse off than the other tenants of the Tarawad, who have only to account for the stipulated rent.

35 and 36. There are *Anandiravans* who work for the Tarawad and there are those who do no work, or work only for their self-aggrandisement. This depends upon the natural disposition of the men, the extent to which they are influenced by public opinion, and various other circumstances. For instance, a man who loves his Tarawad, who has not many calls on his purse from outside the Tarawad, or who is wedded to a lady of moderate ambitions and belonging to a well-to-do family, will be found to set apart the major portion of his earnings to his Tarawad. On the other hand, one who has no affection for his Tarawad and takes every opportunity to quarrel with his Karanavan, who has no character to lose or who is a doting husband wedded to a grasping and impecunious woman, or to a loving wife of poor family, will be found to earn little or nothing for his Tarawad. In all cases, earnings that are not handed over to the Tarawad are given to the wife and children, unless the man happens to be a debauchee who squanders his fortunes on wine and women.

37. I understand that "*Puthrāvākāsam*" is nothing more than the name given in North Malabar to the property acquired by children from their father, and that it has no reference to anything which they might claim as a matter of right if their father failed to give them. If my informant is correct, there is, of course, such a thing as *Puthrāvākāsam* in South Malabar too.

38. I have stated at length in my letter dated 15th ultimo the serious objections that in my opinion exist to providing a permissive Marriage Law for Nayers, understanding by permissive Marriage Law an enactment of the stamp proposed by the Honourable C. Sankaran Nair.

39. If it be decided that legislation on the subject is desirable or necessary, I think it would be unwise to insist on any form of marriage other than that prevailing among other Hindus. Registration of domestic occurrences is an idea entirely foreign to Hindu notions, and we cannot expect the one million or more of Hindus in this district to have the same liberal and enlightened views as the handful of my educated countrymen. I would therefore strongly protest against registration in any shape being prescribed for marriage. Such Registration does not obtain among our co-religionists elsewhere, who have not been shown to labour under any disadvantage on that account.

40 and 41. The conditions of a valid marriage referred to in this question differ from the Sambandham recognised in practice in several important respects.

(1) Polygamy is not prohibited in practice.

(2) Girls of 12 are generally given in marriage.

(3) At present the consent of the Karanavar is in all cases necessary whether the parties are minors or not. If that be not obtained, the wife is not allowed admission to the Tarawad house of the husband, or the husband is refused admission to the wife's house, as the case may be.

(4) 1st Proviso. There are considerations of caste which at present prevent persons from marrying. There are also superstitious folk, to an extent that will amaze even sober reformers, who will not permit any marriage that is not sanctioned by the astrologer, on consulting the horoscopes of the bride and the bridegroom.

2nd Proviso. If I understand this proviso aright it sanctions marriage between persons who have what is called *pula sambandham* (relationship by pollution) and between whom sexual connection is at present regarded as incestuous.

41. I would certainly not disregard caste distinctions. To ignore them in any piece of legislation, affecting the social condition of the Hindus, will be an inexcusable blunder. The tenacity with which Hindus cling to the caste system is well known, and no where are the caste observances more rigidly enforced than in Malabar. However deplorable this state of things may be, it is a stern fact, which cannot but be recognised and requires to be duly provided for. Again the proviso regarding marriages between consanguineous persons is faulty. Existing customs relating to it should be respected. In fact both the 1st and 2nd provisos to the 4th condition should be struck out, and a fifth condition should be added declaring that the parties must not belong to different castes, a marriage between whom would by any recognised custom be improper.

42. According to social usage, a divorce may reasonably be effected for,
1. Adultery by wife. 2. Cruelty by husband. 3. Imprisonment of either party in criminal jails. 4. Loss of caste. 5. Incompatibility of tempers.

43. My reply to question 31 answers this question also.

44. The new rights arising from the proposed marital relations referred to in this question are, in my opinion, sure to lead to complications of a serious nature.

A thorough change of the system of inheritance from Marumakkatayam to Makkatayam, which may convulse the entire social fabric for a time, need not be so much feared as the proposed partial change. Any attempt to graft on the Marumakkatayam system rules and ideas, which are quite against the grain of that system, will produce nothing but discord and litigation. A double system of inheritance is said to cause a good deal of unhappiness and misery in certain Moplah families which are governed by it, and that is nothing more than what may be expected. I do not see why the testamentary power should be restricted to those who avail themselves of the provisions of the proposed Marriage Act. It is, I suppose, the sweet offered to the Malayali public in order to induce them to swallow the bitter pill.

45. *Sambandham* between the Nayers in British Malabar and those in the Native States of Malabar is customary and frequent, and takes place freely in all cases where the castes of parties are well known to each other, and are suitable.

(Signed) P. GOVINDA MENON, B.A.,

Deputy Superintendent of Census,

Calicut.

Answers to Interrogatories

BY

M.R.Ry. KANNAMBRA RAMANUNNI NAIR AVARGAL,

JANMI AND MEMBER OF THE DISTRICT BOARD,

(The Karanavan of the Tarawad is a Nāduvāzhi Chieftain.)

1. Yes; he can have.

2. No.

3. Chārnatha cannot form Sambandham with Sudra and *vice versa*. Pallichān and Chārnatha cannot form Sambandham with each other. Vattēkkāt and Athikurissi cannot form Sambandham with each other. But a few exceptions, to the last two prohibitions, may be found which are objected to by their castemen. A Kiriya man can have Sambandham with all other Nayar castewomen. The *vice versa* of this is prohibited. A Sudra man is permitted to form Sambandham with all Nayar castewomen except Kiriya and Chārnatha.

4. If Sambandhams against caste rules are formed, the erring woman, and all her relatives who live with her, or taste any food or water touched by her, will be excommunicated by their castemen, called Enangar. Excommunication means that no other Enangar will join them on the occasion of any death, birth, or marriage ceremonies in their houses. Neither the excommunicated will be permitted to attend any such ceremonies in the houses of any of their castemen.

5. No; it cannot be. But the woman's relatives and castemen, who disobeyed the excommunication orders of the castemen, may be taken back by a Prāyaschitham

6. Korapuzha.

7. The Nayars of South Malabar do not generally form Sambandham with the Nayar women of North Malabar; but North Malabar Nayars do sometimes form Sambandham with South Malabar Nayar women.

8. Yes; he can. The reason why a South Malabar man does not form Sambandham with a North Malabar woman, and why a North Malabar man does with a South Malabar woman is this; the women of the former can cross Korapuzha; while, the women of the latter cannot do so without breaking the caste rules. A man generally wishes to marry a woman of his country and neighbourhood if possible. Therefore a South Malabar man has no necessity to marry a North Malabar woman. A North Malabar man when duty detains him in South Malabar is obliged to form Sambandham with a South Malabar woman, since no woman of North Malabar can cross Korapuzha.

9. Yes; they may cross the river.

10. In ancient times when the country was subjected to foreign attacks, especially of the Mohammadaṇs through Palghat valley and Wynad, and also subjected to internal disorders and mis-government, it was considered unsafe for women of either country to leave their own neighbourhood. Hence the restriction. South Malabar women were similarly prohibited from crossing the Wālayar River. Now the cause being removed the restriction is useless.

11. It is a marriage. All the formalities of a Makkathayam marriage are observed in a Tali-kettu kalyanam of a Nayar. The only difference is that the Nayars have no Manthrams but only Tanthrams, which are almost the same with those of a Brahman or Kshatriya, which is therefore a religious marriage, if there is anything religious to a Nayar. It consists of (1) Vari-yezhutha, or preparing an estimate of marriage expenses by castemen. (2) Ashta mangalyam, that is electing a bridegroom to a bride (girl) by referring to the horoscope of both, with the assistance of an astrologer, or Kanissan. (3) tali-kettu, that is the tying the Tali by the bridegroom. For this ceremony a prosperous day and time, called muhûrtham, is already fixed in consultation with the astrologer. On this occasion, feeding the Brahmans, castemen, neighbours and poor people of all castes, is essential. Giving presents to the Brahmans, and offerings to the pagodas, are also necessary. All sorts of amusements such as fireworks, plays, kathakali and music &c. are to be found on the occasion. The above-mentioned feeding and amusements last for 4 days. On the fourth day, the bridegroom and the bride attended by their castemen and others, are taken to the nearest river, or pond, and after bathing, they wear all sorts of ornaments and are led in procession to the family house with great pomp and cheering. Betel nuts and leaves and sandal and rose-water &c. are freely distributed among all those who attend the ceremony. The tali-kettu is to a Nayar what an early marriage is to a Brahman, and his Sambandham may be likened with the consummation of marriage of a Brahman.

12. A boy of the girl's own caste division, whose horoscope favourably coincides with that of the girl, should tie the tali. He is called the Manavâlan or Manâlan. The word means bridegroom.

13. If the man who ties the Tali is a Kshatriya he can tie the Tali of several sisters at the same time and place. In no other instances is this permitted. The custom may look awkward; but when compared with the custom of a Kshatriya marrying several sisters at the same time and place, the meaning of this custom will be clear.

14. Yes; if he does not forego his right by a divorce on the 5th day. On the 5th day of tali-kettu kalyanam a formality is usually observed. The bride holds one end of her new double cloth called mantravadi (mantra + kodi), and the bridegroom cuts it crosswise with a knife, thereby denoting a dissolution of their marriage connection. When there is a will on both sides to live as husband and wife this ceremony of divorce is not performed. He may afterwards form Sambandham with the girl.

15. See answer to 14.

16. Yes. I can point out many instances of such Sambandham.

17. The pollution is observed by all divisions of castes in most Taluks, if the man who ties the Tali is of the girl's own caste division, and not superior caste-man. The Chârnata division does not observe the pollution of a kettiyavan (he who ties) as the tali-kettu of their girls is invariably performed by a kiriyam man or Sâmantâ-Tirumulpâd; both of them are superior to the Chârnatha caste, and hence their omission to observe the pollution. Similarly when a Kshatriya-Tirumulpâd ties the Tali of a kiriyam girl (vide the custom of all Nayar chiefs), no pollution is observed; the kettiyavan (tier) being of a higher caste.

18. It is said that there was such a custom, but it was never in general use. If a family either from want of Enangar, or from poverty, is unable to perform the tali-kettu ceremony, it is said that the mother may perform it in the presence of

Mâdhêra, or Mahadêvar, the family God of a Nayar. This is simply to avoid the penalty of not performing the ceremony. This shows how indispensable is this ceremony in the estimation of a Nayar.

19. Yes; it is the rule. But some exceptions may be found in some parts of Malabar which are not severely dealt with. The general Hindu Law that compels an East Coast Brahman to get his daughter married before she attains puberty, may be cited in support of this. The Nambûdiri custom may be cited in favour of the exceptions.

20. Although no more formalities are compulsory, yet certain formalities usually observed on the occasion of Sambandham, are considered necessary. As for such formalities see my book on the occasion of Ayathâkshy's marriage (vide page 67).

21. Yes, on a small scale and with less pomp and publicity.

22. Those of South Malabar are pretty well described in my book (vide page 67.) Compare that with a North Malabar man's description. They are in all material points the same throughout South Malabar.

23. In days past such a custom was prevalent in some parts of Malabar; but general public opinion doomed it to die, and I doubt whether such a custom can anywhere be found now.

24. It is prohibited. Malayalis should follow the general Hindu Law except in respect of certain changes made by Parasu Rama, and Sankarâchâriyar. Among those changes this could not be found.

25. Yes; but she seldom does so. Whenever she wants to terminate it, she behaves towards her husband in such a manner as to compel him to terminate it by his own accord.

26. Yes; the man either personally, or by proxy, presents to the woman a set of new clothes and a few rupees in the presence of some of their castemen, and says that the connexion is henceforward dissolved. This he does with, or without, explaining his reasons.

27. Yes.

28. Yes; there is nothing to prevent it; the general Hindu Law is in his favour.

29. Now-a-days, she sleeps and takes her meals in her husband's house if he is able to support her. Formerly contrary was the rule. A Marumakathâyam husband is only bound to give her clothing, oil and other extra expenses, but not food.

30. I think so.

31. He is bound to supply her with all the necessaries of life except food which she is entitled to get from her own Tarawad.

32. No, one woman to one man is the rule.

33. Yes; he does feed and clothe them.

34. The working Anandaravars will get a small allowance, for cloths, oil, &c. But this is becoming very rare. They cultivate Tarawad lands for rent but this is also becoming rare. In case they get a surplus they may deal with it at pleasure.

35. They do not generally work for the Tarawad. They try to earn something for themselves.

36. With their earnings they not only support their wife and children, but their direct sisters and nephews. They never hand over their earnings to their Karanavan.

37. There is nothing analogous to it in South Malabar.

38. I think it is objectionable unless we are prepared to entirely root out the Marumakkathayam system. A change in any existing system should only be made, when it is plainly proved that the existing system is against the welfare of the majority of the people, and that the change will produce a better result. The burden of proof lies on those who propose a change. The reasons set forth by the party for the change are merely sentimental in my opinion. Doubtless there are some defects in the present system, but defects there will be in every human institution. Will the proposed change remedy those defects or will it make them worse, is the question? By the proposed change a Nayar will become half Marumakkathayam and half Makka-thayam man—a double-headed man. Will not such a man look more monstrous and awkward in the eyes of a foreigner? If it is argued that by the change, Marumakkathayam will be totally extinguished in course of time, I ask why it should be doomed to die a lingering death. Let it die at once with as little pain as possible. Let it be enacted that each member of a Marumakkathayam family has a right to sue for a division. If the law permits the self-acquired property of a Nayar, whether wholly or partly, to descend to sons, the growth of the family property will be stopped, and the old family property will be gradually ruined by the endless litigation arising from the proposed change. Nayars are already litigious and waste a good deal of money in this way. Is it not then doing a lingering death to allow it to be ruined by facilitating litigation?

What is self-acquired property? The nephews will say that, property acquired by the aid of family property is not self-acquired. The sons will say the contrary. How can a Karanavan's self-acquired property be distinguished from family property? A youth, before he passes B.A., and B.L., burdens a family property with a debt of six or seven thousand Rupees. Is the earning of that B.A., and B.L., youth self-acquired or family property? If it is self-acquired will a single pie be spent in future to educate a nephew? These and thousand others are questions to be solved between nephews and sons. Will a single pie of the growthless ancestral property be left after all these? I, therefore, say if any change is to be made, a right to compulsory division of property may also be a part of it.

39. I prefer to retain the customary form. The other form is quite disagreeable to the taste of a Nayar especially of a Nayar woman.

40 and 41. Require consideration.

42. Adultery and continued illtreatment are grounds for dissolving a Sambandham. Incurable disease, or barrenness, is not a ground for dissolution. It is only a ground for another marriage during the life-time of a wife.

43. After the death of a Nayar, his Anandaravars usually supply his wife and helpless children with clothing and oil. By helpless children I mean unmarried females and minor males. The wife is not entitled to get anything after she is married to a second husband.

44. (c) In the absence of father and mother, the eldest brother or sister should be the guardian instead of the head of the Tarawad.

(d) "Failing children born to him before or after such marriage" to their children and grand children and not to the Tarawad; as the Tarawad property is doomed to die, I think the sooner it dies the better it is.

(e) Sufficient provision and suitable maintenance are vague terms that will help litigation.

45. Yes.

(Signed) KANNAMBRA RAMANUNNI NAIR.

LETTER FROM
M. R. RY. T. V. ANANTAN NAYAR AVARGAL, B.A B.L.,
DISTRICT MUNSIF.

CALICUT,
22nd April, 1891.

To

H. M. WINTERBOTHAM ESQUIRE, C. S.,

Sir,

With reference to your circular letter dated 8th April 1891, I have the honour to submit the following observations on the questions referred to therein.

1. The first question is whether it is desirable to pass a permissive law enabling Hindoos under the Marumakkathâyam, or Aliasantana Law, to contract a marriage such as the law will recognise. Confining myself for the present to the case of Marumakkathâyam Hindoos, I have to observe that the view that marriage is not recognised in Marumakkathâyam Law is not absolutely true. No doubt, this view is perfectly true in so far as it is said that legal rights such as those of inheritance are not attached to the tie of marriage, but beyond this, the proposition cannot hold good. That, in a system of family-law such as Marumakkathâyam, which is composed of a body of usages regulating the social and domestic life of an entire community, there is no recognition of marriage as a civil institution, is a proposition which cannot be lightly accepted. It is a proposition which is negated by actual facts. Though it is undeniably true that, for purposes of inheritance and other judicial incidents, marriage among Marumakkathâyam people is not recognised as giving rise to legal rights, it is equally true that, for purposes of social rights and obligations, it is distinctly recognised by the customary law. According to the orthodox custom which obtains throughout the greater part of Malabar, there is a regular form of marriage prescribed for the union of man and wife, and this is known by the name "Pudamuri" in North Malabar. The generic term of designation for a marriage of this description is "Guna-Dôsham," which means a union of man and woman, for "better for worse, for richer for poorer." The wife is recognised as such for all social purposes, and she has a distinct status in the Tarawâd of her husband. The wife and children are entitled to maintenance while living in the Tarawâd of the husband, and this right has been judicially recognised among Nairs in North Malabar (vide I. L. R. 6, Madras 341). The husband is, during the continuance of the marriage, entitled to the society of the wife, and the wife to that of the husband. Among orthodox Nairs, adultery is considered a grave social offence and arbitrary divorce is certainly not permitted. Matrimonial offences are punished by social degradation, which is an efficacious punishment to a community who value caste privileges more than their worldly possessions. It is, thus, not strictly correct to say that marriage is not recognised in the Marumakkathâyam system of family-life. It is recognised for social and ceremonial purposes, but not for the purpose of legal rights. I must however say that this conception of marriage as a socially-recognised institution can be predicated of only the orthodox form of marriage, which obtains in most parts of North Malabar, and a few Taluks of South Malabar.

I am free to admit that the fugitive connection known by the name "Sambandham" which prevails in some parts of South Malabar is not a marriage in the sense above described. It is undeniable that in some parts of South Malabar (especially in Walluvanad Taluk where the Nambūdiri influence is most felt) considerable laxity prevails in the matter of the marriage tie. A man takes a girl as his wife, one day, and the next day, a more favoured suitor comes upon the scene, and walks away with her. In such a case, conjugal fidelity is quite out of the question. This is, no doubt, a grave social evil and there can hardly be two opinions as regards the desirability of removing it—but at the same time it is to be remarked that this vicious custom is only a sectional aberration, locally limited in its operation. The endeavour of some of the educated men among the community, to bring about a reform is worthy of all praise; but it may well admit of a question whether the enactment of a permissive law is the best way effecting it. A permissive law is always an invidious law, and in the case of such a socio-domestic concern as marriage, it should not in my opinion be resorted to unless the necessity for it is clearly established. The removal by the state of a civil disability under which a whole community labours is no doubt justifiable under certain circumstances, but it may well be doubted whether it is expedient for the Legislature to frame an optional law to suit the convenience of a fraction of a community, who want to secede from the law which governs the rest of that community. A permissive law implies that the community as a whole is not willing to change the existing usage, because, if the community as a whole is ready for a change, the case is no longer one for optional legislation. If the community as a whole does not desire a change, the interference of the Legislature can be justified only on one of two grounds, either that those who desire a change form the great majority of the community, or that, in the opinion of the Legislature, the change proposed is calculated to promote the welfare of that community. In the present case I do not believe that the great majority of the Marumakkathāyam Hindoos are in favour of a change in the law of marriage. If then the Legislature interferes, it must be because the Government deems it fit in the interests of public welfare to legalize marriage among the Marumakkathāyam people. If such is the case I do not see why the benefit intended should not at once be conferred upon the whole community by positive legislation, instead of leaving it optional with each member of the community to avail himself of it as he likes. For the Government to frame a standard law of marriage and to leave it at the same time optional with the community concerned to adopt it or not, is inconsistent with the theory of state legislation. The Government, as the responsible guardian and protector of the subject population, is bound to see that a particular course of conduct, which it lays down for the improvement of a community, is observed by the whole community, and that its observance is not left to the individual opinion of each member of that community. A law of marriage is a matter of public policy, and as such, the expediency of leaving it to the tender mercy of each individual is, to say the least of it, questionable. The enactment of a permissive law as proposed, for Marumakkathāyam Hindus will result in a few members of that community following the new law while the great bulk of their kith and kin are governed by the Marumakkathāyam usage. We shall then witness the spectacle of some members of a Tarawād following one law and some members of the same Tarawād following quite a different law. In the words of a learned writer, the effect of this will be "to call into existence a set of amphibious beings who are at the same time members of two families." This will surely give rise to complications both social and legal, and will be the fruitful parent of dis-

cord and litigation between members of the same Tarawād. For the foregoing reasons the enactment of a permissive law of marriage is, in my opinion, extremely undesirable.

2. If a marriage law is to be framed at all it must be a law affecting the Marumakkathāyam community as a whole. Then the question is whether the community as a whole is prepared for such a marriage law. The answer to this must depend upon what is the nature of the proposed law. If all that is intended is simply to accord a legal recognition to the tie of marriage as a civil contract, I do not think there will be much opposition to it. Among the better classes of society, there is at present such a conception of marriage, and to make it the basis of legislation, would be merely to give legal sanction to a state of things justified by orthodox practice. But if by legal marriage is meant a marriage such as is calculated to affect the law of inheritance, I do not think that the people as a body are prepared for it. It is extremely doubtful if such a marriage law is, in the present circumstances of the Malayāli community, either expedient or practicable. The Marumakkathāyam system of inheritance has been the governing law of the community since the foundation of society in Kēralam, and it has become so deeply ingrained in the habits, institutions, and family-life of the community, that it is a sheer impossibility for them to adopt, at a moment's notice, a different law. It may be said that Marumakkathāyam as a family law is opposed to western political conceptions; but it has yet to be shown that it is against the genius of the Malayāli community.

There is a fundamental difference between the occidental and oriental theory of social polity, and this is evident from the fact that while individual ownership has been the favoured theory in European jurisprudence, corporate ownership has been the governing rule of property in the East. If the history of social institutions teaches anything, it is that the family law of one community, however good it may be for that community, is not necessarily so in respect to another community, differently circumstanced. Differences of social ideas, climatic conditions, and hereditary instincts, are factors which cannot be ignored in practical legislation. The Malayali community has a distinct individuality of its own, which is the outcome of centuries of social experience, and it is an impossible task to make them divest themselves of it, all of a sudden, by a legislative enactment. The Marumakkathāyam system of family law is no doubt a deviation from the generally received notion that sonship is the natural basis of inheritance, but it is not, on that account, liable to be condemned. The view that "Makkathāyam" is the rule of succession ordained by nature, is not a universally-accepted view. According to the authority of Blackstone, the law of inheritance is not a natural but a political establishment and it is founded, not on any principle of nature, but on principles which have their origin in the exigency of human society. If this is so, it is clear that simply because the Marumakkathāyam system does not recognise sonship as the basis of inheritance it cannot be said to be an unnatural system. However this may be, it is undeniable that, as a family law, Marumakkathāyam has much to recommend it. It is a system of property law best calculated to augment and conserve property in each individual family, and thus to increase the material happiness of society composed of those individual families. To judge of it by its proved results, Marumakkathāyam exercises a beneficial influence upon the manners and morals of its followers. In consequence of the enduring nature of a Tarawād and its effects on domestic conceptions, the love of home and country, which is instinctive in man, is better appreciated

among Marumakkathayam people than among any other race. The Malayalis as a community have always been noted for their manliness, hospitality and domestic purity, and this will be evident to every one who reads the impartial accounts of Doctor Buchanan, Colonel Welsh* and other European observers of Malabar society. The possession of social virtues such as these cannot co-exist with a pernicious system of family-law, and this is sufficient to show that Marumakkathayam is not such a barbarous law as it is thought to be by unenquiring critics. It is a system of family law eminently suited to the habits and sentiments of the community, whatever may be theoretical views of those that cannot realize its excellence. The expediency of changing such a law is, to say the least of it, questionable. Such a change cannot be effected without a social revolution. The practical difficulties in the way of so radical a departure are in the present circumstances of the Malayali community, simply insurmountable. We thus see that a change in the law of Marumakkathayam is at present both inexpedient and impracticable. In other words the Marumakkathayam as a family law of inheritance cannot, at present, be changed in favour of "Makkathayam."

3. The question then is, can Makkathayam succession be prescribed in case of self-acquired property? No doubt it is possible to prescribe such a rule of succession for self-acquired property, but in my opinion the desirability of it is open to serious doubt. To enact the Makkathayam rule of succession for self-acquired property, while the Tarawad law of Marumakkathayam inheritance is left unaffected will, I am afraid, be a discordant jumbling-up of two dissimilar systems of family-law. Under the Marumakkathayam law the Tarawad member who makes the self-acquisition will retain his right to Tarawad property intact; while, under the Makkathayam law which affects his individual property, his acquisitions will go to his children. This is clearly an unjust arrangement and offends against the principle of mutuality. The effect of this will be that the Tarawad will always lose and never gain. Instead of a member contributing for the Tarawad, the Tarawad will have to contribute for him with no thought of a recompense. This will give rise to family dissensions and mutual jealousy culminating in expensive law suits. The Tarawad system will be thrown out of gear, and a chaos of conflicting rights and ideas calculated to disturb the harmony of domestic life, will set in. Such being the case, I feel considerable misgivings as regards the expediency of enacting the Makkathayam law of devolution for self-acquired property, side by side with the Marumakkathayam Tarawad law. In my opinion, so long as it is not possible to change the Marumakkathayam system as a whole, it is not sound policy to weaken its vitality by partial encroachments on it.

4. How then, it may be asked, is it possible to frame a marriage-law, without the incident of legal succession attached to it? The answer to this is not difficult. Marriage may be recognised by law in such a way as not to affect the law of property. The only question is one of a proper *modus vivendi*. Marriage, as a social institution, is meant for the purpose of regulating and protecting conjugal rights and for legalizing issue. Inheritance in the line of sons is not an invariable incident of a legal marriage. A qualified recognition of marriage as a source of inheritance is all that we see among many civilized societies. Absolute and exclusive succession to property by the children of a legal marriage is not the rule in many recognised systems of law. In support of this position I may refer to the Mahomedan Law and the law of the Succession Act. It is clear from this that the legalization of marriage

NOTE.—I have not succeeded in ascertaining what writer is here referred to.—H. M. W

need not involve, as a necessary consequence, a change for Makkathayam in the Inheritance Law of property. Legal force may be imparted to the tie of marriage, and marital rights and obligations may be recognised by law, without directly affecting the question of inheritance. As I have already said there is no objection to this. Having regard to the laxity in sexual relations which obtains in some parts of the district, I think that a legal recognition of marriage for the purpose of regulating marital rights is a necessity. At the same time I am not prepared to advocate any interference with the law of inheritance, as I am convinced that such a step, under present circumstances, is both inexpedient and impracticable.

5. It may perhaps be objected to this view, that, to legalize marriage without annexing to it the incident of legal succession is an anomaly. The answer to this has already been stated by me. As I have shown above, there is no necessary connexion between marriage and inheritance. I do not deny that consistently with the enacting of a legal marriage a suitable provision must be made for the wife and children. Such a provision is, in practice, made by all those who follow the orthodox form of marriage. Among them the wife and children are maintained by the husband, and the husband, during his life time, gives them as much property as he can afford to give. This practice which prevails among the orthodox Nayers may be recognised by the Legislature. Towards this end the legalization of Wills will be an important step. If the form of orthodox marriage, which now exists among the true Nayers, is adopted by the Legislature as the standard form of marriage, and the matrimonial rights and duties attaching to it by custom are enacted as legal incidents flowing from it, and an obligation to maintain the wife and children is created in the husband, with a power to devise his self-acquired property by Will, I think a workable marriage-law suited to present requirements can be smoothly framed without evoking much opposition from the mass of the community. The legalization of Wills, will go a great way towards supplying the want of a Makkathayam law of inheritance, and the wife will, by it, be sufficiently compensated for the loss of freedom implied in a legal marriage. When a man of average intelligence and refinement knows that unless he exercises his right of testamentary disposition in favour of his wife and children, they cannot claim his property after his death, there will be every inducement to him to devise his property to them by will, if he thinks that they are deserving of his bounty. The wife and children will, in such a case, be obedient and dutiful to him, and the fear of being omitted in his last Will and testament, will be a sure guarantee for their good conduct.

6. The important question, then, is the mode in which a marriage law with the limited scope above pointed out is to be framed by the Legislature. As I have shown in my preliminary observations, whatever law is framed must be framed in such a way as to apply to the whole community. This can be effected by taking the more refined marriage form of the orthodox Nayers as the basis of legislation. Such marriage form flourishes in full vigour in North Malabar and it is there known by the name "Pudavamuri" of which the following is a brief description:—

When a man is to get married, his Karanavan and his father hold a consultation together and propose a bride for him. If he approves of their selection, the guardian and other relatives of the bride are applied to on the subject, and if they agree, a day is appointed to examine and compare the horoscopes of the bride and bride-groom. On the day so appointed, the guardian of the bride-groom with some

of his relatives and friends goes to the bride's house, and the horoscopes are examined there. If the horoscopes agree *i. e.*, if the conjunction of Planets is favourable, an auspicious day is selected for the performance of the marriage ceremony (Pudavamuri). On the day so appointed, the bride-groom, with his friends and relatives invited for the occasion, proceeds, in state, to the bride's house, and is received there by the master of the house with suitable honors. The bride-groom then gives Dakshina (money presents) to the Brahmans assembled, invoking their blessings upon the contemplated union, and at the hour appointed for the ceremony of marriage, the bride-groom and his chosen friend enter the Padinyatta room (the sanctum sanctorum) of the house, and the bride is thereupon introduced into the room by her female relatives. The real ceremony of marriage then takes place, and this consists in the bride-groom handing to the bride a number of clothes (Pudava). This over, a sumptuous banquet is held in honour of the occasion, and marriage presents are bestowed. Early in the morning of the next day the bride-groom returns to his house where, in due course, the bride is taken by his female members with all the pomp and ceremony which characterized the marriage. Forms of marriage similar to this, known by different names in different localities, exist in parts of South Malabar also. The ceremonial of marriage, as above described, is a public and solemn ceremonial and there is no reason why it should not suffice for the creation of the marital tie. It may be objected to this that such a purely domestic ceremonial cannot furnish indefeasible evidence, in cases where the marriage is disputed in a court of law, and that, therefore, a statutory mode of securing such evidence should be prescribed. I do not feel the force of this objection. The Hindus and Muhamadens effect marriages among them according to their own particular forms and ceremonies and no statutory mode of securing evidence of such marriages is in existence among them. If this is so among two of the most important communities living under British Law, I do not see why a like concession should not be allowed to the small community of Marumakkathayam people. It is a well-known fact that among the Hindus, the forms and ceremonies of marriage vary in different castes, and that even in the same caste they are not uniform. Though such is the case, the Legislature has never thought of introducing registration of marriage among them, and they do well enough without it. Notwithstanding the absence of a statutory mode of evidence, they are able to prove their marriage, when disputed, before Courts, and I do not see why the Marumakkathayam people should not be able to do likewise. All that is necessary is that there should be some recognised form for the formation of marriage and for the dissolution of it. Resort to a public tribunal is not a "sine-quâ-non." The orthodox classes of Marumakkathayam Nâyars have a recognised form for marriage and it may well be adopted as the basis of Legislation. It may be then declared that marriages contracted according to that standard form will be recognised by law for the purpose of vesting in the husband and wife, reciprocal rights and duties, juremarito, and for the purpose of giving to the wife and children a right to get maintenance from the self-acquired property of the husband. If with this, a power to devise property by Will is also given to the husband, the wife and children can reckon upon getting a fair share of his property. Legislative interference to this extent is in my opinion not only justifiable, but is also desirable. But beyond this, in my humble judgment, the Legislature cannot now usefully interfere, having regard to the state of public feeling and sentiment on the subject. So much change as is indicated above is justified by the practice which at present obtains among the better classes of society, and can hardly be considered a violent innovation; but any attempt to change the law of inheritance will

be regarded by the general mass of the community as an act of spoliation, a high-handed interference with their dearly-cherished usages and institutions.

7. To the first question my answer accordingly is that, while I deprecate all interference at present with the Marumakkathayam Law, I am in favour of the Legislature legalizing marriage, in the manner and for the purposes, set out in the preceding para.

8. To the second question, my answer is emphatically in the affirmative. I am of opinion that legalization of Wills among the Malayâlis is a desirable measure. No doubt, it is a deviation from the strict theory of Marumakkathayam Law, but the demand of modern civilization as well as the requirements of the great majority of the people render the measure imperatively necessary. The necessity for it will be more pronounced if, as proposed, marriage is made legal among the Marumakkathayam people. There is no denying the fact that a protest against the present law, in this respect, has been long going on in the minds of all educated men of Malabar. In the Hindu Law, Wills were recognized by Judicial decision, after a long struggle for existence, but under Malabar Law, which is a more inflexible law than the Hindu Law, that recognition has not yet been given by the Courts, though the tendency of a recent decision of the High Court is in favour of it. The relief which the Courts cannot afford, the Legislature is justified in giving, as a concession to public opinion and as a measure of public policy. Many a man who wants to give a fair share of his property to his wife and children is deterred from making a present gift of it to them by the fear of their proving false to him in after-life. If he is given a power of disposing of his property in such a way as to take effect after his death, he will welcome such a concession with open arms. The absence of such a power under the existing law proves fatal to a man's disposition to be just and generous to those whom nature places in the forefront of his affection. The removal of this disability will be a boon of unquestionable good to the community and I am therefore wholly in favour of it.

I beg to remain,

Sir,

Your most obedient and humble servant,

(Signed) P. V. ANANTAN NAYAR,
District Munsif,
Calicut.

Answers to Interrogatories

BY

M. R. RY: T. V. ANANTAN NAYAR AVARGAL, B.A. B.L.,

District Munsiff,

1. Yes.

2. No.

3. The rule is that a man belonging to one division cannot marry a woman belonging to a higher division. A woman of one division can be married by a man of a higher division. A man of the Kiriya (കിരിയാ) division can marry a woman of the Chârna (ചാർന) division, but not *vice-versa*. The 'Kiriya' division is superior to the 'Chârna' division in point of caste, and according to the rule aforesaid, marriage between a 'Kiriya' female and a 'Chârna' Nayar is not permitted. Matrimonial connexion is not allowed between Sudra (ശൂദ്ര) and Chârna (ചാർന) Nayars. Each of the two divisions thinks that it is superior in caste to the other, though theoretically there is not much distinction between the two.

4. Yes, they incur social penalty. In North Malabar the penalty is rigorously exacted. The offending man or woman is excluded from caste-association and is denied all caste-privileges. Their Tarawâd too is socially boycotted, and their Enangans (എണ്ടാങ്ങൻ) and fellow-caste-men refuse to associate with them on occasions of auspicious and inauspicious ceremonies. Where the delinquency is grave, the parties concerned are interdicted from tank and temple by order of the local Raja who is supposed to be the censor of public morals.

5. Prâyaschitham (Expiatory ceremony) cannot validate a marriage contracted in violation of recognised custom; but it may remove the taint brought upon a Tarawâd by such a marriage. Generally, the expiation in such cases takes the form of a fine imposed on the offender by the tribunal of caste-assembly. This is known by the name Ardhadannam (അർദ്ധദാന്നം) in North Malabar. Another mode of expiation is the ceremony called Shudhabojanam (ശുദ്ധബോജനം). These expiatory ceremonies can, however, only restore the offending person to caste, but cannot validate the Sambandham, contracted in violation of caste-usage.

6. Korapuzha.

7. Among high class Nayars, Sambandham is not permitted between a Nayar woman of North Malabar and a Nayar man of South Malabar; but between a Nayar man of North Malabar and a Nayar woman of South Malabar, "Sambandham" is permitted and is widely prevalent. The Nayars of North Malabar are more orthodox and more keen about their caste-privileges than the Nayars of South Malabar and their family-pride is, as a rule, greater. They do not therefore give their females in marriage to South Malabar men, but South Malabar Nayars have no objection to give their females in marriage to North Malabar men. Owing to the operation of the rule which prohibits a North Malabar Nayar woman from going to the South of the Korapuzha, North Malabar men employed as officials in South Malabar are obliged to form 'Sambandham' with South Malabar women. Very many instances of this can be cited. The effect is prejudicial to the intel-

lectual growth of North Malabar in so far as the best men of North Malabar transmit their qualities to their progeny in South Malabar.

8. No. The reason is that stated in the answer to the preceeding question.

9. No.

10. The prohibition is founded upon a blind custom which is as absurd as it is unsuited to the requirements of the present day. In former times, when internecine warfare between chieftains of North and South Malabar, was the rule, there was perhaps, some meaning in this restriction, but at the present day there is no justification for it. Tradition has it that South Malabar women are descended from a race of Deva-Stris, (1) (ദേവസ്ത്രീ) whereas the North Malabar women are supposed to have descended from the race of Asura-Stris (2) (അസുരസ്ത്രീ). This view is no doubt an allegorical fiction, but it accounts for the origin of the rule of prohibition aforesaid. It is a well-known fact that Deva-Stris (ദേവസ്ത്രീ) called 'Upsaras' are noted for their freedom in sexual relations, while the Asura-Stris (അസുരസ്ത്രീ) are the very embodiment of sexual purity. Owing to this conception, the Nayars of North Malabar thought it *'infra dig'* to allow their females to have free association with the females of South Malabar, and in course of time, this became a regular canon of their sociology. It is satisfactory to find that this prohibition is fast losing its hold on the public mind. There are instances in recent times, of North Malabar Nayar having taken their family to South Malabar, in disregard of this prohibition. Necessity compels them to break through this rule of "immiscibility". As social intercourse between the two parts of the District becomes more and more close; this prohibition must of necessity become less and less vital, and there is every reason to think that in the course of a few years more, this prohibition will be a thing of the past.

11. Tali-kettu kalyanam is the symbolical marriage of a girl in a Maru makkathayam household. Among the Hindu-law people the "Tali-kettu" ceremony takes place 'pari passu' with the real marriage, but among the Nayars, it merely marks the period at which a girl attains her marriageable status. The "Tali" is the symbol of hymeneal capacity and the 'Tali-kettu kalyanam' is a religious sacrament prescribed for every Nayar girl before she can enter the order of a "Grahini" (ഗ്രാഹിണി). There are various minor ceremonies such as Manthrakkodi churakkal (മന്ത്രക്കോടി ചുരക്കൽ), and Kappu kettuka (കാപ്പു കെട്ടുക) in connection with the "Tali-kettu kalyanam."

12. The custom as to Tali-tying is different in different parts of Malabar. In North Malabar, among the high class Nayars, the Tali is tied, generally, by a Nambudiri Brahman, or Embrandiri. Among the lower orders of people in North Malabar, the Tali is tied by a class of inferior Nambudiris. The Nayars of a particular locality called 'Neriyott swarupam' observe the custom of 'Tali-tying by the mother of the girl. In South Malabar, an 'Enangan' (എണങ്ങൻ) does the business. In cases in which an 'Enangan' is not available, the mother of the girl does it. In some castes a Tirumulpad is made to tie the Tali. In cases in which an 'Enangan' ties the Tali he is called by the name 'Manavalan'.

13. In South Malabar, the practice of performing the Tali-kettu kalyanam for a number of girls together, is very common—but in North Malabar it is rare.

NOTE.—(1) Deva-stri—a celestial female.

(2) Asura-stri—Dr. Gundert defines "Asuran" as a demon, or fiend. The 'Asura-stri' is a superhuman female of some sort.—H. M. W.

The custom of one and the same man tying the 'Tali' to all the girls is not in vogue generally, but in poor families it occasionally obtains. The approved usage of the Nayars is against this practice.

14. No. Because the mere fact of tying the 'Tali' does not render him the bride-groom; in point of actuality. As I have already said, the Tali tying ceremony among Nayars is merely a religious sacrament meant for denoting a particular stage in the family-life of the girl, and does not amount to actual marriage, which is a separate transaction altogether. That the Tali-tying ceremony cannot be confounded with actual marriage is too clear to need any lengthy remarks.

15. There is no objection to the man who ties the 'Tali', to form Sambandham with the girl afterwards, if in other respects, the match is suitable.

16. I do not happen to personally remember an instance of this, though my information is decidedly in support of the above proposition.

17. In some places in South Malabar, where the Manavalan who tied the Tali dies, the girl is expected to undergo pollution for 15 days; but of late, this practice has well nigh fallen into desuetude. In North Malabar, there is no trace of such a custom at all.

18. Yes. (Vide the answer to question No. 12.)

19. Yes, because it is considered to be a religious impurity for the girl to attain puberty before the Tali-kettu kalyanam is performed. This is founded upon the principles of the Hindu Law of Acharam (ceremonial) and is not merely the outcome of an unmeaning custom.

20. Marriage in the conventional sense must take place before a girl, for whom the Tali-kettu kalyanam has been performed, can consort with a man in the character of his wife.

21. The formalities preliminary to, and following, the marriage are slightly different, but there is no essential difference in the mode in which the marriage celebration takes place.

22. No. There is considerable difference. In North Malabar, there is a recognised form of 'Sambandham' called "Putavamuri", with a good many incidents suggestive of a legal marriage—but in some parts of South Malabar, there is no recognised form in practice. Even the ceremony of "cloth-giving" is not universally followed in South Malabar. Throughout North Malabar, the formalities attending a 'Sambandham' are the same: but in South Malabar there are local variations in the mode in which "Sambandham is effected."

23. According to orthodox conceptions, it is not permissible for a woman to have more than one husband at a time. In North Malabar, this rule is very strictly observed, and instances of departure from it cannot possibly be found, but the same cannot be said of South Malabar. There is a tradition that some years ago there flourished in Walluvanad Taluk a woman who had the rare distinction of possessing 28 Sambandhakarans at one and the same time. Such a state of things is now-a-days not tolerated even in that notorious Taluk. All that we can now find, even in localities which are not over-strict in the matter of sexual morality, is the rule of 'one Sambandhakaran at a time,' publicly avowed as such with possibly a certain number of special paramours on whom the woman secretly bestows her favours. In the case of South Malabar women, who are kept by Nambudiri Brahmans, this practice of illicit consorting is largely prevalent. The Nambudiri keeper himself

very often takes a pride in seeing the woman excelling in her love intrigues, and not unfrequently, he makes a trade of her accomplishments. Such a practice is abhorred and detested in North Malabar.

24. The social feelings of orthodox Nayars prohibit polyandry. The prohibition does not depend upon any written Text of Law; but is to be founded in the moral consciousness of all right-minded Nayars.

25. She can, in South Malabar, but not in North Malabar. In South Malabar, women have, as a rule, much freedom in the choice as well as the divorce, of their "Sambandhakāran". The males in the family do not generally interfere with the exercise of this freedom so long as it does not produce a domestic scandal. But in North Malabar, the females are held in strict subjection by the male members of the Tarawād, and have no voice of their own in the matter of selecting or rejecting their husbands. The position of a North Malabar woman in this respect is very much the same as that of a Hindu woman under the strict doctrines of Hindu Law regarding female dependence. In North Malabar, a woman cannot terminate her Sambandham except with the express consent of the Kāranavan of the Tarawād, and such consent will not be given except on very clear and cogent grounds. Arbitrary divorce is, in North Malabar, regarded as degrading and disgraceful, and it will be difficult to find instances of it.

26. In North Malabar, there is in theory, a regular formality for the dissolution of a 'Sambandham.' The formality consists in the husband's going to the wife's house in the company of a few friends, with two pieces of cloths (ചാടലുകൾ) and some bundles of betel leaves. The two pieces of cloths must be thrown on the woman's cot in the presence of her relatives, and the betel leaves must be distributed to the elder members of the household. This done, the man must say that thenceforth the Sambandham is at an end, and go from the house without taking his meals there. When this is done, the Sambandham is dissolved. I am not aware of any such practice among South Malabar Nayars, among whom no particular formality is, I believe, observed on the dissolution of a 'Sambandham.'

27. No. This is not tolerated among the better class of Nayar society. According to the strict view prevailing in North Malabar, a man can have only one 'Sambandham' at a time. The instances in which this rule may be found infringed in practice are cases of fugitive connections by way of concubinage.

28. There is no penal law which prevents a Nayar from having more than one Sambandham at a time, but such a course is reprobated by the social opinion of the orthodox classes of society.

29. During the continuance of the 'Sambandham', women in North Malabar invariably live in the Tarawād of their husbands and are supported there by the Kāranavan of the Tarawād. The woman takes her meals in the company of the females of that Tarawād and becomes, as it were, part and parcel of her husband's house-hold. The permanent home is the home of her husband and she visits her Tarawād only on occasions of special family-ceremonies and the like.

30. In South Malabar, the reverse is the rule, though instances pointing to a different tendency are occasionally to be met with. Generally, a South Malabar Nayar lady lives in her own house and is there visited by her 'Sambandhakāran.' She takes her meals and sleeps in her own house, subject of course, to arrangements made by the latter. Among the official classes of Nayars in South Malabar, necessity

compels married ladies to live in the house of their husbands who, in the majority of cases, live apart from their Tarawād on account of their official business. This is a departure from the ordinary practice which prevails in South Malabar.

31. Yes; it is considered a great disgrace to a man to fail in this duty; oil, clothes, paddy and pocket-money are the things which he is bound to provide for them, according to the position and means. In North Malabar, the Tarawād of the man must defray these expenses if the man has no income of his own.

32. In North Malabar, it is certainly not the custom to change the Sambandham frequently. A man who takes into his head to indulge in this obnoxious pastime will be visited with condign social punishment by the powerful tribunal of his caste. In South Malabar also, frequent change of Sambandham is not the rule among the better classes of society. Indeed, when a man feels happy with one Sambandham, he never thinks of forming another Sambandham, merely for the sake of novelty. The consciousness of having the required liberty keeps him disinclined to exercise it unless when forced to do so by the circumstances of his matrimonial life.

33. Yes, he does feed and clothe them. Nothing is a greater disgrace to a married Nayar female than to be obliged to have recourse to her Tarawād, for such things, during the continuance of the Sambandham.

34. This depends upon circumstances, and no hard-and-fast rule exists on the point. In some cases the Anandaravan who works for the Tarawād is given a special allowance by the Kāranavan in consideration of his so doing, and in some cases he gets no more than his bare maintenance in the Tarawād. Anandaravans very often assist their Kāranavan in the cultivation of Tarawād lands. In some cases, especially among the aristocratic Nayar jenmis of North Malabar, Anandaravans are put in charge of separate estates (chêrigal) belonging to the Tarawād. They manage those estates and render accounts to the Kāranavan. Out of the estate-income, they are allowed, in such cases, to take a fair share for their comfortable sustenance.

35. In North Malabar, Anandaravans generally work for their Tarawād. Those Anandaravans who are well affected towards their Tarawād exert themselves to add to the prosperity of the Tarawād; but those who live in discord with their kith and kin, try to feather their own nests.

36. Generally, an Anandaravan who makes earnings by his own individual exertions keeps them in his own hands, and on his death those earnings lapse to his Tarawād. There are also cases in which during his life-time he incorporates his earnings with the Tarawād property. Such cases are more frequent in North than in South Malabar. Where the wife and children of such an Anandaravan live in his Tarawād, their maintenance is defrayed by the Tarawād, and he has not to contribute anything towards such maintenance. But very often he gives to his wife and children a fair share of his earnings. In South Malabar, the greater part of a man's self-acquisition goes, as a matter of fact, to his wife and children.

37. Yes, there is such a thing as 'Puthrāvākāsam' in North Malabar. According to the social usage of North Malabar, there is a moral obligation in the father to provide for his children. A man who has property of his own is bound, in honor, to give to his wife and children so much out of it as is sufficient to keep them above want. The wife must, in any event, be given property sufficient for her actual maintenance till her death. This obligation is fully recognised in North Malabar among all divisions of well-to-do Nayars. There are, in fact, instances of Anandaravans of

the man having, on his death, given away property to his wife and children, in consideration of this obligation. The practice of "Putrāvākāsam" donation, which, to a great extent, mollifies the unbending rigour of Marumakkathāyam Law, is a fair indication that in North Malabar, 'sonship' is well recognised. I do not think there is any practice analogous to this in South Malabar.

38. There are various objections to enacting a permissive Marriage Law for Nāyars. In my communication dated the 22nd April, I have set out in detail some of the more serious objections to it. I do not think it necessary to go over the same ground again. In my opinion, if a new law is to be enacted at all, it must be so framed as to apply to the whole Marumakkathāyam community and not merely to an infinitesimal fraction of it.

39. If legal sanction is to be accorded to marriage, I should certainly prefer to retain the customary form, and to make such improvement upon it as is sufficient to secure indefeasible evidence of it. In my opinion a marriage solemnization under the auspices of a Registrar and 3 witnesses will be a very poor substitute for the customary form recognised in practice. Despite the hyper-critical notions of theorists a Malabar marriage has an element of religion about it, and is not merely a civil bargain, wholly depending for its efficacy upon a bare declaration of will. Rites and solemnities appropriate to its religious character cannot therefore be dissociated from it so long as the Marumakkathāyam people are "Hindus." A form of marriage fashioned on the Legislative anvil, with adjuncts wholly foreign to the religious and domestic conceptions of the people, can never do duty for the customary formalities now in vogue. The intervention of a Registrar in such a socio-domestic ceremony as marriage will be felt by the orthodox portion of the public as a violent interference with the privacy of their family-life. It will be intolerable to them, and they will not be slow to put out of caste those who follow this exotic form of marriage. I am of opinion that the proposed substitutionary form of marriage is unsuited to the habits and sentiments of the Malayālis, and is opposed to the custom of the country. The best course appears to me to uphold the existing forms, so far as they go, and to supplement them, where they are defective, by a temperate application of the principle of analogical selection.

40. There are points of difference, and they are the following:—

(1) According to existing practice, a man who has a wife living is permitted, under certain circumstances, to contract a second marriage, whereas the proposed measure makes this altogether illegal. Even under the Hindu Law, it is permissible for a man to take a second wife when the first wife becomes barren or bears only female issue. The Marumakkathāyam people are certainly "Hindus," and the Hindu Law doctrine of salvation from "Put" by a son is applicable to them. This being so, the prohibition to take a second wife under any circumstances during the lifetime of the first wife is opposed to the principle of the religious law which governs the Marumakkathāyam people. It is also to be remarked that in localities where the female population predominates, the rule which restricts a man to one wife will have the effect of leaving a good many marriageable girls without husbands.

(2) The proposed rule of prohibition relating to consanguinity and affinity is not in consonance with the accepted canons of matrimonial usage now in vogue. The prohibition falls far short of the existing practice.

(3) The provision that consanguinity or affinity alone shall be recognized as a valid bar to marriage is revolutionary in its character. It demolishes all distinction

between caste and caste. A man of the Pariah caste can, under it, aspire to the hand of a Nayar lady, and a union formed between them will be recognized as a State-approved marriage!!! I think this principle of legislation is far in advance of the times, and likely to produce quite a consternation among the people. For the foregoing reasons I would omit altogether the Provisoes 1 and 2, and substitute in place of clause (1), a provision rendering it legal for a Marumakkathāyam man to marry a second wife in every case in which such a marriage is sanctioned by the Hindu Law.

42. Adultery, habitual incontinence, desertion, cruelty, and loss of caste, are recognized as reasonable grounds for the dissolution of a Sambandham.

43. In North Malabar, the wife and children, as a rule, live in the Tarawād of the husband and are there maintained by the Kāranavan of the Tarawād. In rare cases, where the wife and children live in their own Tarawād, the Kāranavan of the husband gives the wife the expenses of raiment and oil, her Tarawād defraying the expenses of her meals. The husband, of course, gives her and the children the necessary funds for their comfortable living, in addition to the allotment made by his Kāranavan. In South Malabar, where generally the wife and children live in their own Tarawād, the husband has to give them only the expenses of raiment, oil and such other things. The cost of their meals is defrayed by their own Tarawād so long as they live there. When the wife and children have no Tarawād property, the duty of maintaining them is wholly on the husband. When they live with him he, of course, attends to all their wants.

44. Clauses (a) (b) and (c) are fair enough, as the provisions which they lay down are the necessary adjuncts of a legal marriage. No reasonable exception can be taken to them. But clause (d) which enacts Makkathāyam succession to self-acquired property is a violent departure from the present practice of the community. In my opinion, the people as a body are not prepared for so radical a change in the law of inheritance. The expediency of enacting it even as a permissive law, while the public sense is against it, is to my mind, questionable. The evils which such a piebald system of family-law is calculated to give rise to in practice, have been pointed out by me in my communication dated the 22nd April and I don't think it necessary to recapitulate them here. As observed by me there, the utmost change that can now be effected without producing a social revolution is to legalize marriage, annexing to it rights and obligations 'jure-marito', to declare Wills valid, and to provide a right of maintenance to the wife and children from the self-acquired property of the husband. The change in the law of inheritance contemplated by clause (d) is, under present circumstances, as inexpedient as it is impracticable. This clause may therefore be well eliminated. There is no harm in the other clauses so far as they go, but they do not go far enough. When marriage is legalized, the marital incidents flowing from it must be definitely laid down. There must be positive provisions, in regard to the right of society and cohabitation between the husband and wife, *inter se*. The want of a clear, statutory declaration on these points will be productive of all the glorious uncertainty of matrimonial law which the recent "Jackson case" in England has disclosed to an astonished public. I would therefore suggest an enlargement of this section by the addition of suitable rules in regard to the connubial incidents of the proposed marriage.

45. In recent times, a vigorous social intercourse has sprung up between the Nāyars of British Malabar and those living in Cochin and Travancore. There are many Nāyars of Malabar employed as officials in those two Native States, and there

are some Nâyars of Cochin, employed in British Malabar. There is thus every opportunity for Sambandham between the Nâyars of British Malabar and those who live in Cochin and Travancore, and such opportunities are seldom missed. Indeed, that classic ground of feminine accomplishments, Trichur, which is situated in the Native state of Cochin has always been a flourishing matrimonial market for the 'elite' of British Malabar Nâyars. Unless therefore the proposed statutory law of marriage is made a personal law applicable to all Marumakkathâyam Hindus, irrespective of their domicile, a plentiful crop of international difficulties will be the sure outcome of it.

(Signed) T. V. ANANTAN NAYAR,
District Munsiff of Shernad,

BALIAPATAM
North Malabar,
13th May, 1891.

MARUMAKKATHÂYAM MARRIAGE COMMISSION.

ANSWERS TO INTERROGATORIES

BY

M. R. RY. MANJERI KÂRANAMULPÂD, AVARGAL,
STANI AND LAND-LORD,
MANJERI.

11. Among the Marumakkathâyam Hindus tâlikettu takes the place of the rite of marriage among the Brahmins. The Sudras were brought into Malabar in the early days by the sage Parasu Rama, the creator of Malabar for the purpose of serving the Brahmins. For these Sudras Parasu Rama ordained Marumakkathâyam, or succession through the female. Subsequently Sankarâchâriar laid down the caste rules for the several divisions of Sudras, and assigned to them certain functions according to their caste. At the same time it was also laid down that if the man who ties the tâli is unwilling to form Sambandham with that woman, any other man is allowed to do so, in accordance with the caste rules as shown in the answer to question 20.

12. Tâli tying ceremony is performed as follows:—

Divisions.	By whom tâli tying is done.
(1) For Kshatriyas	Brahmins.
(2) „ Sâmandhans	Kshatriyas.
(3) „ Kiriya	By one in the same division, or by a Sâmandhan.
(4) „ Sudras	By one in the same division.
(5) „ Chârnnata	Do. or by one of the Kiriya Division, or by a Sâmandhan.
(6) „ Lower Divisions	By one in the same Division.

It is never the custom to have the tâli tied in any one of the said divisions by one of an inferior division. It must be done by one of the same, or of a higher division. Among Nâyars when the tâli is tied by one of the same class he is called *manavâlan* for the occasion.

13. Yes. There are *Sruthis*, *Smrithis* and *Purânas* in support of the practice of one man tying the tâli for more than one girl. But amongst the Nâyars when a man of the same division performs this ceremony, he can only tie the tâli for one girl at a time. A Sâmandhan usually ties the tâli for more than one girl at a time.

14. Yes.

15. The same as answer to question 14.

16. There are several instances.

17. If the tâli-tying ceremony is done by one other than a Sâmandha, the woman observes pollution on his death.

18. No.

19. Yes. The Sastras say that the tali-tying ceremony of the girl must be over before she attains puberty.

20. Ceremonies are required if the man is not the one who tied the tali. Generally for this an auspicious day is fixed by the tarawād people of both the man and woman in consultation with their respective relations, and on the night of the day thus fixed gifts are made to the Brahmins, and A (the man) takes B (the woman) to wife. In North Malabar after the distribution of gifts on the day fixed for the formation of Sambandham, there is also the practice of giving the woman a number of cloths by the man. Hence the ceremony there goes by the name of Pudamuri (cutting of cloths).

21. Yes, with this exception that he does not take his meals in the wife's house.

22. They must be somewhat alike, as shown in answer to question 20.

23. No.

24. Answers to question 23 suffices.

25. Cannot be done without the consent of their tarawād people and of their caste-people.

26. Nothing further is necessary than mutual intimation of the matter with the consent of the tarawād people, and relations concerned.

27. Yes.

28. Same as answer to the 27th question.

29. She may either remain in her own house, or in her husband's house.

30. Must be alike.

31. In case the wife remains in her husband's house during the continuance of the Sambandham the husband pays for all her wants, but if she remains in her own house, the husband has only to see that she is supplied with oil and cloth and that any special expenses on her account are also met.

32. It is not the custom to dissolve Sambandham often. Want of agreement between husband and wife, or other causes, may necessitate a dissolution. There are instances in which man and woman remain as husband and wife for life.

33. Given, during the time she is under his control.

34. Kāranavan looks after and maintain the Anandaravars. It is not customary for Anandaravars to hold tarawād lands on rent. Where such custom exists, there is nothing to prevent the Anandaravan from making use of the surplus as he likes after paying the rent.

35. Well-behaved Anandaravars always work for the welfare of the tarawād in obedience to the orders of the Kāranavan.

36. Both customs are found to exist; but well-behaved Anandaravars make over their earnings to their Kāranavan, and obtain from him whatever they require.

37. There is nothing known as *Putrāvāksam* in South Malabar. I do not know if there is any such thing in North Malabar.

38. It is objectionable. Marumakkathāyam was introduced into Malabar by the great Parasu Rāma, the creator of Malabar, and many eminent personages since have submitted to the system without making any change, and no innovation can now be permitted. This must have been based upon Sastras. But I have not been able to quote from them. Over and above this:—

(1) A permissive law has not been heard of until now i.e. a law which makes it optional for some people of one caste to do a certain thing, and for others to omit to do it. All the laws hitherto passed have always had application to particular peoples, or tracts, but not to portions of the same class.

(2) The Bill sets forth that its provisions will not bind all Nayars, but only those who choose to act in accordance with it. I think that a permissive law is unnecessary.

(3) All legislation must be compulsory in its operation.

(4) As marriages among Nayars and other like classes, and the observances connected with them, agree in essentials and do not differ, any improvement which the present time demands should be regulated by a law which is binding on all alike.

(5) That people of the same caste should be allowed to do just as they like in matters of importance connected with caste observances would be pernicious and fruitful of dissensions.

(6) It is very natural to apprehend under the circumstances that there will be at one and the same time in a Nayar tarawād members who follow the new system and those who follow the old.

(7) The Honorable member who introduced this Bill before the Legislative Council must have done so with the object of raising the moral tone of the Nayar females by removing polyandry, and enforcing chastity among them; of giving children the honor of being born in wedlock; and of investing them with the right of inheriting the father's property.

(8) If such is the aim of the Honorable Member of the Bill, the law must be made compulsory and any violation of it must be made penal.

(9) When a law is made for any one class of people, it must be done after due consideration of the question as affecting the whole class, and then passed so as to bind the whole of that class.

(10) The introduction of this Bill is opposed to the Queen's Proclamation of 1858, declaring religious neutrality.

(11) This Bill has for its object the repudiation of a uniform custom of marriage observed by Nayars from time out of mind, and the introduction of a new system, which binds only those that care for it.

(12) It is certainly objectionable that there should be a law authorising people of the same caste to do a particular thing in two different ways.

39. Vide answer to question 38.

40. The conditions differ. As the custom now is, there is nothing to prevent one who has one wife already from having another wife. The *Sastras* sanction this. It is not compulsory now, for the purpose of marriage, that the man should be 18 years of age and the woman 14. If it is made binding that the girl can be married only on her attaining the 14th year, it is very probable that by this time the girl will have attained puberty, and the marriage after this is of course opposed to all *Sastras*. Even in case the man and woman are 21 years of age, I am of opinion that it is highly essential that the matrimonial ceremony should be celebrated with the consent of the Kāranavars concerned. If marriages are conducted as set forth in provisoes (1) and (2) that will be quite against the practice now obtaining.

41. Vide answer to question 38.

42. Want of harmony between the couple, adultery &c.

43. It depends upon the husband's will and pleasure.

44. To introduce a law of marriage among Marumakkathâyam Hindus will be (as shown in my answer to question 38) quite opposed to the present custom and all Sastras on the subject, and untold misery and calamity among them will be its necessary out-come.

At present therefore I refrain from giving any opinion as to what the nature of the inheritance should be under the proposed law.

45. Yes.

(Signed). MANJERI KĀRANAMULPĀD,

[True translation as near as may be].

H. M. WINTERBOTHAM,

Collector on Special duty.

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EXTRACT FROM

ANSWERS TO INTERROGATORIES

BY

M. R. RY. KUTHIRAVATTATH NAYAR AVARGAL,

NAYAR LAND-LORD WITH EXTENSIVE POSSESSIONS

IN THE PALGHAT TALUK.

11. Tali kettu is a rite which converts a *kanyaga* (maiden) into a *stri* (woman).

23. There is such a practice.

24. I have heard there is a *Pramānam* (in support of the practice). I have not looked for it.

25. She can.

26. There is no formality.

38. It is objectionable because it will cause uncertainty as to death pollution, and because the nephew is the heir.

44. (a) The husband cannot be guardian.

(b) The wife has no right to maintenance from the husband.

(d) The husband and wife have no claim on each others property. If one of them dies, his or her property should lapse to the *Tarawād* and not in any other way.

(e) The wife and children have no ground for claiming property from the father.

(f) Property obtained by inheritance ought to belong to the *Tarawād* and cannot be self-acquired.

(Signed). KUTHIRAVATTATH NAYAR.

True translation as near as may be.

H. M. WINTERBOTHAM,

Collector on Special Duty.

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Marumakkathayam Marriage Commission.

Answers to Interrogatories

BY

M. R. RY. K. IMBICHUNNI NAIR AVARGAL,

FIRST GRADE PLEADER,

TELLICHERRY.

1. Yes.
2. No.
3. The invariable rule so far as Sambandham is, that the male must be either equal to or superior to the female in caste and caste sub-division. Except in some parts of Ponnani Taluk, there is no intermarriage so far as I know between Charnathu and Sudra.
4. To the women, there is social disgrace and loss of right to live in the family house and to mingle with the family.
5. No Prayaschittam can validate such Sambandhams.
6. Korapuzha.
7. The Nayar males of North Malabar do very often form Sambandham in South Malabar. The reverse is not the rule.
8. No. The reason is not exactly known. There is an impression amongst the natives of North Malabar that they have a better social status. The objection on the part of our females to cross Korapuzha is probably another reason.
9. There is a meaningless prohibition against our women crossing Korapuzha.
10. The reason is not well known. The general impression is that the objection is based on social grounds. This seems to me to be wrong. The rule must have originated from political grounds which have now died away.
11. Tâli-kettu is the tying of Tâli (neck ornament) round the neck of Malabar girls. It is an emblem to show that the girl has attained an age to have the honorific title of "Amma" after her name. In fact, the ceremony concludes with that installation. The ceremony is of various kinds. In North Malabar, it consists in giving dinner to Asmadies (fellow caste people), feeding the poor, feasting Brahmans and giving them Dekshina (money) and tying tâli. Finally, Atuttôn or Marân (the man who purifies us from pollution) calls the girls in public "Amma."
12. In North Malabar, Brahmans and Kshatriya princes tie the Tâli. In South Malabar Tâli is generally tied by a man of the fellow-division and he is called *മാനാലൻ* (Manâlan).
13. There is such a custom but it is not invariable.
14. I most emphatically deny the existence of any such right. Tâli-tying is by no means intended as marriage and this is sufficient reason why he should not cohabit.
15. None whatever.

16. I have no personal knowledge.

17. There is certainly no pollution. Such a thing is not observed anywhere in North Malabar. I have read since the marriage bill controversy, that such a custom does exist in some parts of South Malabar. I can't say where or amongst whom. It is difficult to understand the meaning of the custom.

18. In some places, mothers also tie Tali.

19. It is believed that Tali-kettu before puberty is imperative. There is only custom in justification.

20. A Malabar girl has no independent voice in the matter. The bridegroom is generally selected from her Asmādi on consultation of horoscope and the wishes of near relations. This is generally done by her Karanavan in consultation with her father. The bridegroom then comes to her house on an auspicious day appointed for the ceremony and gives her in the presence of her relations either money or clothes. Grand feast and Dekshina to Brahmans precede. I have avoided details.

21. I do not know what is the practice in such cases in South Malabar. In North Malabar, such Sambandhams are very rare. When they occur, there are no formalities observed and they are justified on the ground of mutual love and consent alone.

22. There are slight differences in details. Even throughout the whole North Malabar, the details of the ceremony are not uniform. Such is the case in South Malabar also.

23. I am surprised that the question has been asked. The assertion is made on account of one or two isolated cases supposed to have existed in some remote corner of South Malabar. We call such cases of shameless brutality "barefaced prostitution" and not "Sambandham."

24. It is most clearly prohibited. The prohibition is to be read from the immemorial custom obtaining amongst us, which is our law. We follow Dharma Sastras so far as they are consistent with our customs.

25. In North Malabar, such cases are practically nil. It is however believed that women have equal power with men for dissolution of marriage.

26. It cannot be said that observance of formalities is indispensable. As a matter of practice however, no dissolution is allowed unless the causes for the same are enquired into and discussed upon by guardians and relations.

27. Yes.

28. None whatever.

29. Generally in the house of her Sambandakāran.

30. In South Malabar till recently the rule was the reverse. I mean that the woman used to live in her own family house.

31. I have no hesitation in answering the question in the affirmative.

32. The rule is for one man and one woman to cleave together for life.

33. Sambandakāran feeds and clothes them.

34. Anandaravans who get maintenance from the Tarawad get no separate remuneration for working for the Tarawad. I can't say they do often cultivate land for rent. Surplus is at their disposal.

35. Anandaravans generally try to earn something for themselves.

36. They support with such earnings their wives and children as also their immediate relations such as mother, brothers and sisters. Their earnings are not as a rule handed over to the Karanavan.

37. There is such a thing as Puthravagāsam in North Malabar. It consists in giving house-hold utensils and money according to circumstances to the children of the deceased, soon after his death. I am not sure that there is a practice analogous to it in South Malabar.

38. I have given my reasons against such law in my letter addressed to H. M. Winterbotham Esq., c.s., on the subject.

39. I would prefer the customary form now obtaining in North Malabar and registration of marriage for evidence of the same.

40. To render Sambandham valid, at present, it is not necessary that the husband should be without a wife then living. There is also no restriction about age. Special attention is paid to the class or sub-division to which the husband belongs.

41. If legislation is necessary, I would adopt all the conditions mentioned in question 40, except perhaps the one as to the girl's age which might be reduced to twelve.

42. Adultery, cruelty, change of religion, incurable and contagious disease in either, poverty to the husband and even intemperate habits in him are considered sufficient grounds.

43. In North Malabar, a man's wife and children live along with the members of his family in his Tarawad house and are there maintained. In South Malabar where the wife lives in her own house, she is given clothes and oil by the husband who also in most cases makes contribution for other necessities.

44. If again legislation is to be undertaken, I would include brothers and sisters amongst heirs and make the acquirer's mother's maintenance a charge on his property. Under the immemorial custom of Malabar, the private property of any individual member devolves on his immediate heirs *viz.* brothers and sisters after his death and does not lapse to the Tarawad. Under no circumstances then should the provision for devolution of property on the Tarawad precede that for the same on the acquirer's brothers and sisters and also sister's children.

45. There are some instances of such Sambandhams.

K. IMBICHUNNI NAIR,

1st Grade Pleader, Tellicherry.

4-5-91.

To,

H. M. WINTERBOTHAM ESQ. C. S.

SIR,

In reply to your questions regarding the proposals of the Honorable C. Sankaran Nair, I beg to state as follows:—

It seems to me that you have started with wrong premises. The whole tenor of your letter and the nature of question I, clearly indicate that you treat it as an admitted fact that the marriage now obtaining amongst us is such as can receive no legal recognition. The point, Sir, is not admitted; nay, it is most seriously disputed. It is an insult to the Malayalis to say that they have no valid marriages and that their present wives are strictly no wives at all but are concubines. What is it

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that is so very abominably defective in our marriage system? Is it want of publicity or solemnity in our ceremonies, or is it absence of civil rights out of marriage connection? I should think that there is no valid objection to be raised against us. We perform our marriages in a respectable and approvable form. A description exhaustive, of our marriage ceremonies has very often appeared in print and it is unnecessary to detail them at present.

2. As to the rights and liabilities of the married parties, there is, no doubt, some difference of opinion. Judicial decisions can not be said to have finally settled the question one way or the other. In a case from North Malabar, a Division Bench of the High Court has held that a junior member's wife's maintenance is a valid charge on his family income. It is, further, now an admitted proposition of law that a Marumakkathayam Mopla is legally bound to maintain his wife following the same law and that the Karanavan of his Tarawad is bound to contribute towards her maintenance. On the other hand, it has been held that a Karanavan's right to the custody of his minor Anandaravan is preferential to that of the minor's father. Whatever may be the effects of Judgments of Courts which, as I said before, are not uniform, there is little doubt that a careful investigation of our time-honoured customs can not fail to convince that our present marriages are perfectly valid and that a legislation for the so-called legalising of them is simply superfluous.

3. I am a native of North Malabar where I have been also practising as a 1st Grade Pleader for the last 11 years. The rule there is of the wife and children living under the guardianship of the husband. We certainly do not cry for legislation. We will be perfectly content if our immemorial customs regarding devolution of property and rights and liabilities of the husband and wife are properly understood and correctly laid down.

4. One objection often raised against the validity of our marriage is our alleged freedom of capricious divorce. It is said that our's is a customary law and that no custom which is unreasonable can receive the sanction of law. I am not quite sure if there is anything against reason in a custom under which both husband and wife are clothed with equal power of divorce in cases of disagreement and dissatisfaction. I am certainly unable to appreciate any provision of law which compels a husband and wife to resort to a court of justice for dissolution of marriage. Our customs in cases of divorce are not less reasonable than the provisions of Mahomedan Law on the same subject. A Mahomedan husband is at liberty to divorce his wife at any time and without any reason. He pronounces "Talak" three times and the marriage-tie is broken. No doubt, a Mahomedan wife is not allowed a similar freedom, but I do think that it will be said that this partiality on the part of the Mahomedan legislator for males is to be applauded. Marumakkathayam people are also not without caste rules meant as restrictions on divorce.

5. It is true that under our system a son has no claim of inheritance through his father. There is, however, ample provision for his inheritance through the mother and the defect of law therefore leads to no hardship. In the case of a father who is not devoid of natural feelings, the law has left open various ways of providing for wife and children. His self-acquired properties are entirely at his disposal and if there is danger in premature disposition of property by gift, testamentary power of disposal can sufficiently meet his wishes. On the whole it seems to me to be nothing but absurdity to say that the Malayalis are aggrieved by a defective marriage system and are driven to claim redress from legislative council. I do not, for a moment, say

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that our system is perfect everywhere. Like many others, we also stand in need of certain social reforms. Such reforms, influential gentlemen like Honorable C. Sankaran Nair may work out from within and need not force on us by means of legislation.

6. Any attempt at legislation to create a mode of inheritance different from what is now detained, I certainly denunciate. It simply tends to shake the shackles of Maurmakkathayam law and is pregnant with immense mischief. That the law is intended to be permissive is no recommendation in its favor. For various reasons, a permissive law on the subject is more objectionable than a compulsory one. In the case of the latter, consequences evil and beneficial, are shared by all the families and by all the members thereof. The former creates destruction amongst the members of the same family and place them in unequal and unfortunate position. The Bill, if passed into law, will be a dead-letter with the uneducated masses. In the hands of the English-educated minority it may receive favor. We will thus come across ladies and gentlemen in the same family following different pervasion of law, and conflicting mode of inheritance and possessing contradictory views of obligation and sympathy and autogonistic interest in almost everything. In such families, instead of peace and happiness, there will be more of continual quarrel and constant litigation. To all intents and purposes, followers of the Hon'ble Gentleman's law become strangers to the Tarawad of their birth, and in the long run they lose all regards for, and of, the family of their mother. If at any time, they return to their old family home, it will be more to threaten the Karanavan with a law-suit for non-payment of maintenance than for anything else. Need I speak of the unpleasantness of such an unsympathetic half—Makkathayam man becoming the Karanavan of his Tarawad and ruling the destinies of a corporation to whose welfare he is indifferent if not opposed. The consequences I say will be frightful.

We will now pause to consider what the effect of the law will be on the future education of the Malayali youths. It cannot be denied that in a majority of cases, the English education of a junior member costs much more than what he is legally entitled to, in a fair distribution of family income. It is the Marumakkathayam tie that raises fair hopes of individual acquisitions lapsing to the Tarawad and individual education being considered investment of money for the family, which encourages Karanavans to make large allotments for the purpose and which compels Anandaravans to nod assent for the same. Instances are not rare where Tarawads have even contracted debts for the education of its junior members. Where is the room for such inducement or encouragement hereafter? Our Karanavans may rightly say that for aught they knew, their English-educated Anandaravans might eventually become enthusiastic admirers and supporters of the marriage law and renounce the Tarawad that patronise them and the family that once lived in affection and harmony with them, and that, consequently, there is neither necessity nor justification for spending for Anandaravan on English education anything more than his share of income under Marumakkathayam Law. Considerations like these may not deter those of advanced liberal views but such men, I need hardly say, are comparatively very few.

Even to a father, the Bill is very suggestive. He is taught to see the folly of entertaining any hopes hereafter that education of one child is, in a way, provision for all children. He will read from the Bill the necessity of providing for all his children alike and more perhaps for his daughters.

I am afraid I have been long and I shall therefore conclude by answering your first question in the negative.

2nd question.—This I answer without hesitation in the affirmative. The advantages of such a law are indeed various and I do not think that from the whole Malabar there will be even one dissentient voice. It might be said that *Wills* were not unknown to Malabar and that their validity to a certain extent has been established by a recent judgment of the Madras High Court. There is still room for considerable doubt on the subject and it is most desirable that in the case of a measure so very beneficial, the validity must be made doubly sure. How far and under what circumstances should a *Will* be held valid are questions of detail and may be discussed hereafter.

I remain
Sir,

Yours faithfully,
K. IMBICHUNNI NAIR.
1st Grade Pleader.

Quilandy,
25th April, 1891.

ANSWERS TO INTERROGATORIES

BY

M. R. RY. A. CHATHU NAMBIYAR AVARGAL,
District Munsif,
NADAPURAM.

MARUMAKKATHÂYAM MARRIAGE COMMISSION.

ANSWERS TO INTERROGATORIES

M. R. RY. A. CHATHU NAMBIYAR AVARGAL,
DISTRICT MUNSIF,
 NADAPURAM.

1. Yes.
2. No. A Nayar woman in North Malabar is never allowed to form Sambandham with any man of her own free will. Her guardians always select a fit husband for her. The marriage of a woman of a higher division with a man of a lower division is not only not allowed but is strictly prohibited.
3. Sambandham of a man of a higher division with a woman of a lower division is always allowed; provided, of course that they are of the same caste. For instance a man of the Chârna, or Agatha Chârna, division cannot have Sambandham with a woman of the Puratha chârna division, though a man of the latter division may have Sambandham with a woman of the former division.
4. Cannot.
5. They are always excommunicated.
6. Korapuzha is the present boundary, though Kottapuzha, or the river just to the south of Badagara, or Vatakara *alias* Vatakêkara (northern bank) was the ancient boundary.
7. The Nayar men of South Malabar cannot form Sambandham with North Malabar women; but Nayar men of North Malabar can do so with Nayar women of South Malabar.
8. Cannot. Because the custom does not allow it; the current notion being that the Nayars of South Malabar are on the whole in point of social status, lower than the North Malabar Nayars, and because the Nayar women of North Malabar may not eat with the Nayar men or women of South Malabar.
9. The rule is that they may not; but I have recently learnt that this rule like all rules admits of some exceptions; for instance, a Nayar woman of North Malabar may go to South Malabar with her husband or other guardian.
10. The reason is this. In the days of native Rajahs who were often quarrelling with each other it was considered unsafe for women of North Malabar to pass from the territory of their own Rajah to that of the Rajah of South Malabar. Further, Nayar men of South Malabar cannot marry Nayar women of N. Malabar who cannot eat with South Malabar men or women, and therefore the Nayars of North Malabar evidently thought it better not to allow their women to mingle with South Malabar people, who are as already stated considered generally to be inferior, in point of social status, to North Malabar Nayars generally.
11. Tâlikettu Kalyânam is the formal or the preliminary part of the marriage among the Nayar girls of Malabar. In all Hindu marriages there are two parts to be performed, the formal or the preliminary, and the material. In the case of

Brahmins both these parts are performed at the same time in the course of a continuous ceremony extending over a period of not less than 4 days, thus causing the bad result of child marriages. But we the Nayars of Malabar in following the Brahmins divide the ceremony into two distinct parts, and perform them on two different occasions, when the proper time arrives for the performance of each part. After the Tâli Kettu Kalyânam ceremony is over the girl attains the rank of woman, and becomes eligible for marriage proper. Tâli Kettu is therefore not the marriage proper among us but only a religious condition precedent to the marriage.

12. In North Malabar Tâli is tied by a respectable, holy, learned and elderly Brahmin. He has no particular name in that capacity.

13. It is sanctioned by custom but is rarely practised in North Malabar.

14. Decidedly not. Because; he has not performed the marriage proper and become the husband of the girl. In fact he has done nothing that a husband proper ought to do according to our well-established and immemorial custom. Tâli Kettu Kalyânam is not, as already remarked, marriage proper but only the preliminary or the formal part thereof.

15. There is no prohibition on that account. If he is qualified and approved he may form Sambandham with her afterwards.

16. I am not aware of any such instance.

17. No pollution whatever is observed in North Malabar. I am not aware of the custom in South Malabar in this respect.

18. Not in North Malabar. I hear that it is the custom in some parts of South Malabar.

19. Yes; that is the rule among the Nayars of Malabar and the Hindu law ordains it.

20. In North Malabar the girls are invariably married before they consort with any man. They are by rule and custom not at liberty to select their husbands. The material part of the marriage proper, viz. Vastradânam (gift of cloth) must always be gone through by them in the following form before they may cohabit with a man. After Tâli Kettu any eligible man can ask the girl in marriage. The proposal must be made to the father or the guardian of the girl; and if the same is accepted a day will be appointed to examine the horoscopes of the proposed bridegroom and bride, and they are examined by an astrologer at the house of the bride in the presence of the relatives of the bridegroom and the bride and if they agree a day will be fixed for the performance of the wedding. After that the bridegroom must invite his relatives and friends for the ceremony. On the day fixed the relatives will attend his house, and there they will present him with new cloth or money at the central room of his house, and after that he and his relatives and friends and some others start in a procession at night for the house of the bride with a bundle of a new cloth and betel and areca nuts and tobacco. By that time a number of her relatives will have assembled on her guardian's invitation at her house to witness the wedding and a sumptuous meal will have been prepared there for the bridegroom and his party. The bridegroom is, on arrival, taken to the central room of the house and made to present the cloth to the girl in the presence of the relations and friends of both parties. After this all are feasted and then the betel, nut and tobacco are distributed among the relatives of the bride

and after that the bridegroom and the bride retire to the central room where they sleep that night. Next morning the bridegroom and his party go to his house and send a party of women to take the wife to the husband's house. The wife is accordingly brought to the husband's house the same day and she lives with her husband in his house at the expense of his Tarawâd.

21. Yes, the same formalities are observed in North Malabar. But, of course, in that case the bridegroom and his Brahmin friends and relations do not take their meals in the bride's house, but in a temple or "Matam" near to that house.

22. Throughout North Malabar the formalities are generally observed. In South Malabar I hear that they are not strictly observed. There the custom in this respect is, I understand, rather loose or indifferent; in as much as in the majority of cases the women of their own accord form Sambandhams with the men they like.

23. She cannot have in North Malabar. But I hear that in some parts of South Malabar this practice is current.

24. This is always prohibited in North Malabar and the law prohibiting this bad custom will be found in Mahâ Bhâratha (vide Sambhava Parvâ where the discourse between Pându and his wife Kunthi occurs about the begetting of children by Kunthi, after Pându was owing to a cause prevented from touching his wives Kundi and Madri). The Hindu law is also against this practice; and we the Sudras or Nayars of Malabar are governed by Hindu law subject only to certain modifications ordained by Sri Parasu Râma and other sages.

25. She can do so with the consent of her guardian in North Malabar, but in South Malabar, I hear, that she can do so of her own accord only.

26. In North Malabar in the presence of 2 or more respectable neighbours and relatives new cloth must be given to the woman by the husband and she must be told then that their marriage is dissolved from that date. I don't know if any such formality is necessary in South Malabar.

27. Can have.

28. Nothing but the social odium to which he is thereby open.

29. In North Malabar in the house of the husband.

30. Throughout North Malabar, and I hear that in some parts of South Malabar this is the custom.

31. According to the custom in North Malabar, he or his Tarawâd must support her and her children while they live with him or in his Tarawâd house. In South Malabar where, as a rule, wives live in their Tarawâds they and their children are maintained by their Tarawâds.

32. In North Malabar, as a rule, they live as husband and wife for life. It is only in very rare cases that a divorce takes place in North Malabar. In South Malabar, I hear that the change is more frequent than in North Malabar.

33. He does.

34. No special allowance is made to them when they are under the protection of their Kârnavans. They are comfortably maintained by their Kârnavans. Sometimes Anandravans cultivate Tarawâd lands for rent and in such cases they are allowed to deal with the surplus, if any, at their pleasure.

35. As a rule they work for their Tarawād if they are asked to do so by their Kārnnavans, but at the same time they try, if possible, to earn something for themselves.

36. They do not, as a rule, hand over their earnings to their Kārnnavans but keep them to themselves. They try to get maintenance from their Tarawād and if that is not sufficient to maintain them comfortably they spend something out of their own acquisitions also for their own expenses.

37. In North Malabar if a man has self-acquisitions, he generally gives some part of them to his wife and children. This is called *Putrāvākāsam*. This is sometimes done by the Kārnnavans also with Tarawād means with the consent of the Anandaravans. This is sometimes the practice in South Malabar also, I believe.

38. There are serious objections to the passing of such a law. In the first place the proposed legislation will enable those who may choose to adopt the same to follow *Makkathāyam* which is contrary to our Sastras and religion and immemorial custom. Sri Parasu Rāma who is an incarnation of our God Mahā Vishnu and who is the founder of Keralam or Malabar, and its institutions, has ordained that Nayars or Sudras of Malabar should follow *Marumakkathāyam* like some of the Brahmins of Malabar such as the Brahmins of Payanūr Grāmam like the Tāyakat and Kunnath Tiru-Mumpus. This ordination of the aforesaid sage has been invariably observed ever since the creation of Malabar. To allow by British legislation some of the Nayars at least to ignore the said ordination and the immemorial custom in accordance with it would be opposed to our law and religion; and those who would support or adopt the proposed legislation will therefore be transgressors of our law and religion. In the second place the proposed legislation ignores caste distinctions in the matter of marriage. But the Hindu law and the institutes of Sri Sankarāchārīār, the founder of "Achārams and Anāchārams" (customs and non-customs) in Malabar, enjoin the strict observance of caste distinctions in all matters. To discard these distinctions in the matter of Nayar Marriage would therefore be sinful and unreligious and it would further give rise to serious disputes and quarrels and disturb the peace in Malabar Nayar families. In the third place the proposed legislation would sow much seed for litigation in the matter of questions which may often arise as to whether the estate acquired and managed by a particular individual is self-acquired, or separate, or belonging to his Tarawād. Malabar is unfortunately a rich field for litigation already, and several of its families have already been ruined by the curse of litigation; and to add to the seeds already existing would be highly unpolitic and dangerous. In the fourth place the proposed legislation would give rise to family quarrels which are already too numerous in Malabar. As soon as a man marries according to the proposed law he will be disliked by all the other members of his Tarawād. In the fifth place, I fear, that this legislation would injuriously affect the education of Malayāli youths and consequently the progress of Malabar. I believe that if such a law were made the Kārnnavans of Malabar Tarawāds would hesitate to lay out Tarawād funds for the education of their Anandaravans lest the latter should marry according to that law and thereby deprive their Tarawāds of their right to inherit the acquisitions made by them by means of the education imparted to them at the expense of their Tarawāds.

39. I would prefer to retain the customary form and to suggest that the same may be recognized by the British law, and that the form of Marriage proper

current in North Malabar may be strictly adopted by the Nayars of South Malabar also and that no legislation is necessary to evidence the marriage; in-as-much as the formalities and the publicity attending the present form of marriage afford enough of evidence of the same.

40 & 41. The answers to these questions will be found in the answers already given. I am decidedly of opinion that no legislation is necessary in the matter of Nayars marriage.

42. Unchastity is the most important cause. If however disagreement owing to other causes, if any, between husband and wife is so great that it is not comfortable for them to live as husband and wife, they can dissolve the marriage with the consent of the guardian of the husband, in North Malabar.

43. In North Malabar the wife and children are maintained by the Tarawād of the husband while living with him or in his Tarawād house.

44. I consider it unnecessary to answer this question as in my opinion the proposed law is unnecessary and illadvised.

45. Yes. But a woman of North Malabar cannot be married to a South Malabar, Cochin, or Travancore man.

A. CHATHU NAMBIYAR.
District Munsif of Nadapuram.

EXTRACT FROM
ANSWERS TO INTERROGATORIES

BY

M. R. Ry. KUNHI MANGALATH MANAYIL SUBRAMANIAN THIRUMUMP Avargal,
NAMBŪDRI LAND-LORD,
PAYANUR GRĀMAM, CHIRAKKAL TALUK.

11. Tālikettu kalyānam is a preliminary part of marriage. *Description.* Although it is attended with ceremony up to Pancha mehini (പഞ്ചമേഹിനി) still in North Malabar its principal object is to show that the maiden can henceforth use ornaments, such as *thōda*, *kāthila* (earrings) *charatu* (marriage thread) &c, use *thattu* (താട്ട, the under cloth crossed between the thighs) and assume the name of either Akkalamma, Pullayāramma, Nēthiyāramma &c. according to the caste she belongs to, instead of miss, or maiden (കുട്ടി) as she was hitherto called, and to consider herself no more a kanyaga (കുട്ടി = maiden, or virgin).

12. Tāli is tied by her father. As Tāli kettu, the preliminary marriage ceremony is to be performed before a girl attains her puberty and before she is 12 years old, it is the father's duty to give her the necessary ornaments. Therefore the father ties the Tāli.

13. The custom of tying the Tāli for a number of girls at the same time by one and the same man does not prevail among Nayars of North Malabar.

14. The man who ties the Tāli obtains no right to cohabit with the girl because it is only a ceremony preliminary to marriage, performed by the father without any husband being fixed.

15. As long as it is the father who ties tāli it is evident that he cannot have sambandham with the girl. Among those who get the tāli tied by Brahmins there is no objection to sambandham being formed by him who ties the tāli, provided the usual sambandham ceremonies are undergone.

16. If the person who tied the tāli should become the husband or sambandhakkaran of the girl, he should be a Brahmin or her father's nephew (sister's son). The usual pudamuri ceremony should be undergone.

17. Amongst those who get the tāli tied by the father, there is pollution if he dies,—not as the person who tied the tāli but as father. To those who get the tāli tied by Brahmins, there is no pollution if the man who tied tāli dies.

18. If the father is dead the mother generally ties the tāli.

19. It is compulsory among Nayars following Marumakkathayam that the Tālikettu ceremony should be performed before the girls attain puberty. After 12 the age of puberty commences, and the ceremony should therefore be performed before that age. This is done so that the girls may not attain puberty before the preliminary marriage ceremony. Marriage among all castes should be performed before puberty. Amongst Brahmins, where a suitable husband cannot be found, the marriage can be performed even after puberty.

20. If after the Tālikettu ceremony a girl wishes to have sambandham with a man, a pudamuri (cloth gift) ceremony has to be undergone.

Description.—The Karnavan, father and an Enangan (friend of his own caste connected by marriage or otherwise) of the man who wishes to have Sambandham with any girl, go to the house of that girl and speak to the Kāranavan of the girl about the intended Sambandham. If he consents the horoscopes of the two are examined, and on the horoscopes agreeing an auspicious day is fixed for Sambandham.

On that auspicious day, the girl's people prepare a repast; during night the would-be-husband and his castemen (friends) come to the house of the girl, and enter the western room with friends, and present betel and nut to the males and females of that tarawād, and his castemen, according to the prescribed custom. The girl is then introduced into the western room by females to whom the Sambandhakkāran presents cloth. The Brahmans present, are then presented with gifts by the bride and bridegroom. After these preliminaries the people who assembled then take meals with the Sambandhakkāran. The man and woman are then considered man and wife.

21. When a Nayar lady forms Sombandham with a Nambudri or Pattar, the same ceremonies which a Nayar has to undergo in such cases as detailed above have to be undergone with this difference. As Brahmans cannot take meals in the girls' house he has to feed them in his matam if he has any, or in temples, or feeding houses. His Brahman friends he has to feed in his house.

22. In North Malabar the formalities attending Sambandham are alike every where. I cannot give any decided answer in reference to the practice in South Malabar as opinions differ.

23. In North Malabar a female cannot have more than one Sambandhakkāran. It is not customary.

24. It is objectionable for a female to have more than one Sambandhakkāran. This is not permitted in order to prevent them from becoming prostitutes.

25. A woman cannot terminate Sambandham at her will and pleasure.

26. If the Sambandhakkāran hears anything ill of his spouse, he informs her people accordingly, and dissolves the Sambandham.

27. A man can form Sambandham in more than one house at the same time.

28. There is nothing to prevent him from so doing.

29. Until the Vettalakettu (betel-leaf-bundle) ceremony is performed by the husband in his house, the woman sleeps and takes her meals in her own house. The ceremony of introducing the bride for the first time after Sambandham into the bridegroom's house is called *Vettalakettu* ceremony. After the ceremony she lives in the Sambandhakkāran's house. If she conceives, the ceremonies attending on the 1st conception and confinement are performed in her own house. The confinement generally takes place in her own house.

30. This is the custom in North Malabar. I do not know the custom in South Malabar.

31. According to custom the man either supports, or does not support, his wife and children during Sambandham. There is nothing compulsory.

32. A man and a woman either cleave together for life, or separate themselves, according to the good or bad disposition of each.

33. If a woman lives with her Sambandhakkāran in his house and bears him children the husband has to feed and clothe them according to custom.

34. If the Anandaravan lives with the Kāranavan in the Tarawād they all work together for the Tarawād and the proceeds go to the Tarawād property. If they live separate, and earn anything by renting and cultivating Tarawād lands, they have every liberty to dispose of their earning; but usually the earnings are made over to their nearest relatives (sisters' children).

35. The Anandaravars work both for the Tarawād and for themselves.

36. The Anandaravars support their wives and children with their earnings. The surplus of their earnings are made over to their sisters' children.

37. The Kāranavan of a North Malabar Tarawād has no liberty to transfer property to his children or others without the consent of Anandaravans, because in North Malabar nephews inherit property. If he is one who has earned much and if he wishes to make over a portion to his children, he usually does it with the consent of his nephews. Such grants are called Puthrāvākāsam (son's right). It is called Puthrāvākāsam because the property does not go to the Tarawād of the son, but is enjoyed by him and his sister's children separately.

38. A law not inconsistent with the existing custom cannot be unwelcome to the Marumakathāyam Hindus. It is objectionable to legislate against existing customs.

39. If the Bill for legalizing marriage is passed into Law the old practice of settling things through father, Kāranavan, relations and friends will die out, and the methods pointed out in the Bill, which are in direct contravention of the existing customs, have to be followed. It is therefore not a good one. If declaration is to be made before a Registrar the boys and girls will be led to act independently without caring for the words of the parents and elders, and without obtaining their consent, as if it were a matter of taking land on rent. This is not good.

40. The conditions of a valid marriage set forth differ much from the recognized practice. It is evident from the very meaning of the words 'marriage' and 'Sambandham'. 'Sambandham' can be dissolved; but 'marriage' cannot. At the time of marriage a wife may be alive, but not so when a husband is alive.

There is no rule that a female can marry only after 14. It is the rule that permission of the parents and elders (പ്രഭുക്കൾ) is absolutely necessary however old she may be.

41. There should be a Law preventing females of South Malabar from having more than one Sambandhakkāran at one and the same time. A woman will be justified in marrying another if (1) her Sambandhakkāran dies (2) if he has become a devotee, if he has left the country and does not return for a reasonable time (3) if he is impotent (4) if he has been excommunicated. It is not proper that she should be allowed any liberty to change Sambandham at pleasure.

42. According to social usage reasonable grounds for dissolving a Sambandham are:—

(1) Madness, excommunication, leprosy, impotency, being born in the same Gōtram, blindness, deafness, chronic disease, skin disease, these are grounds for divorce.

43. It is the custom among Nayars to give oil and clothes to the wife and children, to supply her wants during confinement (oil, medicine, &c.) to undergo the expenses of Chōrānu (first feeding) of the new-born child with rice; Pērvili "naming" of the new-born in the shape of ornaments &c., and such other provisions according to a person's means.

44. The law of Marumakkathayam was enjoined by Parasurama, the creator of Kérala, and Shangarachariar, the law-giver. It has been observed from time immemorial. To try to convert it into Makkathayam is only disregarding them, and is in direct contravention of the established customs followed for centuries by our ancestors; and if any change is effected it will be found that the change will be neither Makkathayam nor Marumakkathayam, but a mixture of the two. I have heard many people of North Malabar say that the intended law is against their interest and a source of grievance to them. I do not therefore agree with any of the provisions proposed for legislation.

45. The Nayars of North Malabar do not give their females to people of distant places in marriage.

(Signed). SUBRAMANIAN THIRUMUMP,
Nambudiri Land-Lord of Payanur
Grāmam in Chirakkal Taluk.

(True translation as near as may be).

H. M. WINTERBOTHAM,
Collector of Malabar
on Special Duty.

EXTRACT FROM
ANSWERS TO INTERROGATORIES

BY

M. R. RY. KARAMVELLI KUNHUNNI KURUP, AVARGAL,
NAYAR LAND-LORD,
CALICUT TALUK.

Amongst Nayars and other high caste people following Marumakkathayam, a man of a higher division can *keep** women of a lower division. Sambandham (with them) is prohibited. But in the case of Rajagan (washerman) and Kshuragan (barber) and other low classes (of Nayars) their women must not even be kept (by the higher caste men).

2. The same liberty can never be granted to women.

3. There are many divisions amongst Nayars between which there is no inter-marriage. Sambandham is not customary between the Charnatha and Sudra Nayar divisions.

4. In such case the woman would be turned out of society, and not received by her own caste.

5. No.

6. Kōrapuzha.

7. Sambandham is not usual between Nayars of North and South Malabar; but Nayars of North Malabar are in the habit of keeping* Nayar women of South Malabar.

8. South Malabar Nayars cannot form Sambandham with Nayar woman of North Malabar. The reason is that the Nayars of North Malabar have the superiority in caste.

9 and 10. The old rule was that women living between Kallai river in the South and Kōrapuzha, and women living North of Kōrapuzha, were not allowed to cross the river (either way.)

11. Tālikettu Kalyānam is a ceremony by which at the auspicious moment, in an ornamented pavilion, with certain rites, the ornament called Tāli is fastened on, and by these rites she who was a Kanyaga (maiden) becomes an Amma (matron.)

14. The man who ties the Tāli acquires no right to cohabit with the girl. Amongst the Nambudiris, the person to tie the tāli is the girl's father; if she has no father, her brother,—if she has no brother, her father's brother,—if she has no father's brother, a male who is related so as to observe 10 days' pollution,—if there be no such relative, then the mother. Can these persons cohabit with the girl? Just so it is in the other case. The tāli-tying is not a marriage.

20. After Tālikettu when she comes of age it is necessary that she should go through the ceremony for beginning Sambandham, called Pudamuri and other names. This is the ceremony which among Nayars is the Vivāham (marriage). For it the parties to the Sambandham, their relatives &c., must be invited and a feast &c., must be given.

*NOTE.—The word used is the idiomatic phrase for keeping a mistress.

21. The same ceremonies must be observed if a Brahmin or Kshatriya, is the husband, except that he will not eat in the house.

25. A woman cannot terminate the Sambandham at her pleasure. Women are not independent in such matters.

26. Amongst Nayars to terminate a Sambandham there is no formality whatever.

38. There is no necessity for such a law. A majority of Marumakkathâyam Malayâlis neither desire nor consent to such a law. To pass a law objected to by the majority is unjust and very grievous to the public.

This will be clear if leading people are questioned personally. Multitudes beg that Government will not pass such a law without so doing. It is also contrary to the Proclamation of 1858 in which the Queen promised never to interfere with matters relating to religion. Moreover to change a law of succession and a law of marriage which have been in force from time immemorial is not a thing to be agreed to, and will be very grievous and hurtful to the people. Besides from this cause many suits and family quarrels, and numerous other inconveniences and evils will afflict the Marumakkathâyam tarawâd, and thereby many tarawâds will speedily go to ruin. It can never be pronounced proper, nor can the passing of it be willingly consented to.

41. Nothing to add or omit because, I wholly disapprove of the proposed marriage law.

42. Misconduct of the man or woman.

44. The new rights can in no way be agreed to.

(Signed) KARAMVELLI KUNHUNNI KURUP.

(True translation as near as may be).

H. M. WINTERBOTHAM,

Collector on Special Duty.

MARUMAKKATHÂYAM MARRIAGE COMMISSION.

ANSWERS TO INTERROGATORIES

BY

M. R. RY. V. KELU ERADI AVARGAL,

DISTRICT MUNSIEF,

PAYYANAD.

1. Yes.

2. No.

3. Sambandham is forbidden between Sâmandans, such as Erâdi, Nedungâdi, Vellôti and Tirumulpâd on the one side, and Ambalavâsis such as Wârriar, Pisharôdi, Nambiassan &c., on the other. Even amongst the Ambalavâsis inter-marriages are not allowed.

As regards Nayars their divisions are numerous. A Kiriya Nayar can have Sambandham in any of the lower divisions such as Sudras, Purathchârâthâ, Akathchârâthâ, Athikurissi, Pallichân and Vattêkkât. But no Nayar of the lower division can have Sambandham in any above it.

Even among the *Sudras* there are several sub-divisions, and the superiority of each depends upon the superiority of the Illam, or Mana, to which it is attached.

4. If a woman of a higher division admits for her husband a man of a lower division, she subjects herself to exclusion from community.

For instance, if a woman of a Sâmandan, or Ambalavâsi, caste takes a Nayar for her husband she is altogether put out of caste. Similarly if a Kiriathil woman takes a Sudra, or Vattêkkâtavan as her husband, she is also excluded from her community, and it may be stated generally that when marriages are contracted between different divisions in contravention to the customary rules the female, as well as her house people, are shunned by their community. On public occasions such as Kalyânam and other ceremonies, where the Castemen generally assemble, the members of the above family are not only not invited, but their presence is even avoided.

5. No.

6. Kôrapuzha.

7. The Nayars of South Malabar do not generally form Sambandham with those in North Malabar. But the Nayars of North Malabar form Sambandham in South Malabar.

8. I do not see why it should not be done. But cases where such a Sambandham has been formed are indeed very rare. The cases are rare, because the females of North Malabar do not generally cross Kôrapuzha.

9. They do not generally do it.

10. Perhaps, when the people of North and South Malabar formed subjects of different Rajahs it was considered unsafe to allow females of one country to go to another.

11. Tālikettu—which literally means the tying of the Tāli—is one of the grand ceremonies which more or less is celebrated in every Marumakkathayam Tarawād. The details of the ceremony vary in different divisions. In every case the day of the ceremony is fixed in the presence of the castemen or relations. It is done after due consultation with Astrologers. In the case of rich Tarawāds arrangements for the feasting of Brahmins, castemen and lower orders, are made. All relations and friends are invited. The person who ties the Tāli is not always the casteman. In the case of some it is so, and in the case of others a man of a higher caste is invited to do the duty.

The day previous to the ceremony, the girls are adorned with jewels and a ceremony called “Ashta Mangalyam,” or “Kayyil Ariyiduga” (pouring rice in the hands) or “Akathu vekkuga” is performed. The meaning of this ceremony is that the blessings of the God Ganapathi are invoked. The night is spent in jollity, the Brahmini, a female of Nambiassan caste singing the whole night. The next day at the appointed hour the ceremony of tāli tying takes place with much éclat. The great part of the ceremony may be said to end here. In the case of some, the feeding &c., continues for 3 days. The girl at the time of the ceremony is dressed in “Kōdi” (new) cloths which are generally given by the person who ties the Tāli. During the aforesaid 4 days she is supposed to be under pollution and bathes only on the last day. In the case of some a portion of the new cloth, dressed by the girl, is cut off by the person who has tied the Tāli. This I believe is meant to be a divorce in order to permit the girl to be married to another sometime hence, and here the ceremony ends. The Kalyānam is invariably performed before the girl attains puberty.

12. I have stated above that in different divisions different persons tie Tāli. For instance in the case of Ambalavāsis, Kiriathil Nayars, and a few others, their castemen are selected for the purpose. In the case of Sāmandans and certain Nātuvālis, a Kshatria Rajah, or a Tirumulpād of the Kshatria caste, is invited to do the duty. The person who ties the Tāli is called *Manavālan*.

13. Amongst some it is so done.

14. He obtains no right.

15. There is no prohibition.

16. I am unable at present to give instances.

17. Pollution is observed amongst those whose marriage custom is to have the Tāli tied by an Enangan, or casteman.

18. I am not aware of such cases.

19. She must undergo the ceremony before attaining puberty. I am unable to find anything but custom to support it.

20. Yes. First the horoscopes are consulted; permission of the bride's Kāranavan is obtained, and a day for the ceremony is then fixed. The bridegroom goes to the house of the bride accompanied by friends and relations, and the occasion is made as grand as the position of the parties would permit.

21. The occasion is not made so grand as in the case of the Nayar.

22. The formalities are mostly the same. But I believe there are slight differences. In North Malabar the ceremony is called *Pudava muri* and is celebrated on a grander scale than in the South.

23. No.

24. I can find no prohibition. But such cases are very rare.

25. Yes.

26. No formality is necessary.

27. Yes.

28. No.

29. Generally in her Tarawād house. But there are also many cases where she lives with her husband.

30. I do not think there is much difference.

31. No liability is attached to the husband.

32. The rule is for one man and one woman to cleave together for life and changing is only an exception.

33. He does feed them and clothe them.

34. No allowance is made by the Kāranavan. The Anandaravans often cultivate Tarawād lands for rent and in such cases they are allowed to deal with the surplus income as they like.

35. Some Anandaravars work for the Tarawād and some try to earn something for themselves. Now-a-days the tendency is more towards the latter.

36. With their earnings they support their wives and children. In majority of cases their earnings go to the Kāranavan only after their death.

37. The word is more current in North Malabar than in South Malabar. But in both districts the wife and children cannot claim property as a matter of right. But the husband often gives his property in gift during his life-time and in some cases after the death of the husband, the Tarawād, out of regard for the deceased, gives some property to his wife and children. In this respect the practice in North and South Malabar is almost the same.

38. The passing of the proposed law will to a great extent interfere with the present system of inheritance of property. The proposed change will create Tarawāds within Tarawāds and make the inheritance of property more complicated.

Further, intermarriages between several castes not being permitted by custom, husband must necessarily be chosen from castes higher, generally Brahmins. The law of inheritance which governs the Brahmins being different from that of the Malayalis as well as of those that may submit to the proposed law—they the Brahmins, would naturally be reluctant to contract such a marriage as contemplated by the proposed law. This objection is only applicable to some and I shall not therefore seriously object to a permissive law being passed.

39. If legal sanction is to be accorded to marriage I would prefer to retain the customary form. As evidence of its legal recognition I would propose the following simple form of recording it. In every amsam, or village a Marriage Registrar may be appointed. Registers containing 2 foils and one counterfoil may be retained by him. On the completion of a marriage ceremony, the Registrar may be requested to attend the residence of either the bride or bridegroom with his register. The form may be filled up in the presence of himself and 3 or 4 witnesses, who are able to identify the bridegroom and bride, and the signatures of the parties to marriage may be taken thereto, and of the two foils one may be given to the bridegroom and the other to the bride, as a document to evidence the marriage. The counterfoil should always be sent to the District Registrar.

Here I may say the attendance fee of the Marriage Registrar should in no case exceed the 2nd class travelling allowance of a Public servant.

40 and 41. Condition No. 1 precludes a man from marrying more than one wife. Here it differs from the Sambandham recognised in practice. I would omit this part of the condition. But to the 2nd condition I would add the following, "If she has not already attained puberty;" and in the 3rd condition would reduce the age to 18.

I object to both the 1st and 2nd Provisoes to condition No. 4.

The 1st ignores all caste distinctions; and the 2nd both Pulasambandham, and Dayâdi Sambandham, which under the existing rules form a bar for inter-marriages. I am for preserving the existing caste rules.

42. Adultery.

43. The husband is bound to pay the sundry expenses such as cloths, &c. But as a rule maintenance is also given.

44. The proposed rights are fair.

45. Instances are not many.

V. KELU ERADI,
District Munsiff, Payyanad.

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Marumakkathayam Marriage Commission.

Answers to Interrogatories

BY

M. R. R. C. KARUNAKARA MENON AVARGAL,
SUB EDITOR OF "THE HINDU,"

MADRAS.

1. Among Nayers and higher castes, a man of a higher division can have Sambandham in a lower division.

2. The same liberty is not accorded to the woman, but a similar one is. As the man is allowed to marry into a lower division, so the woman is allowed to marry into a higher division. Hence, there is no inequality practically.

3. Sambandham between different divisions is forbidden, except under the conditions indicated in the answers to the 1st and 2nd questions. As for Sambandham between Chârna Nayers and Sûdras, the term Chârna itself includes several divisions, and men of some of the higher divisions can and do form Sambandham with Sudra women. Among the rest, Sambandham is forbidden.

4. If a man and a woman belonging to different divisions, between which Sambandham is not customary, form Sambandham, it certainly subjects them to social penalty by way of excommunication from their caste.

5. Such Sambandham can, by no means, be validated by Prâyaschitham.

6. I do not quite understand the question, "what is the recognised boundary between North and South Malabar for caste purposes?"

7. The Nayers of North and South Malabar occasionally form Sambandham with one another.

8. There is no possible objection to Sambandham between a Nayar of South Malabar and a Nayar woman of North Malabar, provided convenience warrants, and the conditions of caste are satisfied.

9. The Nayar women of North Malabar are not allowed to cross to the South of Korapuzha.

10. Tradition traces this prohibition to an ancient feud between the Chera-kkal Rajah and the Zamorin which resulted in a ruling by the former that the women of North Malabar should not enter the Zamorin's territory.

11. I am unable to answer this question in detail within the short time allotted to me. But I may say that the Tâli-kettu Kalyânam does not materially differ from the Kalyânam or marriage among other Hindus.

NOTE.—In Malabar the ceremony is popularly known as Penkettu Kalyânam and not Tâli-kettu Kalyânam. The former makes the girl and the latter the Tâli prominent. Tâli-kettu seems to be a newly-coined expression.

12. As to who should tie the Tāli, depends upon the customs of particular castes. In some castes none but an Enangan (a man of the same caste as the girl, who is competent to marry her) can tie the Tāli, while among others, according to their caste custom or usage, a Brahman, Kshatriya, Sāmantan or other caste man may do it. The man that ties the Tāli is, in Malayalam, called *Manavālan*.

13. As far as I know, it is not the custom, generally, for one and the same person to tie the Tāli for a number of girls. But the custom is found among certain castes, for whom a Brahman or a Kshatriya ties the Tāli. It is difficult in some parts to get as many Brahmans, or Kshatriyas as there are girls, to undergo the ceremony. Hence, the custom is the result of necessity, and not one sanctioned by our early law givers.

NOTE.—I know one instance in which a Rajah having to send a Kshatriya Tirumulpad to a certain Nayar family for this purpose, deputed an Embranthiri Brahman in the guise of a Tirumulpad

14. The man that ties the Tāli, does not thereby obtain a right to cohabit with the girl. The reason is plain. The man that is competent to tie the Tāli by reason of his caste, may not be so by his position in other respects. He may be a poor man without any recognised status in society except as a casteman. This makes it inevitable that he should not be allowed to marry the girl for whom he merely performs a ceremony.

15. There is no prohibition to his afterwards forming Sambandham with the girl.

16. I have personally known of instances of such Sambandham.

17. When the man who tied the Tāli dies, there is no pollution, properly so called, to the girl. But as far as I know, among certain classes, the girl bathes on hearing of his death as symbolic of a belief, that she has by his death, contracted pollution which is removed by at once bathing.

18. To the best of my knowledge, in no part of Malabar is the Tāli tied on by the girl's mother instead of by a man.

NOTE.—Among Nambudiri Brahmans, the father sometimes ties the Tāli.

19. Every Marumakkathāyam girl must undergo the Tāli-kettu ceremony before reaching the age of puberty. There is much more than custom to be pleaded in justification of this. I have elsewhere stated that the Tāli-kuttu Kalyānam does not differ, in any essential respect from the marriage ceremony among other Hindus. All available evidence unmistakably points to the conclusion that the Kettu Kalyānam is in intention, if not in effect, the actual marriage ceremony as among other Hindus. With one exception, there is little difference in the ceremonies, that exception being, that while the Brahmans recite the Vedas and Mantrams, we are compelled to substitute for them what is called Brāhmini Pāttu (song by Brāhmini). In singing her songs, the Brahmini must regulate her voice so as to make it harmonise with the tune in which the Rig Veda is recited; or, in other words, she should sing her songs in Rig Veda *swaram*. The Brahmans alone being privileged to recite Vedas and Mantrams, it was ruled that for other classes, the Kshatriyas and Sudras, the Brahmini pāttu, sung in *Veda swaram*, would be a sufficient substitute. From the time when Kettu Kalyānam came into existence in Keralam, the Brahmini pāttu has also been in existence. The following are some of the verses recited on the occasion of Kettu Kalyānam; and they will show that the Tāli-Kettu-Kalyānam, is not such a meaningless ceremony as has been vulgarly supposed:—

*1. "The weaver has spun the white and red threads, and in the wedding-pandal the Veda Brahmini has twisted them into cords. She has bound them as an armlet on the right arm of the virgin (saying) "May the thread be your constant light and may you live a hundred years in the enjoyment of married life. May the possession of husband and happy children be yours. May you have children as numerous as paddy counted, and life for years as numerous as rice counted."

*2. "The Pandal has been six months in building and the Kettle drums announce (the festival). There is a banquetting hall and a bed-chamber. The *Māla* is put around the neck of the sweet-voiced damsel, and as *they* lived there happily as husband and wife, so let these live here long in the enjoyment of happiness."

The above lines all speak of the preparations for marriage, the union of the bride and bridegroom, their happy married life and so forth. The concluding lines in the first, express the wish that the bride may long enjoy conjugal happiness, that a number of children be born to her, and that she may live long. Those in the second are to the effect that as Rama and Sita (in Rāmāyanam) lived happy there after their marriage, so may this couple here live long and happy. It must be noted that among all higher caste Hindus, the marriage ceremony is divided into two parts, viz (1) that in which the religious ceremonials form the chief feature, and which is known as betrothal, and (2) that which is popularly known as consummation. As among other Hindus, so among Marumakkathāyam followers, the first part which is more important from a religious point of view than the second, must be performed before the girl shows the first signs of menstruation, since in default, the girl becomes subject to excommunication; and no girl can be married before the performance of this ceremony. The second or the consummation ceremony among Hindus in general, may take place either on the 4th day after the religious ceremony, or on any other auspicious day selected afterwards. The same is the case among the Marumakkathāyam followers. It will hence be seen that the only difference between Marumakkathāyam men and other Hindus in respect to the marriage ceremony is, that while the latter perform the ceremony after selecting a husband, and postpone the union of the couple for a future date *i. e.* when the girl attains puberty the former perform the ceremony first, and select the husband (in the large majority of cases) only on the second occasion *i. e.* when the girl is fit to be united to her husband. The *Manavālan* in the Tāli-kettu ceremony, merely performs a vicarious part for the future husband. But when a husband is ready to hand, it is not unusual for the girl to be actually married on the occasion of the Tāli-kettu. The reason for this departure from the ordinary Hindu custom, seems to me to be, that our early law givers, in view of the scarcity of men and the consequent difficulty of securing a husband for every girl before puberty, and the danger of girls being out casted in default, devised this happy plan: to allow every girl to be married, in a sense, with the necessary religious ceremony, and to enable her to remain unmarried for life without being subjected to excommunication from caste. This view receives much support from the fact that the Nayars were, till the British advent towards the close of the last century, a great fighting race, and that they often lost lives in their frequent wars with the neighbouring principalities and tribes. Nor is this the only Hindu custom in regard to which the letter of the law has been closely followed without a corresponding adherence to its spirit. Among the Nambudiris, who are admittedly the holiest and purest of Indian Brahmans, the women are allowed to

*NOTE.—Verses translated by the Commission.

remain unmarried for life without being excommunicated, and as if to make tardy retribution to women who die unmarried, the corpse cannot be burned till a Tâli string is tied round the neck of the corpse, while lying on the funeral pile by a competent relative (vide Logan's Manual page 127). Similarly in other Hindu customs also it will be found that while the letter of the law is strictly adhered to, the spirit is sometimes lost sight of or is not observed.

20. After Tâli-kettu kalyânam, when a girl desires to consort with a man further formalities are necessary. The guardians and relatives of the bride and bridegroom, having, after the examination of the horoscopes of the parties, satisfied themselves as to the position of the stars and the suitability of the match, proceed in consultation with the astrologer to appoint an auspicious time and day. When the time has been fixed, friends and relatives are informed of, and invited for, the ceremony. Just before the appointed time, a large number of people gather at the house of the bridegroom who then proceeds to the house of the bride, accompanied by all those who have gathered as his friends, relatives and followers. The procession arriving at the bride's house, a large banquet is held, and the bridegroom then gives Dakshina to the Brahmans who generally assemble in large numbers. This having been done, we proceed to a separate room, generally the *sanctum sanctorum* of the house, where the bridegroom presents to the bride (according to local custom) either a pair of cloths or *Thimbûlam* (betel and nut) with fire to witness. These, briefly, are the formalities necessary for the consummation of the marriage. The next day, betel nut and sweetmeats are sent to all neighbouring houses.

21. When a Nayar lady forms Sambandham with a Nambudiri, the same formalities are observed as when the husband is a Nayar. As for Pattars, it is not customary for respectable Nayars to allow them to form alliance with their women. Even among the lower classes, as Mr. Logan says, it is only when nobody else can be found, that a Patter is admitted. The Malayalam language has even a proverb to that effect:—ആമല്ലെങ്കിൽ പട്ടറ ഏതുമല്ലെങ്കിൽ താള. "If there is none (to wed), then a Patter; If there is nothing (to eat) then greens."

NOTE.—the word "Sambandhakâran" used in this question is used mostly by the vulgar. The respectable classes, as far as I know, seldom use it except perhaps jocosely sometimes.

22. The essentials of the formalities attending Sambandham are the same in North and South Malabar, with this difference, that in some parts, Tâmbûlam, or money is substituted for clothes. Parts of the Palghat Taluk, which stand half-way between Malayalam and Tamil country, and which have contracted many of the practices of the latter, are however, unique in one respect. They call their Sambandham, Kedakapara, and the formula recited on the occasion is, that the man may come and go for six months, meaning of course, that if the parties agree within these six months, they may continue for life as husband and wife.

23. A woman cannot have Sambandham with as many men as she pleases at the same time. One man for one woman is the rule.

NOTE.—I beg to observe that this question is not at all warranted by anything connected with the Nayar marriage custom.

24. Certainly this is prohibited. The best authority for the prohibition is the custom itself of the people. If more is wanted, I can quote from authentic popular Malayalam literature any number of passages. For example:—

- *(1). "Wherever there is a man he wants a woman to look after him."
- *(2). "Those who abandon their husbands will meet with great danger and infamy."
- *(3). "It is better to have no wife than have one whose words you give way to."
- *(4). "He who has no servant: he who has no wife: he who has no son: these are poor indeed."

In none of the above is it stated that a man is to have more than one woman or *vice versa*. On the contrary, it is expressly stated that one man must have one woman.

25. A woman is not allowed to terminate the Sambandham if she wishes to do so. She must have sufficient cause for it, and must satisfy her relations and society that she has sufficient cause.

26. The formality that is common to all parts is, that the woman's and her husband's relatives and the elders of the Desam should be informed and convinced of the causes of the difference between the parties, and there should also be an open declaration of the dissolution.

27. A man cannot have Sambandham in more than one house at the same time.

28. If he chooses, his Tarawad people and society will not recognise it as Sambandham. No woman, or Tarawad of any status, would consent to such an alliance. Women for the purpose can be found only among prostitutes and outcasts.

29. During Sambandham, the woman sleeps and takes her meals in her husband's house while she lives there, and in her own house at other times.

30. The custom is not the same in North and South Malabar, inasmuch as in the North, the woman lives more frequently in the husband's house.

31. According to recognised custom, the man should support the woman and her children, with the only exception that while the latter live in their own house the husband ought not to pay for their meals.

32. It is not the custom to change Sambandham frequently. In 999 cases out of a thousand, it is the rule for one man and one woman to cleave together for life.

33. If a woman lives with her husband in his house, and bears him children, unquestionably, he does feed and clothe them.

34. If Anandaravns work for the Tarawad, the Karanavan gives them all personal expenses. They sometimes cultivate Tarawad land for a rent. In such cases, they are permitted to deal with the surplus, if any, at their pleasure. But every Anandaravan is expected to contribute his mite to the Tarawad.

35. The Anandaravns generally work for the Tarawad and for themselves. In rare cases alone, they earn something for themselves.

36. Where they, and not the Tarawad, support their wife and children, they do so only with a portion of their earnings. A substantial portion, they either make over to the Tarawad, or earn for the sake of the Tarawad.

37. This question assumes that there is a right called *Putrâvakâsam*. Such a right does not exist. All that the word indicates is, that which the father gives to

*NOTE.—Malayalam proverbs: translated by the Commission.

his children during his life time. Property so given is called, both in North and South Malabar, Putrāvākāsam.

38. There is the greatest objection to "providing a form of permissive marriage Law for Nayers." The proposal in the first place makes the gratuitous assumption, which every true Nayar must indignantly deny, that we have no form of marriage at present. Secondly, it casts a stigma on those who cannot, or do not follow it. Thirdly, it will injuriously react upon the community by creating followers of different and conflicting laws in the same family. Fourthly, an optional law is the least fitted to bring those, for whom it is really needed, within its operation.

39. My answer to the preceding question renders it unnecessary for me to answer this.

40. "The conditions of valid marriage mentioned in the margin" differ from the Sambandham recognised in practice.

(1). No difference.

(2). With regard to man, the age limit agrees. But as regards the woman the age limit is 12. Although these are the respective minimum age limits, marriage does not generally take place at such an early age.

(3). Even beyond the age limit given here, it is customary to obtain the consent of the Karanavans.

(4). No difference.

1st Proviso.—This is against the rules of caste.

2nd Proviso.—All those who are descended from a common female ancestor, however remote, are prohibited from marrying one another. Other prohibitions are in regard to the wife's sister, a brother's wife's sister, an uncle's wife's sister, a brother's daughter, father's sister, daughters of paternal uncles &c.

41. I need make no suggestions other than what are indicated in my answer to the preceding question.

42. Reasonable grounds for dissolution of Sambandham, according to social usage are:—(1) Adultery; (2) Desertion for one year without cause; (3) Excommunication from caste; (4) Change of religion.

NOTE.—Even desertion for one year is not generally regarded as sufficient cause.

43. The existing usage as to the maintenance of Nayar wives and their children is as follows:—So long as the wife and children live in the husband's house, the latter bears all their expenses. But when they live in their own house, the husband does not pay for their meals. All other expenses are borne by him, or his Tarawād, as if they were living in his own house.

44. I have answered this question separately.

45. Sambandham sometimes takes place between Nayars in British Malabar and those living in Cochin and Travancore.

MADRAS,
18th May, 1891. }

C. KARUNAKARA MENON, B.A.

To.

H. M. WINTERBOTHAM ESQR.

Collector of Malabar on special duty.

Sir,

For various reasons, I have thought it necessary to answer the 44th question separately. If I answer (b) and (d) in this, I shall have, in effect, answered the whole. The proposals under the two heads virtually amount to this, that the wife and children shall, at one and the same time, be members of two distinct families, retaining the old right in the one, and possessing a new right in the other—a phenomenon to which a parallel can hardly be found in any part of the civilized world. The issues herein involved are so serious, and at the same time so far-reaching, that no thinking man can fail to perceive in this the most important and the most consequential feature of the so-called marriage Bill. If the Hon. Mr. Sankaran Nayar had brought forward an Inheritance Bill or, according to his own notions, a Bill to provide a form of inheritance for Marumakkathāyam Hindus, the question would have assumed an entirely new aspect. I say "to provide a form of inheritance" advisedly, because Mr. Sankaran Nayar could have maintained more correctly that we have no inheritance than that we have no marriage. Among Marumakkathāyam Hindus, there is no inheritance properly so called; the only right which a member possesses being the right to be maintained, a right created not by reason of the death of any one—in which case, it could be called inheritance—but by reason of the birth of himself into the family. Mr. Sankaran Nayar not only contemplates the transference of the devolution of property from one line to another, but also goes on to create in favour of wife and children a claim, which the sisters and nephews, and, for the matter of that, all Marumakkathāyam Hindus do not enjoy, and have at no time enjoyed. Put plainly, the Hon. gentleman attempts to kill not two, but three birds, at one shot: (1) to provide a form of Christian marriage for Hindus, (2) to create a new form of inheritance, and (3) to transfer the line of succession from sisters and nephews to wife and children. The admirable ingenuity which compressed this stupendous scheme within the limits of an apparently harmless marriage Bill, did not however, take into account, a very inconvenient question which must necessarily arise for settlement. I must, in all seriousness, ask whether "a Bill to provide a permissive form of inheritance" will not secure all that Mr. Sankaran Nayar aims at. A Bill declaring that the devolution of one's property will be, not as heretofore to sisters and nephews, but to wife and children, will secure a legally recognized status to the latter in the same way as by the Bill under consideration; and any other rules that may be necessary for the regulation of conjugal relations may be incorporated in the same (i. e., assuming that divorce is necessary). Why Mr. Sankaran Nayar should not have followed this direct course, is not clear to me. The fact that he has tacked on this important question of inheritance to a marriage Bill, does not relieve the Legislature of its responsibility to decide whether it can entertain a Bill to provide a special form of optional inheritance to any section of the Indian people; for that is the main issue involved in the measure, and must be settled one way or the other. If the Legislature be of opinion that it is expedient and possible to allow a few people to have a permissive form of inheritance, there is hardly any necessity to institute an expensive enquiry into the whole social system of the people. Mr. Sankaran Nayar has simply to be asked to put his Bill in the converse form, that is to say, in the form in which it will not mislead people, but make its real object prominent and

plain. Put in this form, the Bill is freed from many difficulties which now beset it, and the only question to be settled will be one of principle. If a few men avail themselves of a permissive form of inheritance, which the Legislature grants them, and they thereby enable their wife and children to inherit to them, the others cannot reasonably complain that their customary marriage is being indirectly invalidated or declared illegal. How far the principle of permissive inheritance is sound, and conducive to public interests generally, I need not here consider. (I have discussed it in my pamphlet published last year.) But I may be permitted to point out its revolutionary effect on one of our most cherished institutions, which has hitherto preserved the individuality of the Kerala race. The Marumakkathâyam system, which to foreign eyes may appear strange, is a natural and angled (*sic*) growth. Under it has sprung up and flourished a wealthy aristocracy and a well constituted middle class. In fact, we owe to it much more than the English people owe to their Promogeniture. The Tarawad property being merely the accumulated earnings of individual members, a law declaring the devolution of individual earnings in another line, will be a direct attack upon the Marumakkathâyam system. If the Legislature is satisfied, that the Marumakkathâyam system is so mischievous that there is sufficient warrant for so violently disturbing it, it is certainly entitled to do so. But then it is also incumbent on it to remove dangerous uncertainties, and provide against a possible conflict between different claimants. The law may easily make arrangements for the disposition of property, but it cannot so easily regulate family affections, and family practices. To the Kêralan, the Tarawad is a centre of the strongest attachment; and it is impossible to make him feel, that he is a being separate from his Tarawad. The man that is capable of earning money first directs his attention to the improvement of the Tarawad, and not to the promotion of his personal happiness. Even Mr. Sankaran Nayar, if he gets a short holiday, would run up to his Tarawad. That being so, we can more or less imagine how far Legislation will change the instinct, and sense of duty, of a nation. The men live and secure their earnings, whether in money or land, in their Tarawad, and by the proposed law, during their life time, their wife and children may remain quiet, but on their death, the latter must exercise their new right of inheritance; and this means an unavoidable conflict, before the law courts, with the Tarawad. Indeed, if every Nayar early separated himself from his Tarawad, and lived alone with his wife and children, like the Chalyans (weavers) of Malabar, much of the objection on this score, would disappear. The Chalyans are, in the eye of the law, Marumakkathâyam followers, but in their daily life, they resemble Makkathâyam men. Being mostly poor, they have no Tarawad; but a man takes a woman to wife and lives with her for life, attending to their common daily avocations, and participating each in the other's sorrows and pleasures. The little property that the man possesses, he settles in the names of his wife and children; and on his death there is nothing left for his legal heirs to claim. For them, such a law as Mr. Sankaran Nayar proposes would be harmless, and perhaps desirable. But for such a people as the Nayars, with their complicated Tarawad system, and family instincts, the new law would prove simply mischievous. The time may perhaps come when the Nayar will be in the condition of the Chalyan, in regard to his family relations; and then, and not till then, can Mr. Sankaran Nayar's new-fangled ideas be forced upon the people with any advantage. As it is, a family distinct from the Tarawad, is unknown to the Marumakkathâyam follower; and any one that now acts like the Chalyan disregarding the interests of his Tarawad, subjects himself to much popular odium, and is an object of universal contempt and ridicule. Popular feeling and popular practices

being what they are, it seems to me wiser and more beneficial to public interests, to abstain from any Legislation of the kind contemplated. Even in the present state of the law, we occasionally hear of cases (more particularly in Palghat) where the Karanavan of the Tarawad having made over to his wife and children property which is not acquired by himself, his sons and nephews resort to the Law Courts to settle their disputes. Be it remembered that the Karanavan alone is competent to deal with the Tarawad property in this fashion. If such litigation could arise when the sons have no legal right to anything except what their father gives them during his life time, we may easily imagine what the result will be when a similar dispute will have to be settled between the sons and the nephews, after the death of every member of a Tarawad, who takes advantage of the proposed Law. The only instance of such a mixed system of inheritance, as is involved in Mr. Sankaran Nayar's Bill, is found among a few Mappillas on the coast; and the fate of the Nahas and Marakkârs of Parapanangâdy, which is perhaps better known than any other, should ever be an awful warning to the advocates of mixed inheritance. It was more than 15 years ago, that a member of the Marakkar family died; and the celebrated riot which immediately followed, the sons and nephews of the deceased taking opposite sides, will be remembered with no little misgiving by the District authorities who administered the country at the time. The contending parties, however, got out of the Criminal Court, only to try their civil remedy; and up to the present time, they have been engaged in the same business, with the result that the Marakkar family now stands as an example of past greatness ruined by a mixed inheritance.

When I consider the other aspects of the provision, certainly it does not become more acceptable. It is laid down that if either a husband or wife die intestate in respect of any of his or her separate property, the said property shall devolve on the survivor and children in equal shares. How far the division of property here indicated will injuriously affect the interests of the country, becomes evident when we remember, that few people in Malabar possess any property except in land. Such is the instinct of the people that even the poorest, who manages to scrape together a few rupees, invests them in land in some form or other; and the result is, that almost every man can boast that he has a land and house of his own. If the division of property contemplated by Mr. Sankaran Nayar were in operation in Malabar, there cannot be any the least doubt, that landed interests would be nowhere. Endless division of landed property has, before now, been condemned by political economists; and ordinary common sense is enough to see that they are right. Malabar is essentially an agricultural country without the Zemindary system based upon Promogeniture; and this makes the gravity of the measure still more clear.

It now remains for me to consider the religious aspect of the question, which cannot be disregarded or ignored without serious consequences. It is perhaps not necessary to go into the origin of the Marumakkathâyam system of succession. The system may have been either a natural growth, or the work of Parasu Rama, who is said, and generally believed, to have reclaimed the country from the sea and settled it with inhabitants from Aryapuram. For our present purpose, it is enough to realise that, in spite of all uncertainties of origin, Marumakkathâyam has a sound religious basis. The present religious observances of the people are the result, not a little, of the religious reformation inaugurated by Sankarâchâriyar in the first year of the Kollam era followed on the coast, that is, about 1066 years ago. In that year were promulgated the sixty-four peculiar rules of observance for Kêralam, known as Kêrala

Anâchârams. Whether these rules, were the original work of Sankarâchâriyar, himself, or were the mere codification of the law that had already been in existence, it is not perhaps now possible to say. If the popular belief, that Parasu Rama was the author of the Marumakkathâyam system be well-founded, then, indeed, those rules which relate to inheritance and religious ceremonial must be much older than the period of Sankarâchâriyar. Of the 64 rules, of which a translation is given in Mr. Logan's Manual, Pages 155, 156, 157, the 61st lays down that "Ceremony is to be performed in honor of an uncle," and the 62nd, that "the right of inheritance goes towards nephews." In these we find a clear confirmation of the principal of Hindu Law, which recognizes inheritance as the co-relative of religious duty. The Legislature is now asked to quietly transfer the right of inheritance from the nephew to the son, without minding whether it has a corresponding right to transfer the key of spiritual salvation. If it cannot do the latter, then certainly it cannot do the former. The Marumakkathâyam follower is bound to perform religious oblations, not only in honor of his immediate ancestor, but in that of one and all his ancestors who may have at any time gone over to the majority. All those who are descended from a common female ancestor, though belonging to different Tarawads without right to inherit, are entitled to perform religious oblations, to one another in consideration of a contingent right to inheritance, which may arise on a family becoming extinct. If the family in which A is born becomes extinct, and such cases are not rare, all the branch families, have an equal right to perform religious rite, and offer the funeral cake to the deceased members of A's family and, in virtue of the performance of such ceremony, to inherit his family property. Sexual connection between members of families, which are so related, is incestuous, and in this respect undoubtedly the Marumakkathâyam follower has fully respected the injunction of Parasu Râma, that the mother is a thousand times more sacred than the father. As I have already remarked, this so-called marriage Bill involves issues of the gravest character, and in my humble opinion, it is imperative that the Commission should direct its attention more to the incidents of inheritance than to those of marriage.

I have the honor to be,
Sir,

Your most obedient servant,

C. KARUNAKARA MENON, B. A.

MADRAS,
18th May 1891.

MARUMAKKATHÂYAM MARRIAGE COMMISSION.

EXTRACTS FROM ANSWERS TO INTERROGATORIES

BY

M. R. RY. K. ERESHA MENON, AVARGAL,
SECOND GRADE PLEADER,
PARAPPANANGADI.

11. Tâlikettu Kalyânam is a marriage ceremony almost similar to the marriage that obtains among the Nambudiri Brahmins of Malabar. First, castemen and relatives are invited to a feast. After their meals, a lamp is lighted and on examining the horoscope an auspicious day (Mûhûrtham) is fixed for the ceremony. A list of things required for the Kalyânam is then prepared and the Kalyânam days are fixed. This ceremony is called "Samayam Cheyyuka" (fixing time).

(2) The next ceremony is "putting rice in the hand and keeping inside." For this the girl is accompanied by her relatives and castewomen, and after bath she is bejewelled and made to sit in a room upon a blanket covered over with cloth. A lighted lamp, "Ashtamangalliam" (eight auspicious articles), "Pârna Kumbham" (a vessel full of water) and "Nirachuveppû" (a measure full of rice or paddy) are kept by her side. A Brahmini, with a few of the girl's castewomen, then enters the room and offering prayers to God, places a looking-glass, a flower and "Akshatham" (a pigment of rice, saffron and lime &c.) in the girl's hand. She then begins to sing.

(3) The castewomen next lead the girl and the Brahmini to a well, and after keeping the "Pârna Kumbham" (the vessel full of water) and "Kuruthi" (water coloured with saffron and chunam) near the well, go round the well several times. The Brahmini then sings some songs, and taking the "Kuruthi" (water coloured with saffron and chunam) waves it over the girl's head and after washing her with water taken from the "Pârna Kumbham" (vessel full of water), puts a bracelet on her arm.

(4) The women in the girl's family, with vessels containing rice, flower &c. in their hands come to the yard, accompanied by the girl and the Brahmini, and there offer prayers to their guardian deities.

(5) The Brahmini then makes the girl worship the sun with the persons above mentioned.

(6) On the day of the tâli-tying ceremony the girl is dressed in a double cloth called "Mantrakoti," and covered over with another double cloth.

A pandal on four supports will be erected at the spot where the tâli-tying ceremony takes place and after decorating it, a lamp, "Ashtamangalliam" (eight auspicious articles) "Pârna Kumbham" (a vessel full of water) and "Nirachuveppû" (a measure full of rice or paddy) are placed in it.

The "Manavâlan" who ties the tâli messes with some of his castemen in a neighbouring house. This ceremony is called Ayini ûnû" ആയിനി ഉന്നം.

After this is over the Manavâlan is escorted by many people to the girl's house, and the girl's brother washes his legs and gives him a seat in the pandal. He then takes the girl, and going round the pandal, places her by the side of the 'Manavâlan'. A book treating of the marriages of Gods is then read, and the girl's relatives and castemen make many gifts to the Brahmins. This is done at the expense of the girl's father. At this time, only fellow castemen, and people of a higher caste are permitted to attend.

After this is over the tâli is tied round the girl's neck, and she is taken into the house by her castemen.

(7) The next ceremony is the 4th Kalyânam. The girl is decorated and taken to the temple with the "Manavâlan," and after offering prayers to the Gods she returns and takes her meals in the pandal with the "Manavâlan," and her castemen. Then the cloth, spread over the seat occupied by the "Manavâlan" at the time of the tâli-tying ceremony, is divided and a piece of it is taken by the "Manavâlan" while the other piece is given to the girl, as an indication of the severance of their marriage ties.

12. Brahmins, Kshatriyas, Sâmantans, or fellow castemen, ought to tie the tâli. They are called "Manavâlans".

14. No. This is owing to the severance of their connection by dividing the cloth between themselves on the 4th day of the kalyânam.

38. The present system of marriage is a very valid one, and is practised from a very remote period. I do not think it necessary that a law should be framed altering the system.

40. It differs a good deal. By this system of marriage, Marumakkathâyam will practically be changed into Makkathâyam. The present system of marriage is not so bad as to discard Marumakkathâyam altogether.

The Nayars of Malabar are divided into several castes of which men of the lower castes cannot form Sambandham with women of the higher caste. This rule is affected (by the proposed law).

(Signed). K. ERESHA MENON,
Second Grade Pleader.

(True translation as near as may be).

H. M. WINTERBOTHAM,
Collector on Special Duty.

Marumakkathayam Marriage Commission.

Answers to Interrogatories

BY

M. R. RY. A. ACHUTHAN SOMAYAJIPAD AVARGAL,

ALANGADAMSHAM, PONNANI TALUK.

Nambûdiri Landlord and Vaidigan (man learned in the Vêdas)

1. Yes. Amongst Nâyars and higher castes, a man of a higher division can have Sambandham in a lower division.

2. The same liberty is not accorded to a woman.

3. In some cases, Sambandham between different divisions is forbidden. e. g. Kiriyaithil, Sudran, Charnnavan, Pallichân, Vattekkâtt and Athikkurissi.

4. It does subject them to social penalty; they will be kept aloof from the other members of their own society.

5. Such a Sambandham can be validated by a Prâyaschitham.

6. Kôrapuzha.

9 and 10. To the North of Kôrapuzha and to the South of Aleppic river there are no Brahmans who perform the Yâgam and kindred ceremonies; therefore high caste Brahman women cannot travel beyond these boundaries and consequently the Sûdra dependents too, of these Brahmans are prohibited from going further than the two limits.

11. Tâli kettu Kalyânam is the way by which marriage (mangalyam) is effected among people following the Marumakkathâyam Law.

12. A male member of the society and caste (to which the girl belongs) ties the Tâli. Manavâlan is the name generally given to such men.

13. Yes.

14. The man who ties the Tâli does not thereby obtain a right to cohabit with the girl. It is because the law of chastity is not in force.

15. Though there is no right, yet there is no prohibition to his afterwards forming Sambandham with the girl.

16. No.

17. There is no pollution to the girl.

18. The Tâli is tied on by the girl's mother only on very rare occasions.

19. No.

20. No formalities are necessary.

21. No.

23. She may if she pleases.

24. This is not prohibited.

25. A woman can terminate the Sambandham if she wishes to do so.

26. No.
27. Yes.
28. No; there is nothing to prevent it.
29. In her own house.
31. No.
32. A man can act as he likes in this matter.
33. He simply clothes them.
34. No allowance is made to the Anandaravar by the Kâranavan. They often cultivate Tarawâd land for rent and in such cases they are permitted to deal with the surplus if any, at their pleasure.
35. Both the customs are in vogue.
36. They hand over their earnings to their Kâranavan.
38. (1) In chapter 48 of Kerala Mâhâtmyam, Parasu Rama ordains that in Malabar all castes below Brahmans should follow only the Marumakkathâyam Law of inheritance; and therefore that ordinance of Parasu Rama should be strictly followed.
- (2) Moreover it has been ruled both by Parasu Rama and by Sankarâchâriar that the Hindu Nayars should be subservient to Brahmans, and it has been so done ever since.
- (3) Brahmans are to perform rites and thereby (are to) protect (everything). But these rites cannot be duly performed without the assistance of Sâdras. To ensure this, the above named persons ruled that the Marumakkathâyam Law should be followed by the Sudras. If in opposition to this, Makkathâyam Law comes to be observed by the Sudra Nayars of Malabar as proposed now, they would render themselves unable to perform any service to the Brahmans who, as well as Malabar, would suffer thereby. It will be found very difficult in practice, and greatly opposed to the welfare of the people at large, to follow the system proposed by one learned man in contravention to that laid down by the above said Parasu Rama and Sankarâchâriar! who knew so little of the Puranas!

(Signed) A. ACHUTAN SOMAYAJIPAD.

(True Translation as near as may be)

H. M. WINTERBOTHAM.
Collector on Special Duty.

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EXTRACT FROM
ANSWERS TO INTERROGATORIES

BY

A.R.RY. VALLÛR MANAKKAL VÂSUDEVAN NAMBÛDRI AVARGAL.
(NAMBÛDRI LAND-LORD), WALLUVANÂD TALUK.

20. There will be a feast suitable to the condition of the Sambandhakkâran.
21. When a Nambûdri, or a Pattar, begins a Sambandham feasting is not customary.
23. Although it is improper it is being carried on.
24. There is no support for it but the custom of the country.
25. She can terminate the Sambandham.
26. There is no formality.
33. There is no objection to passing a marriage law if it is in such a form that it will not dissipate joint property.

(Signed). VÂSUDEVAN NAMBÛDRI.

True translation as near as may be.

H. M. WINTERBOTHAM.
Collector on Special Duty.

Marumakkathayam Marriage Commission.

Answers to Interrogatories

BY

M. R. R. C. RAMUNNI MENON AVARGAL, B. A.,

SUB-REGISTRAR,

TIRURANGADI.

1. The Kiriyaatil Division alone of the Nayars, enjoys the liberty of forming Sambandhams among the lower divisions of Nayars. Among the other divisions, superiority of caste does not carry with it a privilege of forming Sambandhams in all lower divisions alike.

2. The Nayar women of the higher castes cannot form Sambandhams with the men of the lower divisions.

3. Sambandhams between the several co-ordinate divisions are forbidden; i. e., Sambandhams between the Charna and the Sudra divisions are not generally allowed.

4. Sambandham of such a kind subjects the woman to some social penalty. The penalty most generally inflicted is, that the woman and such of the members of her Tarawad as live with her in the same house, are not invited to be present at the houses of her fellow-castemen on occasions of important domestic ceremonies; neither do the latter attend at her house on such occasions.

5. There is no Prayaschittam ordained that validates such Sambandhams. Each case of such very rare occurrences is disposed of by the caste community on its special merits. The result of caste interference is that such Sambandhams are often compulsorily dissolved; and the parties to them subjected to pay some fine in the shape of an offering to some temple.

6. The boundary generally talked of is the Korapuzha river.

7. The high caste Nayars of North Malabar very generally form Sambandham in the South. The converse cases are rare.

8, 9 and 10. are best answered together, and the answer to question 10 will furnish the key for answers to the two others. I shall therefore address myself to question No. 10.

There are no specific reasons assigned in explanation of the prohibition against the crossing to the South of the Korapuzha river by the women of the Taluks that lie to the North of it. Similar prohibitions against passing beyond other specified limits are found to operate in other places in this District. Any explanation of the prohibition must be such as will satisfactorily explain all the cases. The prohibition against the crossing to the North of the Kottakataavu in the Kurumbranad Taluk by the women of the Payyormala country, (2) of the Putiyachira (പുതിയച്ചിറ) in the Calicut Taluk by the women of the Vatakkumpuram (വട്ടാക്കുപുരം) tract, and (3) of Karukapuzha (കറുകാപുഴ) in the Palghat Taluk by the women of the Walluva-

nad Taluk are additional illustrations of such prohibitions. The reasons for them must be looked for in the past political condition of the District; and the object must have been to confine the various tribes in the places which formed their original homes, for purposes as well of aggression as of defence. That for a number of centuries prior to the occupation of the District by the Muhammedan kings of Mysore, this District had been split into a number of petty principalities ruled over by a number of semi-independent petty chieftains who were perpetually at war with each other will, it is presumed, be accepted as a fact established on historical evidence. That among those petty chiefs the Zamorins of Calicut for some time occupied a position of pre-eminence, in point of power and extent of territory, is also another fact which will be accepted without much dispute. It is pretty well known that the Zamorins succeeded in reducing to subjection almost all of the minor chieftains of the present South Malabar, and that their dominions extended as far South as the northern limits of the present Cochin State. In the interior, the Ernad, Walluvanad and a considerable portion of the Palghat Taluk became subject to the authority of the Rulers of Calicut. While thus successful in extending their power in the South, the Zamorins did not enjoy equal good fortune in their operations in the North. To the North of the Korapuzha, the Rajahs of Kurumbranad ruled over the parts that now constitute the division of the Deputy Tahsildar of Quilandy; and in the still further North, beyond the Kuttiyāti (കുട്ടിയടി) river, the Chirakkal Rajah and his feudatory, the Kadaathanad Rajah ruled over the plains. Unsuccessful as the Zamorins were in effectually reducing these chiefs to subjection, they nevertheless managed to inspire the northern chiefs with a somewhat keen dread of their power. This view of the relations between the Zamorins and the northern Rajahs is attested by the fact, that tradition while supplying numerous evidences of their hostility points to no considerable length of time during which they were at peace with one another. The relations between one among the Zamorins and a certain Kurumbranad Rajah indeed became for some time at least so far friendly that at least one Kurumbranad Rajah succeeded in getting a Tampuratti of the Zamorins's family as his bed-mate; (I use this expression for the questions do not seem to favour the expressions 'husband' and 'wife' as applied to the adherents of the Marumakkathayam Law.) The result of this short connexion however did not in the sequel prove highly satisfactory to the Kurumbranad people, in as much as the wily Zamorin contrived to wrest a large slice of their lands from the authority of the Kurumbranad Rajah. Thus from superior strength as well as from their greater astuteness the Rulers of Calicut came to be looked upon in the North as objects of very considerable fear and hatred; and the subjects of these rulers as aliens which in those days meant enemies.

While the political tactics of the Zamorins tended to generate feelings unfavourable to them, in the minds of their Northern neighbours, the administration of their home affairs was not often carried on in such ways as to allay the intensity of the fear and hatred which their political proclivities originated. The reports of events occurring in the Zamorin's dominions must even in those days have spread throughout the whole of the District; and at times true, some times exaggerated and more often false, as the reports are likely to have been, they must nevertheless, have eagerly been listened to and believed in without much discrimination by their hearers. The northern people must have been made aware of the outrage committed under a Zamorin's orders, or at least with his knowledge, on a number of Nayar women who were locked up one night in the Kovilagam, and who for this reason were afterwards disowned by their castemen. The northern people, again, are likely to have

heard something about another event which also occurred in the South; and of which though not caused by the Zamorins, nor exactly in the territories under their immediate authority, the blame must nevertheless have been attributed to them. The second important event was also an outrage done to women; and was this time done by the new Arab settlers, who forcibly carried away some women one or two of them of very high rank too, into the bargain, and made them their wives. Such unpleasant facts occurring in the South must have made the northern people regard the Zamorin's dominions as dangerous places to live in or travel through, and that more especially for women, and as, to them such travellings or settlements were not necessary, they made the passing into the Zamorin's dominions by women an offence against society "punishable with forfeiture of caste." Partly to the apprehended dangers of settling in the territories of hostile chieftains and partly to prevent the dispersion of the people, should the reasons be attributed that have constituted to the growth of a custom the force of which has not hitherto been much impaired and of which the explanation is so hard to get at.

8. The North Malabar Nayars of the ancient days did not know to what order of creation the Nayars of the South belonged, neither did they trouble themselves to make any laborious researches into the matter. Moreover there was the additional difficulty that once a Sambandham was allowed to be formed, the Sambandhakaran from the South would request that the women might be allowed to be taken to his home and thus made to cross the Korapuzha. This difficulty was insurmountable, and rather than to attempt to overcome it, the best way of dealing with it in their opinion was to evade it altogether.

11. The Tali-kettu Kalyanam is the ceremony of first tying a Tali or (Mangalya Sūtram) മാംഗല്യസൂത്രം around the neck of a girl before she attains her puberty. At present the ceremony has no meaning, but it is of some value as furnishing some evidence of the fact that the tribes among whom it now prevails, had at some past period of their history the institution of marriage by which the person who tied the Tali became the husband of the girl.

12. Each Division of the Nayars has its recognized caste out of which persons are chosen to officiate as Tali-kettukaran. Manavalan (മാണവാലൻ) is the name by which the Tali-kettukaran is generally distinguished. But the name is not applied when a Nambūdiri or a Kshatriyan happens to be the person who ought to officiate as Tali-kettukaran.

13. The custom is to engage as many Manavālans as there are girls around whose necks the Talis are to be tied.

14. No. Foreseeing that a claim to cohabit would thereby be advanced, our forefathers so far altered the original frame work of the Tali-kettu Kalyanam that along with the completion of the Kalyanam the dissolution of the marriage was also effected. The Manavālan, among the Nayars, eats his last meal as such on the fourth day, cuts into two a piece of unbleached new cloth, one end of which is held by the girl, and is forthwith sent about his business. (a) The reasons why he should not be allowed to do so would form the materials of a very interesting chapter in the history of the social organization of the Nambūdiris and the Nayars of Malabar. Even if I had the requisite amount of ability for dealing with it I should be allowed to reserve an exposition of them for a more convenient opportunity.

15. There is no prohibition to his afterwards forming Sambandham with the girl.

17. The Kiriyaatil and the Sudra Divisions of Netunganad, Ernad and Sher-nad are known to recognize a pollution, the term of which extends to 15 days. Cases are also known where men have observed pollution on account of the death of women for whom they acted as Manavâlan.

18. The Tali with the string attached must be placed on the neck by the Manavâlan; the mother may fasten the two ends of it.

19. Yes. It is the rule throughout the Walluvanad, Ernad and Calicut and Kurumbranad Taluks. It is said that in some of the Manapuram amsams of the Chavakkad Division of the Ponani Taluk, the practice prevails of performing the Tali-kettu ceremony even after the girl has attained her puberty. Marriages have at all times with the Hindus formed, a part of the duties which rest on religious sanction; and the rule that the Tali-kettu ceremony should take place before the girl has attained her maturity, is an exact reproduction of that based on Sanskrit authorities and prevailing among the Brahmans generally, of giving a girl in marriage before she has attained puberty.

20. Yes; the girl should be united with the man in the regular Sambandham fashion. The formalities gone through are the formalities incidental to a Sambandham connexion.

21. The formalities are nearly the same.

22. The Sambandham of the Walluvanad, Ernad and Calicut Taluks and the ഉവംപുറകൽ Uvam-purakal of the Kurumbranad Taluks are one and the same ceremony. In the പുടമുരി Pudamuri of the latter Taluk the girl is taken to the house of the man on the morning of the day after the ceremony.

23. The practice said to exist even now of two or three persons forming the Sambandhakkârans of the same woman at the same time, and this without evoking the disapprobation of the average members of the community among which it prevails, is in itself some evidence of the fact that such Sambandhams are allowed. With respect to the practice itself, it must be said that it is fast dying out. It is not always exactly the pleasure of the woman on which the practice is dependent. A plurality of Sambandhakkârs is often tacked on to the same woman at the express desire of, or at least with the connivance of the head of the woman's family and often against her wishes.

24. No authorities legal or religious can be cited either as commanding or forbidding the apparently very odd practices that are found prevailing among the Nam-bûdiris and the Nâyars of this District, and I am unable to say in what books such prescriptions or prohibitions are to be found. With reference to almost all of the existing practices it is my belief that explanations based on historical and religious considerations can be offered.

25. The woman can terminate the connexion, but in so doing she must obtain the consent of her relatives.

26. In the cases of a man terminating the Sambandham, proper notice must be given to the heads of the family of the woman about the intended act, and the reasons therefor must be assigned. The clothes to be given to the woman for the time are to be sent to her, and the man ceases to visit her.

27. Yes.

28. The consent of the heads of the Tarawâds where he wishes to form his 2nd and 3rd Sambandhams should be obtained and this is all that appears to be necessary.

29. When the Sambandham formed is of the ഉവംപുറകൽ Uvam-purakal kind, the woman remains in North Malabar in her own house; and the Sambandhakkâran visits her there. She lives with the Sambandhakkâran in his house only after the പുടമുരി Pudamuri has taken place. After her പുടമുരി Pudamuri the woman lives with her man in his house throughout the greater portion of the year and visits her own house only when domestic occurrences render her presence there necessary.

30. The Sambandham of South Malabar lies midway between the ഉവംപുറകൽ Uvam-purakal and the പുടമുരി Pudamuri of the North. The woman after her Sambandham lives in her own house as well as in that of her Sambandhakkâran. When the periods of her stay in the two houses are compared, it will most generally be found that in the course of a year her stay in her own house has been the longer of the two.

31. The woman and the children she bears to her man are supported by the man during the time they live in the man's house. When they live in their own house the man need not make provision for feeding them. Live where they may, the clothing of the woman and the children is provided for by the man.

32. The Rule is for one man and one woman to cleave for life.

33. This question is answered in the answer to question 31.

34. Whether they do or do not work for the Tarawad the Anandravans have a right to be fed by the Tarawad as long as they live in the Tarawad house.

They often cultivate Tarawad lands for a rent. There is no objection to their dealing with the surplus as they please, still, Karanavans would demand contributions under alleged Tarawad necessities. The history of the rise, growth and decline of the various Tarawads would form an instructive preparatory study for the purpose of clearly understanding the relations of Karanavans and Anandravans in regard to the Tarawad property, as well as the self or separate acquisitions of the Anandravans.

35. The rule that now prevails among the members of the established Tarawads is that the Anandravans work in order that they may earn something for themselves.

36. The earnings are not handed over to the Karanavan. The Anandravans keep them to themselves investing them in land (as is most often the case). The Anandravans' women and children are supported by them out of their separate acquisitions.

N.B.—The rules stated in these answers as prevailing are what are found to exist in the present day after about ninety years' British rule in this District. The effect of that rule on the constitution and present state of the Tarawad does not form a subject of the questions now asked, and no attempt is here made to describe the effects, which have begun to have important bearings on the social history of the Malayali.

37. I am not aware that such an അറകാശം (arakâsam) is recognized.

38. It is not apparent what that weighty affair of State may be in consideration of which the Government is concerned in its own interests to provide a law for

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a portion of the inhabitants of this District. It is not pretended that the peace of this District cannot be maintained unless such a measure is brought into operation, nor does any administrative difficulty appear to be apprehended for the removal of which such a measure is needful. It cannot be assumed that having secured the peace of the District and carried its administrative machinery nearly into perfect working order, the Government wishes, in the leisure which the tranquillity of the District has afforded, to see some "experiments" made so that the result of the experiment may be made available for the edification, or the improvement, of the human race. It does not appear that any strong discontent is felt with the existing state of things so that the Government is bound to take steps for its removal, nor is there any security offered that the new measure will be productive of so much unmixed good that it is desirable at whatever cost to get it introduced. Assuming these state of things to exist, I ask where is the necessity shewn for the introduction of a "permissive law." Any person who has taken care to study the social phenomena which Malabar presents will be slow to believe that the Malayalis (*i. e.*, the Nambudiris and the Nâyars) who have admittedly attained to a pretty high state of social advancement, have not nevertheless been able to get out of the "Polyandrous state" so far as their (the Nâyars') marital relations are concerned. A knowledge of the circumstance under which a right to inherit property has come to be associated with descent from women rather than from men, will go far towards the conclusion that so long as those circumstances exist, a new law to regulate the marital relations of the Nayar can at present be productive of only social misery far greater than what the present Law is calculated to remove. The Nambudiris and the ruling Chiefs whose influence on the Nayar society was the most considerable and most direct of all so moulded it that they made the interests of the Nayar subservient to their own, and until the force of that influence is minimized, any law for the regulation of the marital relations of the Nâyars can only work mischief to that community. The explanation and illustration of my meaning cannot be made intelligible without a statement of the social polity of the Nambudiris of Malabar as I conceive it. To expound it here is not an easy task and I should beg to be excused from now doing it.

39, 40 and 41. I shall leave unanswered.

42. Adultery on the part of the women and loss of caste are the principal ground on which a Sambandham may be broken off.

43. The question has been sufficiently answered in my answers to some of the preceding questions.

45. Sambandhams are often formed.

If all things considered legislation should be decided upon *i. e.*, if the parties to the business would not withdraw unless they gave a law to the Nâyars, a short law, not much difficult to pass an examination, might be constituted of the clause (c) of the proposed new rights in question 44.

The bill that I would draft is as follows:—

"Every person whose personal Law is the Marumakkathayam Law, and who is of sound mind and who is not a minor shall be competent to dispose of his self acquired or separate property by Will."

(Signed) C. RAMUNNI MENON.

Tirurungadi,
12th May, 1891.

Marumakkathayam Marriage Commission.

MEMORANDUM

BY

J. STURROCK ESQR. C. S.

1. In ancient Tuluva (modern South Canara) it appears that all property was vested in females, and descended from mother to daughter.

2. Various theories have been put forth to account for this, but nothing definite is known as to the origin of the custom. It is however certain that it has a great hold on the people, for it has survived ten centuries of Hinduism, and even the Tulu Mohammedans adhere to it. The only important modification that has taken place is that the management of property is now so commonly exercised by males that the rule of inheritance has become known by the misleading name of "Alia Santâna," or inheritance by a sister's son.

3. Together with the management by males there has grown-up a practice of a wife leaving her family house to reside with her husband, and a consequent striving to benefit the children at the expense of the estate of the husband's family. This has naturally led to much quarrelling, and even crime.

4. Amongst the Tulu people, a woman retains after marriage something of the power which in European countries she exercises during courtship, and is allowed to practically divorce her husband as readily as a Mohammedan can divorce his wife, or a Hindu take a second wife without giving freedom to the first. The laws of property and inheritance are also entirely independent of the marriage laws, and this fact, together with the independence enjoyed by married women, has led English and Hindu Judges to decide that there is no marriage amongst the Tulu people—a decision which has naturally led to some heart-burning, amongst those who attach importance to English and Hindu ideas on these subjects. The great mass of the people continue to follow the ancient marriage rules, and lead domestic lives undisturbed by the fact that other people, with other ideas, consider that they are not married at all.

5. The impression formed by me during thirteen years residence in South Canara was that, amongst the higher classes, the Tulu women, who follow the Alia Santâna rules, enjoyed a reputation for singular fidelity, and that even the lower classes did not regard the marriage ties more lightly than their neighbours governed by other laws.

6. From the above remarks it will be understood that I think it desirable a husband should be enabled by law to assign his self-acquisitions to his wife and children, either during his life-time or by bequest, but I consider legislation with regard to the marriage relations of the Tulu people quite uncalled for. The less our legislature deals with these matters the better. There are occasions on which it is imperative to do so, but this is not one of them.

7. The stigma which our courts have indirectly thrown on Tulu marriages might perhaps be to some extent removed by an allusion in the preamble of the act about property, to the effect that amongst the Tulu people inheritance is not affected by the marriage rules. This probably would not suffice to bring Tulu marriages within all the sections of the Penal Code dealing with marriage rights, but I do not think that would matter. I do not consider it fair to say, as in the paper to which this is a reply, that the Alia Santâna customs permit any one to commit adultery with a man's wife with impunity. There are other than penal safe-guards against adultery, and I understand that these have their full force amongst the better classes of the Tulu people.

J. STURROCK, c.s.

Camp Karur, 3rd May 1891.

(NOTE.—Mr. Sturrock was Collector and Magistrate of South Canara for over 6 years, and served in the District for over 13 years)

ANSWERS TO INTERROGATORIES

BY

M. R. RY. T. KUNHI RAMAN NAIR AVERGAL,
Judge, High Court,
TREVANDRUM.

MARUMAKKATHAYAM MARRIAGE COMMISSION.

ANSWERS TO INTERROGATORIES

BY

M. R. RY. T. KUNHI RAMAN NAIR AVERGAL,
JUDGE, HIGH COURT,
 TREVANDRUM.

1. Yes.

2. No.

3. I know of no absolute prohibition against intermarriage between different divisions. Sambandham between a woman of a highest class (Purathu Chârna in North Malabar, and Kiriya in South Malabar, Cochin and Travancore) and men of other divisions (Akathu Chârna, Sudra &c.) is however, not customary; the customary law on the subject being that a woman cannot form Sambandham, with a man belonging to a division not equal to, or higher than, that to which she herself belongs. A man may form Sambandham with the women of any division equal to, or lower than, his own, and men of the highest division do form Sambandham with women of any division.

Nayar men and women of Akathu Chârna division do not generally form Sambandham with Sudra division, though men of Purathu Chârna division, being of the higher class, do. I understand also that a sub-division of Sudras, known as Pannikot Vamsam or clan, in Calicut and Ernad, do associate with Akathu Chârna, or Akathoot Parisha, division with the permission of the Zamorin. Here, I may observe once for all, that the designation by which the different divisions of Nair caste are known, are not the same in North and South Malabar, and that there are several divisions, and sub-divisions, each claiming superiority in the social scale over the others, though the claim is not universally recognized. The two main divisions in North Malabar are Purathu Chârna and Akathu Chârna while in South Malabar, they are (1) Kiriya (2) Sudra (3) Chârna. In the Taluq of Calicut, Chârna division is sub-divided into two (1) Purathu Chârna and (2) Akathu Chârna, the former being (unlike in the North) lower than Kiriya, or the highest class of Nairs, though higher than Akathu Chârna.

4. Yes. The woman and her progeny, if any, lose their social status as members of the division to which the woman originally belonged by birth, and become merged in that of the husband. They are not invited by their fellow caste men on festive occasions, and are not permitted to sit in the same row as their kinsmen on the mother's side, and take meals, on public occasions.

5. Such Sambandhams may be validated by a Prayaschitham though the idea is not universally accepted by orthodox Nairs of North Malabar.

6. Kora Puzha River.

7. The Nairs (men) of South Malabar are not generally permitted to form Sambandham with the women of North Malabar, though there are stray cases in which such Sambandhams have been formed, especially by those belonging to the highest class, or *kiriyam*, in the South. There is no prohibition to the men of the North forming Sambandham with women of the South, subject to the general rule that the man should be of a class equal to, or higher than, that of the woman.

8. A South Malabar Nair is, as already stated, not generally taken as a husband by a North Malabar woman, the reasons assigned being 1, the unwillingness of the latter to cross the Kora-puzha river, and 2, the difference in the ceremonies constituting Sambandham, and 3, the treatment generally accorded to wives and children in South Malabar, who are not as a rule permitted, as in the North, to reside in the Tarawâd houses of their husbands or father, but are obliged to live in their own Tarawâds.

For my part, however, I do not see why intermarriages between people of North and South should not be allowed, on the usual conditions obtaining in the North.

9. It is commonly said that Nair women of North Malabar may not cross to the South of Korapuzha river, but as a matter of fact numerous Nair families (high and low) of the North have in ancient times, and especially during the occupation of Malabar by Sultans of Mysore, crossed this river *en route* to Travancore. The traditionary prohibition was originally directed, not to the mere crossing of the river, but to the settlement of North Malabar women and families, in the territories of the Zamorin and other Princes in the South, except those of the Maha Rajas of Travancore, who were friendly to the Kolathunâd, or North Malabar, Rajas. I know of several high caste women of the North, who have crossed this river on their way to Travancore with their husbands or relatives. Several colonies of North Malabar Nairs are settled in North and South Travancore, and some of them residing in Mavelikara, Shengannoor &c. in Travancore, still retain their rights in their old Tarawâds in North Malabar, and form Sambandhams with women of North Malabar. The Rajas of Mavelikara, Ennakad, Tiruvalla, Arammula &c. of Travancore, still hold and possess Estates in North Malabar, and the female members of these princely houses, and their dependents belonging to the Nair class, used often to cross this river, on their way to, and back from, Travancore.

10. In olden times the chieftains of Malabar, then divided into several petty kingdoms, were often at warfare with each other, and there were feuds between the chieftains of North and South Malabar. There was no guarantee at that disturbed time that the people of the South would guard the safety and honour of

the women of North, and outrages on women were probably apprehended at the time. Hence (if the traditionary account be correct,) it was decreed that females of North should not cross Korapuzha, and settle in the Territories of hostile chieftains, and I understand that similar prohibitions existed in Travancore? which like British Malabar consisted at one time of several petty States. The prohibition in Travancore has disappeared with the reason therefor, but it is retained by the North Malabareans, who are conservatives to the core. The prohibition is under present circumstances, meaningless, and the intelligent portion of the North Malabar public are beginning to regard it as an obsolete one.

11. Tâli Kettu Kallyânânam is, as its very name implies, the ceremony celebrated on the occasion of investiture of a girl with Tâli (marriage badge) a small gold ornament, threaded on a cotton or silk cord, in token of the girl having attained the marriageable age, and been betrothed to some one.

The Kâranavan, or manager of a Tarawâd when he finds that there are one or more girls in his Tarawâd, about to attain the age of puberty, in communication with the father of the girl or girls, and other relatives and fellow caste-men, determines the auspicious day and hour for tying the Tâli, by consulting an astrologer. A marriage pandal, or shed, is erected, and decorated, and on the day fixed for tying the Tâli, the girl, or girls, are bathed with water consecrated by Brahmins, and be decked with jewels and ornaments. In some places in South Malabar, an Enan-gen (a fellow caste-man), in others a Thirumulpâd, or an Arya Pattar (foreign Brahmin) is invited to act as bridegroom for the purpose of tying the Tâli. In North Malabar, and amongst some high caste families in Cochin and Travancore, a Malayali Brahmin (Nambudri or Potti) is invited for this purpose. The bridegroom elect is met in procession and brought to the Pandal, where lighted lamps, measures containing paddy and rice, cocoanuts, betel &c., are kept. Then at the propitious moment the Tâli is tied in the presence of relatives and friends, amidst general rejoicings indicated by *Arppu*, or *Korava*—a noise made by the assembled multitude; and dinner parties are given subsequently. Four days are spent in South Malabar, Cochin and Travancore, in feasting and merriment, and on the fourth day, the bride and the so called bridegroom go to a river, or tank, in procession with music, to bathe. In North Malabar, the ceremonies last only two days, and the procession for bath in the tank, takes place on the second day—on the fourth or fifth day the bride goes in procession to worship the village Deity. The details of this ceremony are not uniform, and vary in different parts of the country. In North Malabar, and amongst the higher classes in Travancore, a woman called Brahmini belonging to the Pushpakan caste, is invited to sing bridal songs at the marriage shed, in the presence of the bride and other relatives. In some places in the South, these songs are dispensed with.

The person who tied the Tâli, is after the ceremony, dismissed with suitable presents in money and cloth.

12. The person who ties the Tâli is called in Malayalam Manavâlan (മാനവാളൻ). It would seem that originally the privilege of tying the Tâli was confined to Enangan, called Machambi in Travancore—(a fellow caste man) but as some families assumed an air of superiority, and wanted to raise themselves in the social scale by associating with those high in the social scale, the services of Thiroomulpâds and Brahmins were preferred.

13. No. It is not an approved custom, though there are not wanting a few instances in which a number of girls had their Tâli tied on by one man at the same time and place. It is so done only in the case of poor families who cannot afford to engage the services of more than one Thiroomulpâd, or Brahmin. It is never done when the person who ties the Tâli is an Enangan, or Machambi (fellow casteman).

14. Not. Unless he is permitted to complete the marriage by the ceremony of cloth presentation. The explanation for this anomaly, for it is nothing less, is to be sought for in the ancient political and social organization of the country.

The Malabar Sudras were in ancient times the slaves and dependents of Malabar Brahmins, whose word was law to them, and who, it is to be feared, made laws affecting the Sudras in such a way as to suit their (Malabar Brahmins) convenience, and to further their interests. The lawgivers of Malabar, though they did not think it expedient to prohibit the Tâli Kettu Kallyânam ceremony, which the Sudras in common with other Hindus had come to regard as a solemn religious ceremony, probably interpreted the ancient Smrithis in such a way as to make it appear that the person who acted as bride-groom, or tier of the Tâli, did not thereby acquire the full status of a husband until a further ceremony, that is presentation of cloth, takes place, and this second ceremony is postponed till after the attainment of puberty of the girl. On the conclusion of Tâli kettu, the bride-groom is dismissed with presents in token of the dissolution of his engagement. Here I may add that the marriage system of Marumakkathâyam Hindus, like the ordinary Hindu Marriage system, originally consisted of two processes, the betrothal and the actual marriage, and the ceremony of tying the Tâli, or Kettu Kallyânam is simply a relic of the betrothal ceremony, ordained by the ancient Smrithis, which the Sudra colonists of Kerala, (Malabar, Travancore and Cochin) wished themselves to be governed by, as the rule prevalent at the time in the land from which they emigrated to Kerala.

It is thought by some that according to the ancient Smrithis, the bride does not become a member of the family of the bridegroom on the first day of the celebration of the marriage rite, and that she does so only after undergoing certain further ceremonies to be performed on the fourth, or subsequent, day after the marriage and represented by the consummation of the marriage, (see Aswalayana-1-8-12.

Apastambha Dharma Sutra-2-6-10-and 15: Gobhila Grihia Sutra 2-3-13-2-5) Yama 8-6-(Bombay Edition Likhitha page 377) and in the state of ancient authorities there was not much difficulty in persuading ignorant people of the servile class that so long as the consummation of marriage does not take place, the tying of the Tâli confers no rights on the tier, and that the dissolution of the agreement of betrothment may be effected after this ceremony, so that the bride may be at liberty to form Sambandhams with the younger cadets of the Brahmin families, who are from sordid motives prohibited from marrying in their own caste. The dismissal of the bridegroom, or manavâlan, with presents, is also looked upon as a sort of dissolution of the tie. There is in my view, no valid reason why the tier of Tâli, or manavâlan, should not have the right to cohabit with the girl, when the proper time for consummation of a marriage arrives; and it is to be devoutly wished that some system by which the original intention involved in the celebration of Tâli Kettu ceremony can be fully carried out, could be devised. The custom has however taken so deep a root in the minds of the people, that it will take some time before the desired reforms, which must come from within, can be introduced.

15. There is not the least prohibition to the person who ties the Tâli afterwards forming Sambandham with the girl.

I have personally known of several instances of such a Sambandham in Travancore, and the practice of giving cloth at the marriage shed (പറമ്പിൽ പട്ടവ കൊടുക്കുക) whereby the giver becomes the real husband of the girl, is not rare in Malabar also.

In cases, where the tier of the Tâli is a fellow caste man, (Enangan or Machambi) and not a Brahmin, or Kshatria, the girl incurs pollution on the death of the person who tied the Tâli on her. The practice of observing such pollution obtains amongst Kiriyaams in Betutnad and Nedunganad, amongst Sudra Nairs attached to the Superior or Âdhya Brahmins in Walluvanad, Nedunganad, Betutnad, and also amongst such of the Illakâr and Swarupakâr in Trevandrum and Changanasheri, who get the Tâli tied by a fellow caste man (Enangan or machambi.)

18 In some families, who, on account of poverty or other causes, are unable to procure the services of a regular bridegroom on the occasion of Tâli Kettu ceremony, or when there had not been time to ascertain by consulting an astrologer whether the bridegroom's natal star agrees with the bride's, mothers or other relatives tie the Tâli,—an image of the Deity, or a sword, being in such cases placed in front of the bride, to represent the bridegroom, if one is not forth coming. This mode of performing the ceremony is not generally approved and may be said to be of very rare occurrence.

19. There is undoubtedly an idea that the Tâlikettu ceremony should be performed before the girl attains the age of puberty, which is ordinarily supposed to be 11 years, but the idea has no justification whatever in any law applicable to Sudras.

The practice is also not uniform among the followers of Marumakkathâyam. In the District of Changanasheri in Travancore, the Tâli Kettu ceremony is performed even after puberty, and in the Tarawâds of Thiroomulpads and others belonging to the Kshatria class, the same practice is said to prevail. The Malabar Brahmins celebrate marriages after the girls have attained their puberty and they cite a text of Manu in support of their practice. The text is as follows :—(*Translated by the Commission into English*) “A virgin may, even after the attainment of puberty, remain till death in her house according to her pleasure; but shall never be given (in marriage) to one devoid of all virtue.”

If this text could be interpreted, as it has been, to sanction marriages after puberty in the case of Malabar Brahmins, I do not see why it should not apply to Malabar Sudras who are inferior to Brahmins.

20. The ceremony of Pudava Kotukal, or Pudava-Muri in North Malabar and Travancore, and Sambandham, or Guna-Dôsham, in South Malabar and Cochin, will have to be gone through before a man and woman can consort as husband and wife. This ceremony is the real or actual marriage ceremony amongst Marumakkathâyis, and it is performed with great publicity and a degree of pomp suitable to the circumstances in life of the parties. When the Kâranavan, or the father, or some elderly member of a man's Tarawâd, or the man himself, if of proper age, has found out a suitable match for him, and if the match is ascertained to be agreeable to the guardians, or other protectors, of the girl, a small deputation consisting of the relatives and friends of the would-be bride-groom, proceeds to the house of the girl and request an examination of the horoscope of the girl, taking with them the bridegroom's horoscope. A formal examination of horoscopes is then made by an astrologer, previously invited for the purpose, and an auspicious day is fixed for the Pudava Muri ceremony. On the appointed day, the bridegroom, after getting the formal sanction of his elders, to each of whom he presents a bundle of betel and nut, goes in procession to the house of the bride, accompanied by a number of his friends and other villagers. The castemen, relations and friends of the bride's Tarawâd also assemble in the bride's Tarawâd house. The guests are then treated to a sumptuous banquet, distribution of money, especially the religious gifts called Dânam and Muhûrtham, is made to pious Brahmins. Two or three lighted lamps, a measure containing paddy and rice, and a bunch of cocoanut flowers are placed in the room set apart for the purpose, and the bride is escorted to that room by her Ammayi (Uncle's wife) or other female relatives, and there in the presence of all, rich suits of cloth are given by the bride-groom to the bride, who receives the cloth after getting the formal sanction of her Kâranavan, father, or other elders. The marriage is completed by the presentation of cloth and the couple retire to the bedroom. This ceremony is always performed at night, and is followed in North Malabar by another ceremony called Vettalakettu, which is the taking of the wife to her husband's Tarawâd after the marriage.

The ceremony of presenting cloth is not performed in South Malabar and Cochin, but the other formalities necessary to enable a man to consort with a woman as his wife are nearly the same. The main difference is that the cloth is not formally presented to the bride in the presence of the guests assembled, but is distributed afterwards among relations and kinsmen of the bride, and that the ceremony of Vettalakettu is also not customary, as the rule there is for the wife to remain in her own Tarawâd even after consummation of the marriage.

21. The same formalities as when the Sambandhakâran is a Nair are observed when a Nair Lady forms Sambandham with a Nambudiri or Pattar, with this difference that the cloth instead of being presented by the bridegroom into the hands of the bride direct, is placed on a plank before her, and is thence taken by the bride, after getting the formal consent of her elders.

22. The first part of this question has been already answered.

I believe the formalities are the same throughout North Malabar. My personal knowledge is confined to Chirakkal and Kottayam Taluqs of North Malabar, and to Bekal Taluq forming part of South Canara.

I believe also the formalities are the same throughout South Malabar, with some minor difference in details. Less pomp is displayed on these occasions in some places than in others.

23. Certainly not in these days. Such a practice never existed in North Malabar. A few Tarawâds of a low order in Nedunganâd Taluq in South Malabar, and a few similar Tarawâds in Travancore, had years back been following a sort of polyandrous system, but such Tarawâds were looked down upon with contempt, and shunned by the community at large. They had therefore to give up the practice as one opposed to general public opinion, and I don't think that polyandry is recognized, or approved, by the community at large in Malabar, Cochin and Travancore.

24. No authoritative text books, laying down the law relating to marriages among the followers of Marumakkathâyam exist, and I am unable to cite any express texts of law prohibiting polyandry among Nairs. A native work treating of the law of inheritance applicable to Marumakkathâyam Hindus, contains in para 212 a contradiction of the assertion made by a few globe-trotters and others, who without careful enquiries took it for granted that the practice of a few disreputable families, is the practice of the whole Nair community. This work, a portion of which has been translated in the Madras Journal of Literature p. p. 172—187, Volume for 1878, was compiled by the late Pandit of the Travancore Sadr Court—a learned foreign Bramin—and printed by the late Kerala Varman Thirumulpâd of Trevandrum. I have already sent a copy of this book for the information of the Commission.

25. Yes; but in North Malabar and in respectable families in South Malabar a woman does not act, and is not permitted to act, independently in these

matters. She takes the opinion of the elders of her Tarawâd, and it is only after procuring their approval that the Sambandham is terminated.

26. No sort of formality seems necessary to dissolve the connection; but the fact is communicated to each other through a respectable messenger. In some places the wife's people refuse to accept presents sent on important festival days, such as Onam, Vishu and Thiruvathira, and their refusal is construed as a termination of Sambandham. In Palghat Taluq, however, it is said to be the custom to send for the husband and two of the fellow castemen, and to declare the unwillingness of the woman to continue as wife in the presence of these men. If the divorce is to be effected at the instance of the husband, the declaration by him is made to the relatives of the wife; and the wife and children are, in North Malabar, sent to her Tarawâd house with a message to the Karanavan, or other elder members of the Tarawâd.

27. Yes.

28. Nothing.

29. In North Malabar and in some parts of Travancore the woman generally resides in the house of her husband during Sambandham.

30. No.

31. Yes; but among the poorer classes, the recognized custom is to supply the wife and children with cloth and oil only.

32. It is not the custom to change Sambandham frequently, and it is the rule for one man and one woman to cleave together for life. There are of course exceptions to the rule, and instances of divorce are not rare; but if the divorce is effected by either man or woman without sufficient cause, the person in fault is shunned by his fellow caste men and neighbours.

33. He does feed and clothe them.

34. If the anandravars work for the Tarawâd they are fed and clothed by the Karanavan and their necessities, including the expenses of their wife and children, if any, are supplied by the Karanavan.

They do sometimes, but not often, cultivate Tarawâd land for a rent, and in such cases they are permitted to deal at their pleasure with the surplus if any.

In former days the Anandravans used to work generally for the Tarawâd, but in recent times the Anandravans generally try to earn something for themselves.

When the Tarawâd consist of near relatives only, or when the Karanavan is a good manager, who has really at heart the interests of the members of the Tarawâd individually and collectively, the Anandravans do hand over their earnings to the Karanavan.

37. A gift of some property is made by the father with the consent of the other members of his Tarawâd to his children, and this gift is called Puthrâvakâsam in North Malabar. Similar gifts are made in South Malabar also, but not as often as in the North. The practice in Travancore in rich Tarawâds is for the father to execute the deed of gift at the time of Kettukalyânam ceremony and proclaim

the gift at the marriage pandal, in the presence of the assembled guests.

38. Yes, my objections are:—

(1) Any law intended, as the proposed one, to raise the moral and material prosperity of the Marumakkathâyam Hindus, should be binding on the whole Community. The State should not undertake legislation in such matters unless it is satisfied that the proposed measure will conduce to the well-being of the community at large; and when once it is so satisfied the law should be made compulsory on the community, whatever the wishes or sentiments of the individual members may be.

(2) The proposed change in the law of Inheritance regarding separate property, will tend to create dissensions in Marumakkathâyam Tarawâds, increase litigation, and eventually lead to the ruin and extinction of Marumakkathâyam system of inheritance.

(3) No new form of marriage need be introduced. The marriage customs in vogue if strictly enforced, are not positively mischievous, and the evils complained of may be remedied without radical innovations.

(4) The proposed permissive law would militate against the well known principle that no person or body of persons "can create a new form of estate or alter the line of succession allowed by law for the purpose of carrying out his own wishes or policy". The rule of inheritance being one laid down, or recognised by, the State not merely for the benefit of the individual, but for reasons of public policy, should not be altered at the instance of persons who would retain the benefits derivable from the old law, but would avoid the obligations imposed thereby.

(6) It is unfair and unjust to Marumakkathâyam Tarawâds that they should be altogether deprived of the benefits of education of the members, imparted generally out of Tarawâd funds, and that the residue of the Tarawâd Fund should still be left available to those from whom no advantage is to be derived by the Tarawâd as a whole.

(7) It is in fact a one-sided measure, which does not sufficiently take into account the duties and obligations *inter se* of the members of Marumakkathâyam Tarawâds, and of the moral obligations one is under of making due provision for his mother, sister, and other nearest relatives, out of his earnings.

(8) The non acceptance of the optional law would virtually inflict bastardy on the children of many respectable classes of society, who under the customary law now sought to be superseded, are regarded as legitimate.

(9) The registration of marriages would simply increase the trouble and expense to which the poor classes of society are now put in celebrating marriages.

(10) Any social reform should as far as possible be on the lines of the practice adopted by the intelligent portion of the community, but the present Bill ignores these practices.

39. If legal sanction is to be accorded to marriages, I would certainly retain the customary form of marriage. The form of marriage proposed in the Bill is unsuited to the people for whom it is intended. I am not sure that the parties should be put to the expense of registration. The publicity with which

marriages are celebrated affords the means of proof of marriages. The marriages of other classes of Hindus are not registered, and no evil consequences of a nature demanding legislative interference are known to have resulted from the omission.

40. Yes. In some respects. In the first place, the prohibition involved in the first condition as far as it relates to males is not sanctioned by law or custom. In common with other Hindus, the followers of Marumakkathâyam are permitted by law and custom to contract a second marriage during the life-time of the first wife, though females are not so permitted.

2ndly, the age for contracting a Sambandham or Marriage is popularly supposed to be 18 for the male as proposed, and 12 for the female and not 14. The girls' attain puberty between 11 and 14.

3rdly, the two provisos to clause 4 introduce innovations which may not be acceptable to the orthodox members of the community.

41. I would leave unaltered the present practice whereby a man is at liberty to contract more than one marriage under certain circumstances. The practice as already stated is sanctioned by the Hindu Sastras, held sacred by every Hindu and the interference with such practices is uncalled for. The first condition proposed to be laid down should be so altered as to make it conform to the precepts of Hindu law. I would omit the two provisos to clause 4. They are misleading, and not in accordance with popular sentiments on the subject.

Marriage between persons belonging to the same Vamsam, or clan, whose relationship though only traditional is kept up by the observance of pollution (ചൂഴ്ച *pūla* and വാലായ്മ *vālayma*) on the death of a member in the family, is strictly prohibited among Marumakkathâyis, and such prohibition against marriage which is to be found in almost every part of the world, and to which some writers have given the name of exogamy should I think be respected in toto.

42. Adultery. The commission by either party of heinous crimes involving lifelong incarceration in jail. Disobedience to lawful orders, and quarrelsome behavior on the part of the wife. Loss of caste in either party.

43. Nayar wives and their children are supported by the husband during his lifetime, if he can afford to do so. After the husband's death, they are supported by the Kâranavan out of Tarawâd funds, if the husband died without making adequate provision for the maintenance of his children. If the parties do not belong to the working classes and if the wife's Tarawâd be rich, while the husband is poor, the wife and children reside in their Tarawâds and are there maintained by the Kâranavan.

44. I have no objection to urge against the proposals (a) and (b). They simply legalize the practice observed by the respectable portion of the Marumakkathâyam community, and would not generally speaking be distasteful even to the masses. I see also no serious objection to the proposal (c).

The proposal (d) deals, though indirectly, a deathblow to the Marumakkathâyam System of inheritance. If the Tarawâd is not to get any portion of the selfacquisition of its members, the Marumakkathâyam Tarawâd System cannot be properly worked, or maintained, according to the intention of its founders. That System has endured for ages, and the Tarawâd is the best extant type of the primitive Hindu undivided family, whose cherished idea is to work and earn for the good of the whole, and not for the individual benefit alone. It has conferred domestic happiness in past ages on a large proportion of the inhabitants of the West Coast, and it is not proposed to do away with that System altogether. If so, the soundness of the proposal (d) is open to question. In my opinion all that the State ought to do at present in order to satisfy the requirements of the progress of Malabar society, is to declare the marriages under the present System valid for the purpose of bringing the sinners against morality under the clutches of penal law, and to confer upon the wife and children a claim for maintenance, out of the husband's selfacquisition, should he die without making due provision for the maintenance of his wife and children.

The proposal (e) if adopted would be very beneficial. The doubts thrown upon the competency of Marumakkathâyee Hindus to dispose of their separate property by will, are indeed felt as a grievance by many. To prevent, however, arbitrary and whimsical dispositions contrary to moral precepts, it may be distinctly laid down that the maintenance of destitute parents, and of unmarried or destitute sisters, will be a charge on a man's self acquisitions; and that testamentary disposition made without any regard to their right of maintenance, would only be given effect to subject to such rights.

I am not in favour of a total change in the law of inheritance in the manner proposed and I think the State should at present aim simply at repairing the recognized evils of the Marumakkathâyam system, without pulling down the fabric of the system, and thus necessitating its reconstruction. In this view it follows that the proposal (f) is in my view superfluous.

45. Sambandham between the Nayers in British Malabar (South) and those living in Cochin and Travancore is customary. There are several families in Cochin and Travancore who are allied to those in British Malabar. Many of the high caste families in Travancore for instance. Tampis of South Travancore and Kurups of Trevandrum, and numerous other families in North and South Travancore, are descended from those who from time to time emigrated from the land now known as British Malabar; and most of the princely houses, allied by marriage, or otherwise connected with, the reigning family in Travancore, still possess Palaces and Estates in British Malabar. There have however of late not been many marriages between women of North Malabar and persons residing in Cochin and Travancore, owing to the prejudice of the former to cross the Korapuzha river.

T. KUNHI RAMEN NAIR.

1. I shall now proceed to record as briefly as possible my views on the proposals now under investigation by the Malabar marriage commission.

2. These proposals are to pass a permissive law enabling such of the Marumakkathâyam Hindus as are willing to do so, to contract a marriage in a prescribed form; to institute a judicial system of divorce; to make adultery and bigamy offences; and to confer on the persons contracting marriage under the Act and their children, certain new rights, namely,

(a) To the husband. The guardianship of his wife and of her children born to him before or after such marriage, and the right to take by survivorship jointly with his children any undisposed of separate or self-acquired property which the wife may die possessed of.

(b) To the wife and children—A right to claim maintenance from the husband, and to take by survivorship, that is to succeed to the undisposed of separate or self-acquired property of the husband.

(c) To the wife alone—The legal guardianship of the children in her own separate right.

(d) To both husband and wife—Power to dispose of his or her separate property by will.

3. As will be seen from my answers to the questions you have been good enough to address to me, the only proposals which have my entire support are those aimed at conferring testamentary power, and at giving a right of maintenance to the wife and children out of the earnings of the husband.

4. The testamentary power seems urgently called for. There is, I believe, a consensus of opinion on the desirability of legislation on this point, and legislation on the subject has been suggested not only by the late Malabar Land Tenure Commission but also, as I understand, by Sir Charles Turner, who did not view with favor the other proposals of the late Commission. The present proposal restricts the testamentary power to those who contract a marriage under the new system, but I have looked in vain, in the statement of objects and reasons, for any reasons for confining the privilege to a select few, and I conclude that the restriction is unintentional. If not, the restriction seems wholly uncalled for. The reasons which may be urged in support of conferring testamentary power on a husband and wife under the new system, equally hold good in the case of every follower of the Marumakkathâyam system. The reasons are (1) that the legal duties of a Marumakkathâyam follower are constantly in conflict with his natural affections; (2) His wife and children, mother and sister are the greatest objects of his love and affection, but the two first do not get his property at all after his death, descending as it does to his Tarawâd which may, for the time being, be, for ought we know, under the administration of a very distant relative, and the two last get in some cases, only a distant chance of succeeding to the actual management of such property; (3) At present he can make provision for those nearest and dearest to him only by making gifts with transfer of possession,

and thus stripping himself of his hard earned property, during his life-time, which in the generality of cases a prudent man is very reluctant to do; and (4) that the power of making will, to take effect after one's death, would minimise the evils of the present system by enabling him to dispose of his property in favor of his wife, lineal descendants and others. This power is now possessed by other Hindus, and was at one time thought to be inherent also in the followers of Marumakkathâyam under the customary law of the country (See the Fifth Report of the Select Committee of the House of Commons on the affairs of the East India Company 1812 page 133) but some rulings of the Madras High Court have tended to shake this belief though the tendency of the latest rulings is to recognise the testamentary power in certain cases. It is of the utmost importance that there should be no room for doubt upon an important point like the testamentary power, and an authoritative declaration by the Legislature of the validity of wills executed by Marumakkathâyam followers, in regard to such separate property as could now be alienated by gift during their life time, seems needed; and this declaration should of course include every Marumakkathâyam follower, and not a fraction of them alone.

5. It is also expedient in my humble view that the wife and children of every Marumakkathâyam Hindu should be expressly given a statutory right to maintenance out of his separate or self acquired property. Such right is now enjoyed by them in practice during the life-time of the husband, and the custom on this subject prevailing throughout North Malabar in respectable and influential Tarawâds has, I understand, been judicially recognised by the highest Court in the Madras Presidency, but there are not wanting instances in which the widows and children of respectable men, brought up in ease and comfort during the life-time of their husbands or fathers, have become beggars, as their own Tarawâd did not possess any property; and the opinion of the public generally is that such a state of things should not be continued any longer. The legislation on the point will, therefore, be hailed with joy by at least the majority of the Marumakkathâyam Hindus, and may, therefore, be undertaken by the State without laying itself open to the charge of having unduly and unnecessarily interfered with social institutions. To concede this right however to only those marrying under the new system, and to refuse it to those marrying or married under the old system, would be making an invidious distinction which cannot be supported in principle, unless indeed it is to be authoritatively held by the Legislature that those who cohabit as husband and wife after performing the ceremonies prescribed by the custom of their community and popularly supposed to constitute a real marriage, are really not fit to be recognised as husband and wife, and that their offspring are bastards deserving of no sympathy in the interests of morality. I do not think such a view can properly be held in the circumstances under which the customary Sambandham, or Guna Dôsham, as the ceremony of actual marriage is in some places called, takes place, nor does the ease with which divorces can be effected by the husband or

wife under the custom of the country, and which, in some quarters, is held to reduce the relationship to a mere concubinage, detract from the value attachable to the ceremony of Sambandham (actual marriage.) The Mahomedan Law sanctions divorce by the husband at his mere will and pleasure, and yet no one has been hitherto bold enough to urge, on that ground, that the relation of husband and wife under the Mahomedan Law does not constitute a legal marriage. The old theory probably was that a girl, if of a mature age, is at liberty to choose Sambandhakâran or husband for herself, and to separate from him according to her pleasure, but according to modern practice, the right of choosing a husband is exercised by the father, or Kâranavan or other natural protectors of the girl, and divorce is also not effected without the consent of the elders in the girl's family. It is thus only in theory that the marriage, or Sambandham, under the Marumakkathâyam system can be said to be based upon mutual consent and dissoluble at will. In practice, the moral sanction has in general been found sufficiently strong to prevent dissolution, and if statistics be taken of the number of divorces among respectable classes of the community during the last ten years, the result would, I am sanguine, show that the divorces amongst Malayâlis (except the working classes) are not more frequent than amongst other races.

6. Even granting that the power of divorce is wantonly exercised in Malabar to such an extent as to be detrimental to the well-being of the society, the fact cannot alter the character of the original transaction, and relationships formed by people according to the dictates of their common law, and in the full belief of their efficacy as a real marriage, are worthy of being recognised by the State. Each community should be judged by its own laws and customs, and not according to foreign laws, which it cannot be expected to know, and ideas borrowed from other systems can hardly be imported with justice into the discussion of the validity of Malayâli marriages. A deference to local and ancient customs is dictated not only by justice but by policy also, and the British Government has pledged itself to respect the social customs of its subjects. If so, the wife and children under the existing customary marriages should not be ignored, and they must be given the full benefit of any law which may be made in favor of similar classes. In conferring this right, the Legislature would, as already observed, be simply legalising the present practice on the subject, and no real innovations are involved in the proposal.

7. The other proposals adverted to in para 4 are open to grave objections which in the aggregate appear to me to be fatal in effect.

8. The first in order of these objectionable proposals is the one for providing a peculiar form of marriage on the lines prescribed for Parsis and Brahmos. The proposal proceeds on the assumption that no system of marriage exists amongst the community at present, but the assumption is, I am afraid, purely gratuitous and has no foundation in fact.

9. As already stated in my answer to the Commissioners' questions, the Marumakkathâyam Hindus of the West Coast have a marriage system of their own evidently modelled on the system followed by their brethren on the East Coast. First there is the Kettu Kalyânam, or ceremony of tying the Tâli or marriage badge, which is a relic of the betrothal ceremony of Hindus, and 2ndly there is the consummation of marriage, or real marriage, which in different parts of the country is known by different names—Puda Muri, Puda Kuta, Sambandham or Guna Dôsham. The latter term signifies, as in the English wedding service, the mutual contract of the parties "for better for worse, for richer for poorer," and it shows that the original intention was that the persons united by the ceremony should cleave together for life. The betrothal ceremony, or Kettu Kalyânam has in course of time become an idle and meaningless ceremony, as it was thought for some reason or other, which it is not easy to gather with certainly at this distance of time, that the bridegroom selected haphazard need not consummate the marriage, or complete the ceremony, and the bridegroom's assent to a formal dissolution of the engagement is purchased at the conclusion of the ceremony, except in rare cases where he is allowed to consummate the marriage by the presentation of cloth. The presentation of cloth is the symbol for consummating marriages, and what originally was intended to be a mere consummation of marriage previously contracted by the tying of Tâli, has in course of time come to be regarded as the real and actual marriage. This latter ceremony, that is the Sambandham or Guna Dôsham, is performed publicly, with due solemnity, in the presence of friends and relations especially invited to the bride's house, and the real husband is chosen for the most part by the woman's parents, or other guardians. The ceremony has something also of religion in it, Dânam and Muhârtham presents to Brahmins being usually made on the occasion, and the performance of this ceremony is considered essential to legalise the union of man and woman as husband and wife. Cohabitation between men and women without undergoing this ceremony is looked upon by the public as an illegitimate and improper connection, involving social disgrace. Such being the real state of circumstances, can it be justly said as has been done in some quarters that the customary Sambandham, or Guna Dôsham, is only a sort of concubinage "into which the woman enters of her own choice, and is at liberty to change as often as she pleases." That the actual fact is otherwise is known to every one who has taken the trouble of minutely enquiring into the matter, and a great authority Sir James Stephen the late Legal Member, is reported to have said in the Vice Regal Council at Calcutta in 1872, that "in spite of the loose marriage system, loose from a purely legal point of view only (the italics are mine) the marriage is practically as common and as binding among Nairs as in many other races. The connection which they form usually last for life, and is marked by a great deal of mutual fidelity." Similar testimony is born by local District Officers (European) of whom

Mr. Logan, whose experience of Malabar was great, has remarked in the Malabar District Manual, that "no where is the marriage tie more rigidly observed and respected, nowhere is it more jealously guarded, or its neglect more savagely avenged than in Malabar." It may with safety be assumed that when several thousands of intelligent people practise certain customs for thousands of years, as the marriage customs of Malabar have been, by a race second to none in intellectual and physical attainments, there must be something in those customs entitled to respect, and though social reforms may be found needed by modern circumstances, such reforms must come from within, and not be forced on the people. Any violent and radical changes in the form of marriages, far from conducing to the progress of needful social reforms, would simply retard it; and it makes but little difference that the special form is applicable to only those who may choose to adopt it. Those who adopt the new form, in which religious elements suited to popular ideas find no place, are likely to be treated by the orthodox members of the community as outside the pale of their caste, and no one who has anything to lose by his severance from his Tarwād and from his caste, would adopt the new law. The measure will further create jealousy and ill-feeling amongst the members of Tarwāds, and where peace and contentment prevailed before the introduction of the new law, dissension and split would, I am afraid, be the order of day. In any event, there will be a further split in the community which is already divided into numerous sub-divisions, and the proposed law may, in all probability, prove the very reverse of beneficial. I think no good is likely to accrue, in the long run, by passing a permissive law for a community noted for its tenacity to old customs; and that I am not exaggerating the hold which the customs and usages have over people, may be easily inferred by anybody when I say that there are still numerous people in North Malabar, who think that because it was not the custom for their women to cross a certain river in the past, therefore the crossing of the river in this 19th century is objectionable. There is not the least necessity for altering the form to which people have become accustomed by long usage. The marriage ceremonies are not uniform throughout the world differing as they do a good deal from one another, and there is nothing in the Puda-Muri, or Sambandham, ceremony of Malabar to warrant its exclusion from the list of marriage ceremonies.

10. If, as stated in some quarters, Courts have ruled against the validity as marriage of the customary Sambandham, or Guna Dôsham (I am not aware of any such ruling by the highest Courts, bearing on the Marumakkathâyam system) the best course to pursue is to seek the intervention of Legislature for the purpose of removing these doubts, by affirming the validity of customary marriages, and a special form of marriage unsuited to the sentiments of the people is the last thing which those having the well-being of the community at large, at heart, should seek to get. Every innovation is viewed by people with

suspicion and distrust, and the form proposed is hardly calculated to allay these suspicions. Apart from the omission to provide for the presence of some religious emblem such as the lighted lamps, Nirapara* &c., essential in the view of the common people to add solemnity to such serious engagements like marriage, the new form is too un-Hindu in its general character to find general acceptance. Females of the respectable classes, however educated they may be, are naturally shy and reserved, or affect to be shy, and would find it inconvenient—nay derogatory, to repeat in public in the presence of a Registrar (an utter stranger and perhaps a Christian, Mahomedan, or Pariah) and of those assembled, the words of the formula proposed in the Bill, and the very idea of young females appearing in public and before strangers is distasteful to the community. The wives are not, in some places, permitted to utter even the names of their husbands, and it would shock the feelings and sense of propriety of such people, if they are forced to say in public as proposed the words "I take thee to be my lawful husband."

11. It is possible that if the materials for forming a correct judgment on the question of the validity as a legal marriage of the customary Puda-Muri, or Sambandham, ceremony, and on the present practices of the people, be properly placed before the highest tribunals, they may be led to take a different view in regard to Marumakkathâyam system than what they are reported to have taken when cases under the kindred Aliya Santhânam marriages of South Canara cropped up before them. The Sadr Court of Bengal has so far back as 1817 (see Jaganatha's Digest 606) declared the validity, between Kshatrias, of the Gandharva marriage, one of the eight forms of marriage sanctioned by the ancient Smritis, and belonging, as Mr. Mayne rightly observes, to a time when the notion of marriage involved no idea of permanance or exclusiveness. Marumakkathâyam, and for that matter Aliya Santhânam, marriages under the present system, surely stand on an equal, if not higher, footing with Gandharva marriages. The notion is entertained by some, namely that the connection as husband and wife under these systems, being dissoluble at the will of either party, no prosecution can successfully be maintained for adultery or bigamy, but those who entertain this idea have not in my view taken note of the fact, namely that some overt act, expressive of the intention to divorce, that is a formal declaration, is needed, before the dissolution can take place. Until such declaration is made, the relationship lasts, and the parties are treated by the public as husband and wife, and if anybody offends during the existence of this relationship he is liable for the consequences. Under such circumstances, it may be doubted, if legislation on the subject is necessary at all, but as the right of maintenance as one of the legal incidents of marriage has to be conferred by Statute, the resort to legislation may be needed, and I see no harm in taking this opportunity to place the whole law on a satisfactory footing by an express declaration from the Legislature of the applicability of the provisions of the Penal Code

* NOTE.—Nirapara=A full measure (of paddy.)

anent the offences against marriage, to Marumakkathâyam Hindus as well. I need hardly add that the Penal Law relating to bigamy does not affect ordinary Hindu males, and that the Marumakkathâyam Hindus should be placed only on a par with ordinary Hindus. The present proposal to make the husband also indictable goes too far, and is on that ground open to objection.

12. I do not think the registration of marriages urgently called for. The marriages of Hindus and Mahomedans in this Presidency are not registered, and the omission to register has not been found by experience to be productive of much evil. Every Malayali marriage is celebrated publicly and openly with a due amount of pomp, and the fact affords the best means of proof of marriages. If registration is thought necessary, such registration may be effected, without the trouble and expense attending the registration of a conveyance before a Registrar by parties not appearing in his office, if the Government would direct the Registrar to file in his office certificates of marriage signed by the husband and wife, and their Kâranavans, or fathers, in the presence of three witnesses, one of whom shall be the local Adhikâri, or village Munsif. Precedent for such a form of registration of marriage is furnished by the rules framed with the sanction of the British Government for regulating the marriages of certain castes in Ahmedbad and Kaira Districts, one of such rules being that every betrothal, or marriage, shall be reported to the Talati for registration without fee.

13. Next as regards the proposal to institute a judicial system of divorce. I doubt very much if it will suit the conditions among which the Marumakkathâyam community live and move. The measure will give terrible scope for private malice to bring humiliation and disgrace upon respectable families, and will, I am afraid, destroy the happiness of the people whom it professes to serve. A public trial of matrimonial and divorce suits of the kind contemplated, regardless of the result of the trial, is a life-long disgrace to any family. The readers of reports of trials in Divorce Courts, both in England and in India, are not likely to be fascinated with the proposed mode of settling private family disputes and squabbles. There is no denying that the West Coast Hindus, though following peculiar usages in regard to marriages and inheritance, are still Hindus in religion and by birth, and that ancient Hindu Smrithis, and the interpretation put upon them by learned persons, have influenced, and do still influence, their rules of life, wherever the local circumstances have not compelled them to adopt other rules, and they would, I believe, rather wish to be put on a level as far as possible with their Hindu brethren in social matters, than with the Parsis whose Marriage and Divorce Act 15 of 1865 forms the basis of the proposals made. Makkathâyam Hindus constitute the bulk of the population of India, and no Matrimonial or Divorce Courts have hitherto been established for the benefit of this large and increasing population, though the right of divorce, or more correctly speaking the right of supersession for certain justifiable reasons, is not denied by their law, and some castes

among the Hindus practically exercise this right, nor has the necessity for such been felt under the social laws governing the Hindu community.

14. I am free to confess that the freedom of divorce now enjoyed in theory by the Marumakkathâyam Hindus is liable to abuse, and I am at a loss to appreciate the views of those who consider that there is nothing in the prevailing customs requiring improvement, and that the absolute freedom of divorce now conceded by custom is essential to the well-being of the society, but at the same time the adoption bodily of the English or Parsi law of divorce, which may be turned by designing and unscrupulous persons into an engine for oppression and mischief, is to be deprecated, and I think the requirements of progress of the community would be amply met if it be laid down (1) that no divorce is to take place except upon the mutual agreement of both husband and wife, to be recorded in a writing signed in the presence of at least three of their fellow castemen; or in cases where either party has lost caste by change of religion, or been imprisoned for life, and (2) that adultery uncondoned will bar the wife's claim for maintenance against the husband or his estate.

15. Still more strongly is the proposed change in the law of succession to the self-acquired property of a member of a Marumakkathâyam Tarawâd to be deprecated. The essence of the joint-family system is that its members should work for the common good, and bring their earnings to the common stock. Just expectations of people would be frustrated if the property of every earning member left undisposed of by him, is to be given away to persons other than those appointed by the customary law. The Marumakkathâyam Tarawâd is the best extant type of the primitive undivided Hindu family, and the ideas and principles pervading the system are borrowed from the primitive Hindu Law, with this difference, that instead of the wife and children, the sister and her children are regarded as heirs. The only thing that can be urged against the system is that it does not recognise the claims of wife and children, and is, therefore, opposed to natural laws, but when the claims of wife and children are recognised in the manner already suggested, by conferring upon them a right to maintenance on the lines of the practice adopted by the respectable classes of the community, the reason for the proposed change would fall to the ground, and further interference with this social institution would be unnecessary in the interests of the community at large. A widow with sons in an undivided Hindu family has, under the ordinary Hindu Law, simply a right of maintenance; and the head of the family is, under the Hindu Law, bound to maintain besides his personal family, consisting of his wife and children, his grand-mother, unmarried sisters, widowed sisters who may have no other provision, his illegitimate children and their mothers &c. (1. Strange 67, 171, 175). Similarly a Nair Tarawâd ordinarily composed of a number of men, women, and children, standing in the relation of mother, sister, niece, uncle, nephew, brother and so on to one another,

look to each other for help and support, and those of the relations, who are unable to earn their livelihood depend entirely upon the earning member for their support. The laws of succession obtaining in other civilized countries do not wholly ignore the claims of mother and sisters to inherit a portion of the Intestate's property under certain circumstances, and the Hindus of all classes have long regarded it as a moral, if not a legal obligation to support their destitute mothers, sisters and other relatives out of their own earnings. The sister has by some eminent ancient Hindu lawyers (Nanda Pandita and Balambhatta, for instance, who interpret the text of Mitakshara, which gives the inheritance to brethren, as including sisters) been regarded as an heiress to her brother's property, and this interpretation, though rejected by others as opposed to the whole spirit of the Hindu Mitakshara Law, must probably have had much influence in moulding the ideas of the primitive Hindus of the West Coast. Intelligent and thoughtful Hindus of the East Coast are, I believe, alive to the injustice perpetrated by modern Hindu lawyers by cutting off sisters from their right of succession as nearer heirs to their brothers, and the public feeling on the subject has prompted an honourable member of the Madras Legislative Council to give notice of his intention to introduce a Bill with the object, I presume, of giving greater rights to the sisters than are enjoyed under what is called the modern Hindu Mitakshara law. It would certainly be a retrograde step, if we are now to introduce into Malabar laws of inheritance, considered defective in other parts of India.

16. The proposed change is further inconsistent with the declaration made, namely that the Marumakkathayam system will be left untouched. If the earnings of individual members are not to flow into the old channel, subject to every valid and just claims and charges on them, the maintenance of wives and children being included among such charges, but are to be diverted into other channels,—the present system will, like the crops without the means of irrigation natural or artificial, have to disappear from the field sooner or later. It is not true that every Malayali Tarawad is possessed of ancestral or Tarawad property upon which he can fall back in the absence of other property. Most of the Tarawads, as I have already said, look upon the earnings of their members for their prosperity and aggrandizement, and the Tarawad system has not in the past been productive of such serious evils as to warrant its extinction by a stroke of the pen. The system has been the growth of centuries, and is believed to have conferred happiness on the people generally, and any introduction of foreign ideas into that system, in a manner inconsistent with the ideas and notions prevailing in the bulk of the community of what is right and proper, can only result in mischief, and tend to bring the Hindus of the West Coast into the same chaotic scramble of antagonistic interests which from actual experience I have found to be the characteristic of the double system of inheritance, Marumakkathayam in regard to ancestral, and Makkathayam in regard to self-acquired, property, followed by some Mappilla families of South Malabar. I know for a fact that several Mappilla families in Shernad, where I was

employed for sometime, have been constantly at enmity with each other, owing to the prevalence of both the Marumakkathayam and Makkathayam systems among them, and been ruined by frequent litigation.

17. It is perhaps superfluous to remark that the practice of dealing with one fraction of a subject without giving heed to the effect likely to result on the whole matter, is unwholesome, and no part of an ancient system like the Marumakkathayam can be destroyed without detriment to the whole system. It may be granted that the old system is not the best divisible system *per se*, but it must be judged by its results. What then are these results? We find there aristocratic families who, in spite of dynastical changes, revolutions, and wars of old, have retained their ancient possessions virtually intact. We find there middle classes and farmers who, though at times subject to the tyranny of those in power in olden times, have similarly retained what little they possessed, and are able to support their poor relations without being under the necessity of driving them to the streets, and we find also working classes, whose lot and position in life, would compare favourably with those of similar classes elsewhere. Careful observers of this Malabar system have in the past eulogised it as a wholesome one from an economical point of view, and a system which has produced these results, must have been built on a careful utilisation of natural laws for securing general content, and the greatest happiness of the greatest number. There is not the least necessity for superseding such a system in favor of a double system of inheritance, the effects of which among the few who had adopted it in former times, have not been beneficial.

18. I am free to admit that the natural love and affection which a man has towards his own children is greater than what he possesses towards other relatives, and that the present system, which ignores this natural love, has like every other system in this mundane world its advantages and disadvantages, but the disadvantages may vanish by degrees as western education and civilization progress, and a hasty legislative interference with the social customs can, in the present state of the feelings of the masses, result only in defeating the very object which the Government have in view, that is the welfare and progress of society in moral and material condition. I need hardly add that the true statesmanship consists not in introducing violent and radical innovations in the social systems opposed to the feelings and sentiments of the masses, but in assisting the progress of social reforms in a given community by legislating on the lines of the practice which the majority and not the minority, of the community may have thought fit to adopt under altered conditions, and circumstances in life, of the bulk of the community.

19. To sum up my remarks. I consider

(1) That the proposed change in the law of inheritance regarding self-acquired property is inexpedient.

(2) That the only legislation needed in the interests of the well-being of the Malayâli society is one for the purpose of (1) affirming the validity of existing real marriages, the betrothal ceremony which has for centuries been treated as merely an idle and mock ceremony being of course disregarded, (2) of creating a charge on the self-acquired property of a man for the maintenance of his wife and children, who may be otherwise left unprovided for (3) of restricting divorces to cases where the parties mutually consent, or lose caste, the adultery uncondoned being treated as a bar to wife's claim for maintenance, and (4) of declaring the validity of testamentary dispositions of property made by Marumakkathâyam Hindus with due regard to the claims of destitute mother and sister.

20. With reference to Para 4 of your letter, I may say that I have observed amongst the educated and intelligent of the Marumakkathâyam community, symptoms of a revolt against the case law (I would not call it a custom, because the custom is otherwise) which prevents a man from bequeathing his self-acquisitions to his wife and children, and others dearer to him, and against the custom which gives his wife and children no claim to maintenance from his separate property.

21. People would undoubtedly welcome a way of escape from these customs, or supposed customs, and there can be no two opinions as to the necessity for reform on grounds of morality. The best way of escape, however, from the evils produced by these customs or case-laws, is by legislation in the mode suggested in the preceding Paras.

I have the honor to be,

Sir,

Your most obedient servant,

T. KUNHI RAMEN NAIR.

APPENDIX

LIST OF NATIVE WORKS.

1. Keralâchâram, translated in the Indian Antiquary—1st August 1875.
2. Kerala Olpathi (of which there are different versions).
3. Kerala Mahâtmyam—104 Chapters (not yet printed), a synoptical abstract of which has been published by Dr. Gundert in the Madras Journal of Literature 1844.
4. Kerala Avakâsa Kramam, compiled by the late Pundit of the Travancore High Court, and continued and printed by Karala Varma Thirumulpâd, Trevandrum—a portion of this has been translated in the Madras Journal of Literature (p. p. 172-187. Volumes for 1878).
5. Kerala Vishicha Mahâtmyam, being an account of the chief sub-divisions of Marumakkathâyam caste. St. Thomas Press—Cochin, page 98—(1876).
6. A pamphlet on the birth and death pollutions by Patchu Mussad—Trevandrum.
7. Marumakkathâyam, or Law of Inheritance among the Sudras of Malabar, by R. Muthu Krishna Naidu.

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LETTER FROM
M. R. RY. T. RAMA ROW AVARGAL,
DEWAN OF TRAVANCORE.

(This letter is to be taken as expressing the unofficial opinion of a
private individual.)

PEERMEDE,
30th April 1891.

To,

H. M. WINTERBOTHAM ESQUIRE,
Collector of Malabar, on Special Duty.

SIR,

I have the pleasure to acknowledge your printed letter dated the 11th Instant regarding the Honorable Sankaran Nayar's Bill to provide a form of marriage for Marumakkathâyam Hindus.

2. I have read the Bill, and some of the discussions in the papers on the subject.

In reference to para 3 of your letter, I may observe that, considering that the marriage customs among the Marumakkathâyees in Malabar and Travancore are very much alike, and that, especially in recent years, there are intermarriages between the people of both countries, the Bill, if passed into law in Malabar, cannot but have some beneficial influence on the Marumakkathâyam people in Travancore. The strictly joint-family system which permits and virtually knows no partition of the Tarawad property, does not seem to prevail with the same rigour in this country as in Malabar. Here branches of the same Tarawad, somewhat removed from each other, voluntarily effect divisions; and the wife, who in Malabar seldom leaves her Tarawad, is here in several instances allowed to live and mess with the husband. The change contemplated in the Bill appears therefore to be likely to be felt to be far more striking and sudden in Malabar than in this country.

Adverting to para 4, I have reason to believe that the educated portion of the Malayalees are not satisfied with the existing custom in respect of marriage, and would hail any measure which will have the effect of making the marital tie more real and binding than is unfortunately the case now. I understand that some six years ago, a few of the educated Malayalees of this place formed themselves into a Committee with a view to take the sense of their country-men as to the expediency of moving for a change in the law, or rather the custom, regulating their marriage. Beyond drafting a Bill and circulating the same among some of the prominent members of their community, the Committee seems to have done nothing; but the fact seems to indicate the nature of the feelings of the educated classes in this matter.

There is no doubt that the exceedingly lax system of marriage, which obtains among the Marumakkathâyees is, in reference especially to the advancement which is common with their Makkathâyeo brethren, they have been making in recent years, a solecism; and some change which would considerably mitigate, if not completely

1. In discussing this subject it will be convenient to treat it under the following heads.

- (1) Description of the existing custom of marriage, among Marumakkathayees.
- (2) Its legal consequences.
- (3) What are the defects of the existing law, and whether there is a general feeling of dissatisfaction in regard to it.
- (4) On what lines a change would be desirable and on what grounds, and
- (5) Whether the changes proposed in Mr. Sankaran Nair's bill would be desirable.

I shall first consider the 1st question. Then the 2nd and 3rd together, and so also the 4th and 5th, and close with a summary of the changes that I would propose.

2. Meaning by "marriage" cohabitation between man and woman for life until formally dissolved, apart from any right of heirship attached to such union, in various degrees under various systems of law, such unions are formed with Malayalee women, not only by Malayalee Sudras, but also by men of all the higher castes. A proposal is first made by the husband, or his relations, to the intended wife or her relations. The latter's horoscope is delivered to the former to see if the stars agree and if they do, for fixing an auspicious day (or Muhûrtham) for the union. A muhûrthachârthu is prepared in consultation with an astrologer, and delivered to the girl's relations. The date being thus fixed, the bridegroom with his friends and villagers meet at the appointed hour at the bride's house, where the latter's villagers would be assembled. At the auspicious hour Dakshina (*presents in money*) would be given to Brahmins, and the bride, being led out by some female relation, is formally presented by the seated bridegroom, after due salutation with a few pieces of cloth. The feasting follows this; and from the date of this ceremony, the parties become man and wife.

3. Some say that this ceremony is accompanied by Ashtamangalyam *i. e.*, the procession of ornamented girls with lights and rice-pans. This is common in Travancore only for the Thâli-tying, or Kettukalyânam ceremony, which has practically nothing to do with the marriage followed by cohabitation above described. Again some say that the presentation of cloth is made always in a particular room in the house. It may be so in particular places, but there is no general rule on the subject. It may be the southern room, or Thekkêmuri in Malabar, but in Travancore it is generally the arappuray, or interior nalookettoo (quadrangle) of the house, or the Eastern Erayam or verandah.

4. The above is the marriage ceremony, or Sambandham, as it is called. I will next consider its consequences. From the above description it is evident that there is no religious element in the union. Some have likened it to marriage among Nambudiris; but the latter have Homam, which Malayalis or indeed any other Sudras, do not, and cannot, perform. There are, it is true, some traces of religious rites in the kettukalyânam ceremony, such as, Bhûthakkalam (the serving out, of rice and curries to Bhûthams*), the pouring of water into a palmyra leaf, held by the bride

*Note—Bhûtham—a demon generally malignant; sometimes a guardian spirit.

and bridegroom, and Ashtamangalyam. But the kettukalyanam is practically nothing more than a ceremony of introduction of a girl to womanhood, and has nothing to do with the conjugal union, unlike the marriage between man and woman under Hindu Law; therefore the Sambandham between a Malayali man and woman has no religious element in it.

5. Let us next consider the subsequent relation between the parties, following upon a Sambandham as above described. In South Malabar and North Travancore, the wife is rarely taken to the husband's Tarawad. In South and middle Travancore, the rule is the other way; the husband always taking the wife to his own Tarawad for cohabitation. Where the wife is left in her own Tarawad, she of course passes her time in the company of her Tarawad relations and her friends, the husband visiting her in the night, and at other times as he can find it convenient. In these cases it is evident that the wife and children do not move in the company of the husband, and the latter derives no help in the management of his household affairs from his better-half.

6. Either party can dissolve the union at any moment. It is said that such dissolutions are very rare. Respectable families do consider it a disgrace to dissolve such unions without sufficient cause. But there is no doubt that under the customary law, both the wife and husband have absolute power to divorce each other without even assigning any cause. It is true a social stigma does attach to people who treat so lightly the marriage union. But such stigma attaches also to habitual liars and drunkards. Many people do avail themselves of the liberty, in the same manner as many are habitual liars and drunkards. There is no more a legal sanction against the former than against the latter.

7. As a logical consequence of this liberty of dissolution, adultery is no criminal offence. The High Court of Madras held that in the case of parties governed by the Aliyasantanam law, adultery with the wife was no criminal offence, as the union could be dissolved at any time. Though the point has not been expressly decided under the Marumakkathayam law, the principle of the decision applies equally, as both laws equally consider the mother, and not the father, as the source of family relationship, and therefore attach no permanence to the union between man and wife. The fact that respectable Malayalis do consider it a grave moral offence, cannot justify the visiting of the act with criminal consequences consistently with the liberty given to the wife to dissolve the union whenever she pleases; for the wife may plead that she dissolved it the moment before she received her paramour. On this point therefore clearly the moral sense of Malayalis is in advance of the law.

8. Next as to the children: as to those places, where as already stated there is no cohabitation in the proper sense of the term, the children are practically not under the influence of the father, and the latter has very little to do with their education. They are looked after by the Karanavan of the Tarawad, who sometimes no doubt is a close relation of the mother, but is generally a distant relation of both. Where cohabitation does exist, no doubt the wife is useful to the husband in the management of his affairs, and the children are looked after, and educated by the husband. But in most cases the wife lives in constant dread of the Tarawad relations of the husband, and her anxiety as to the future of herself and children in case the husband dies without providing for them, places her interests in constant

conflict with those of the Tarawad members; and with the exception of Tarawads whose ample means place them above the possibility of want, the union far from being a source of happiness, occasions constant annoyance and unhappiness.

9. The husband cannot claim the children, whose legal guardian is the Karanavan of the Tarawad, who generally is some remote kinsman, and cannot possibly have the same regard for the welfare of the children as their father, and who in obedience to natural impulse, will be rather inclined to care more for his own children, and those of his nearest relations, than those of his distant kinswoman.

10. At the husband's death, the wife and children though they join in the funeral ceremonies, and observe pollution as sheshagars (*relatives*), cannot generally legally claim any share of his property, or even maintenance. In North Malabar, maintenance is allowed to the wife and children by special usage. Among the Thiyanas of Travancore the sons get a half of the self-acquired property left by the father. In South Travancore too, among the Nanjenad Vellalars, the wife and children similarly get a certain fraction of the father's property $\frac{1}{4}$, $\frac{1}{7}$ or $\frac{1}{10}$. But these usages are confined to particular clearly-defined sections of the Marumakkathayis, and the rest never think of advancing any claim based on such usages. Under the existing law therefore the latter, who form the great majority, can claim as a matter of right no part of the father's property. It is true respectable families always make some provision for the children of the deceased. But even among them the allowance will be hardly in proportion to the property left by the deceased, and therefore barely sufficient to bring up the children in the condition in which their father left them. It is true that in Travancore, the wife gets some nominal gifts, such as a few pieces of cloth, a cot or spittoon of the deceased, and the son sometimes his earring. But these are given more as a matter of ceremony. In the generality of cases in Travancore, wife and children get nothing from the husband's Tarawad relations after his death. The existence of even a few of such cases would be a sufficient ground for legislative interference with a custom, which the moral sense of the Malayalis pronounces to be unnatural. For a change in the law giving the children a share or maintenance, while it will do no harm to those who already do make some provision, will do good to innumerable wives and children, of well-to-do men, whose property now goes to enrich their Tarawad alone.

11. It will be seen from the above,

- (a) that the existing practice as to marriage among Malayalis, Sambandham, has no religious significance in it,
- (b) that it is not necessarily followed in all cases by cohabitation as husband and wife,
- (c) that in those cases in which it is, it is the cause of constant anxiety and unhappiness to all parties concerned,
- (d) that the union may be dissolved at any time by the will of either party. Indeed even the fact of its occurrence is too often denied,
- (e) that adultery with the wife is not a criminal offence,
- (f) that the person who naturally has most concern for the children, i. e. the father, has no right of guardianship, which is generally possessed by some re-

note kinsman of the mother, whose regard is based on power and association alone, and not on natural affection,

(g) and that at the death of the father how muchsoever he may have acquired, no Malayali except a few excepted and clearly defined sections, can claim any part of such acquisition as a matter of right. These are the legal consequences of marriage among Malayalis.

12. I proceed next to consider the defects of the custom above detailed, and the state of public feeling with regard to it at the present day.

13. If woman was created to serve as man's helpmate, and the union of the two was intended to promote the happiness of both, and the careful nurture of the rising generation, the Malayali system of marriage not only fails in accomplishing these objects, but defeats them. It must be distinctly understood that I do not mean to assert that respectable Malayalees treat their wives as the customary law allows them to do. The fact however is that not a few take advantage of it, and I am speaking only of the custom which allows such license. There can be no doubt that conjugal affection, i. e. the mutual love of man and woman as husband and wife, strengthens the educated affection arising from constant association and the exercise of power. The relation between father and son will therefore be naturally stronger than that between the father and his sister's son. The law therefore which ignores the former relation, and substitutes for it the weaker tie, is deficient in the factor most conducive to human happiness, and the advancement of the rising generation. The instinctive feeling of animals, the usage of all civilized nations known to history, and even the feeling of enlightened Malayalis all point to the soundness of this view.

14. Considering its importance, it is evident that the sanctity of this union ought to be guarded by every possible sanction, and ought not to depend for its permanence on the mere caprice of either of the parties. Every means therefore ought to be welcome which can help to secure permanence to the conjugal union, and check capricious dissolution, consistently with the happiness of the married couple. Some contend that the existing system by keeping the wife in constant dread of divorce, has an advantage over other systems. No doubt, such dread is beneficial to society in the case of ill-behaved women. But the law is evidently productive of evil in the case of husbands who want to put away grown-up women, from the worst of motives. Public opinion has been found too weak to check this practice in too many cases. The law therefore, while it works some good, is also productive of much evil, and if some measure can obviate the evil and at the same time secure the good, surely that must be adopted, and I think such an arrangement is not impossible.

15. Under the present law, even the fact of marriage may be denied with impunity, the union beginning in not a few cases even without the formal present of clothes. Even as to the cloth-giving ceremony, a formal deed of marriage duly attested by respectable villagers and registered as other instruments under the Registration Act, will give additional security to the union. This will give due publicity to it, and will make it impossible afterwards to deny the fact of marriage. If similar publicity can be insisted on, for a dissolution of the union, capricious divorces will be effectually checked. The opinion of enlightened Malayalis is decidedly in favour of securing some such safe-guard to their marriage-union.

16. Apart from the obligation that the change will impose upon the husband, the fact of marriage could not be disputed in charges of adultery, which, it is the unanimous wish of all Malayalis, ought to be made a criminal offence. Some say that in some parts of Malabar adultery is savagely avenged: and in fact many murders have been committed by people having been compelled to take the law into their own hands. This, far from being a circumstance against the necessity of the change, is a strong argument in favour of it, for it shows that the change while it will do no harm, would be in perfect harmony with the moral sense of the public, and will obviate the necessity for private vengeance.

17. As the object of the union is to secure the happiness of husband and wife and the due nurture of children, though all possible safe-guard should be provided against capricious divorces, yet in cases of a mutual desire to separate, owing to incompatibility of temper or of proved adultery, it would lead to the unhappiness of the married couple if they are compelled to continue cohabitation. The Hindu Law, it is true, does not allow divorce in either case, because in the former case it would be against its policy to allow the parties even to think of disagreement, the wife being always bound to yield; such however is not consistent with modern notions of an independent individuality in the wife, and all systems of modern law do allow divorce in other cases than adultery. Divorce by mutual consent may be sometimes conducive to the happiness of both parties. To prevent a frivolous exercise of it, it would be enough to deprive the parties of mutual claims on each other, and as the children already born ought not to suffer owing to the disagreement of the parents, the dissolution ought not to affect their rights. A conviction for adultery may be made to stand on the same ground as dissolution by consent of both parties.

18. Next as to the guardianship of the children, as already observed natural affection points to the father as the fittest person to look after his children, fitter in every respect, than a remote or even very near, kinsman of the mother. I have already pointed out that in the case of the father, natural affection supplies an additional safe-guard to the due exercise of the functions of guardianship, apart from those of association and "power," which exist in the case of the Karanavan. It is said that the mother, and mother's relations are the fittest persons for guardianship. Of course to those who think it unnatural for grown-up and married daughters to separate from the company of their mothers, it may seem strange to give the guardianship of children to their father. But those who think that woman was created as man's helpmate, that as such she has certain duties to perform by keeping constant company with her husband, and not be merely frequently visited by him, and that no one can have such care for children as he who begets them, I say these, will be of a contrary opinion. It is hardly too much to say that the opposite view entirely ignores conjugal cohabitation, and thus strikes at the root of the main object of marriage, and the theory of civilized nations, that the wife is the husband's better half which is taught even by our great national literary work (പാതിയും മനുഷ്യകൾ ഭാര്യ എന്നറിഞ്ഞാലും മെലിനിപരെ ഭാര്യ വലിയ സഖിയെല്ലോ)*

19. In connection with this question, the high authority of Manu has been invoked to support the mother's right. It is said that Manu says that the soil is more important than the seed. It is a sufficient answer to this to say that the same law-giver most distinctly recognised the father, and not the mother, as the source of family relationship and gave the right of guardianship to the former.

* NOTE.—"Know ye that the wife is the half of man: oh king! a wife is a great help-mate."

20. It has again been alleged that the past generations of the Nair community were remarkable for their spirit of independance and a feeling of fellowship, and that all this was due to the government by karanavans. That the Nairs were so distinguished, and that no few of them distinguish themselves now, is undisputed. There has also been a feeling of fellowship, or clanship, which has commanded the admiration of European visitors. But this could in justice be no more ascribed to the rule of a karanavan, than the Hanseatic league or the Heptarchy of Mediæval Europe. The same martial spirit and union, and perhaps to a higher degree, prevailed among the Rajputs, and yet they were utter strangers to karanavanship.

21. It is again said that the numerous members under the common Tarawad roof constitute a school for a training in sympathy and brotherhood. This is to a certain extent true, especially in the case of Tarawads possessing extensive property. But it is difficult to understand why the Tarawad alone should have such a monopoly of training in preference to the paternal roof.

22. It is no unusual sight in Travancore to see children, who were brought up in good circumstances by a hard-working father, literally neglected by the karanavan after the father's death. It is a well-known fact that most Malayails, whose karanavans are distant kinsmen, owe their education to their fathers.

23. I come next to the question of maintenance of the wife and children, and the absence of any right in them to claim any part of the father's earnings. That a man who begets children should be under a legal obligation to maintain them could be hardly disputed as a maxim of justice and sound policy. No man is under an obligation to marry. On the contrary public policy requires that he should not do so until he is in a position to make some provision for his children. For, otherwise by increasing the number of mouths to be fed, he by his own voluntary act increases the demands on the existing food-supply of the community, and therefore to that extent impoverishes it. As the father, more than any one else, is responsible for this multiplication, it can hardly be doubted that the responsibility for making a provision for the children ought to rest primarily on him. This is a dictate of natural law and the rank, position, or caste of the father ought to make no difference in the case. In the simple but forcible language of Sir Arthur Helps "There are few things clearer to the human mind, 'to saint to savage and to sage' than that a father owes duties to his children. The dullest savages have seen that. Even Lacedæmonians, if they put off individual fatherhood, only did so by throwing it on the community. How can a man for a moment, imagine that any difference of rank (a mere earthly arrangement) can absolve him from paternal duties? I am lost in astonishment at the notion. And then imagine a man performing all manner of minor duties neglecting the first one, the while. I always fancy that we may be surrounded by spiritual powers. Now think what a horrible mockery it must seem to them, when they behold a man going to charity dinners, busying himself about flannel for the poor, jabbering about education at public meetings, immersed in different forms and ceremonies of religion, or raging about such things because it is his duty he tells you: and at the door, holding a link, or at that moment bringing home the produce of small thefts in a neighbouring narrow alley, is his own child a pinched-up, haggard, out-cast, cunning-looking, little thing. Throw down man the flannel and the soap and the education and the Popery and Protestantism, and go up that narrow alley and tend your child: do not heap that palpably unjust burden on a world which has enough at all times of its own to

bear. If you cannot find your own child, adopt two others in its place and let your care for them be a sort of sinsuffering. These are indignant words, but not more so than is right and I will not suppress one of them." (Companions of my Solitude. p. 160.)

24. Indeed, the moral obligation is hardly denied by any one. The great majority are in favour of giving the wife and children maintenance out of the earning of the father. Some there are who contend that it is no hardship to the sons as they will get maintenance from their Tarawad. But this is no answer to the questions whether the sons have not a natural claim on the father's property, at least for maintenance. If A has a moral claim on B, it is no answer to say that he may be otherwise provided for by C, a third party. The natural Tarawad may be too poor to provide adequately for the maintenance of the children in question. Further it must be remembered that the appointment of maintenance to the children from the Tarawad amounts to the proportionate impoverishment of the numbers of the latter in consequence of a multiplication for which they are in no way responsible, while it holds out a temptation to multiply with impunity, which is admittedly opposed to public policy.

25. The law of Travancore does not, as it stands at present, give the sons distinctly the right even to claim maintenance. The moral sense of the public is decidedly opposed to this state of things; nay, it even goes to the extent of demanding a certain share of the father's separate acquisition for the wife and sons. As already observed the Thiyars of Travancore do give such half to the wife and children, and the Nanjanad Vellalars give $\frac{1}{4}$, $\frac{1}{7}$ or $\frac{1}{10}$ according to circumstances.

26. The reasons already given for giving maintenance to the sons apply more or less to giving them a legal right at least to a share. There is hardly a respectable Malayali who does not make some such provision for sons. In most alienations which Shêshagârs (*heirs-at-law*) sue to cancel, the ultimate object is to make some provision for the wife and children of the alienor. At the present day various attempts are made by the father to effect this object secretly, although the general moral sense of Malayalis is in favor of making such a provision. There is surely some defect in the law which obliges people to resort to secret disposals in the performance of a duty which the public conscience admits that the father owes to his children. It is the duty of the law to afford facilities for the performance of a duty, the binding force of which is universally felt. For, unless the law interferes and helps with its sanction, the selfish instinct of individuals will raise difficulties in the accomplishment of any object, though its desirability be universally admitted. Permanence to the marriage union and continual cohabitation being secured by registration of marriages, there would be no difficulty in establishing paternity. The law ought to carry such intention into effect by giving the son a definite share of the father's acquisitions such a share as the father himself is likely to have given if alive.

27. Some say that such a law is unnecessary as Malayalis give some property always to the sons. That respectable Malayalis do make such provision especially in the North, I admit. But there are thousands of families which don't do so. If the Law fixes such a share as Malayalis ordinarily give, while on the one hand those who now virtually observe the rule will not be disturbed, it will secure the performance of a similiar duty by the few who would gladly evade it if possible.

28. Some say that as succession to property is closely connected with religion, by prescribing rules for its devolution, the legislature would be interfering with religion. The only religious rites of Malayalis are the observance of pollution and the performance of Shrâdha. I have already remarked that both are performed by Malayalee sons. As to pollution it is always understood that the son observes it. So far therefore as the father is concerned, the son is not outside the pale of religious affinity. How could it possibly be otherwise when, in fact, the Malayalis got their religion from the Hindu sages who always recognize the son as the first and most effective offerer of the funeral cake? There could therefore be no objection to give the son a share of the father's acquisition on the score of religion. Admittedly no religious question is raised when a man disposes of his separate acquisition in his life time. A man may dispose of all his separate acquisition to a christian before he dies, and the Shêshagârs cannot legally question the validity of the act. Why then should religion be invoked if the law does exactly what the owner would have done in the performance of his duty to his sons?

29. Some again contend that the change would be introducing discord and unpleasantness into Tarawads, where they say perfect harmony and good will have always prevailed, and that it would lead to the disruption of Tarawads and ultimately lead to confusion. These arguments have no, doubt, some force in case the Tarawads are to get no share of the self-acquisition. But if, as they admit, the sons are always provided from the self-acquisitions in respectable Tarawads, the giving of a share would be the doing of what each Tarawad thinks it proper to do, and there is no room for discord. As to less generous Tarawads, there could not be more unpleasantness than exists at present, in consequence of frequent attempts of the father to perform his duty to his sons; while on the other hand the fixing of a definite share will make each party to understand what he can expect, and so far would remove some grounds for anxiety. Under the existing law, a Maroomakkathayee who has only distant Shêshagârs, and who has made no provision for children, is under constant anxiety in his last moments. The distant Shêshagâran who is near enough for inheritance gets all, while the persons nearest to his heart have not even a distant right of inheritance. The poor man's death enriches the legal heir and impoverishes his children. Instances are not rare in which Karanavans under the above circumstances, petition the authorities to protect them from their distant Shêshagârs. But the above apprehension of discord and confusion is a little inconsistent with that "sympathy," "perfect good will" and "harmony" which they say exist in Tarawads, in consequence of the exercise of a "benevolent despotism" by the karanavan. It is very strange that the sympathy and good will which can educate itself to look with brotherly feelings on the daughters of most distant cousins, living under the same roof, cannot extend itself to the sons of an elder or younger brother, but should look upon the latter as strangers. All that I ask is that the circle of sympathy and disinterestedness existing in Tarawads which they say envelops itself into "patriotism," should first extend itself to the children, who admittedly stand in a much nearer degree of blood relationship than many other members of the Tarawad. The arguments urged in favour of the joint family system, as a most effective instrument for the cultivation of the family affections, as a fitting school for the responsibilities of public life, and also as obviating the necessity for a poor law, are all sound. They apply, however, to Makkathayam families at least equally as to Maroomakkathayam ones. However that may be, a slight extension of the sphere of the Tarawad sympathies in the right direction, i. e. to

those who are nearest in blood relationship cannot deprive the existing system of its beneficial effects. It must be granted however that the total disinherison of the Tarawad in respect of the father's separate acquisitions, would lead to disunion, unpleasantness, and the gradual extinction of the Tarawad system.

30. It will be too late in the present condition of the world's progress, totally to ignore the individuality of each member of the Tarawad, as those would do who are for appropriating to the Tarawad all the earnings of each member. If sons stand nearest to a man's heart in natural affection, the disallowing them a portion of the earnings, would be withholding to a certain extent the inducement for exertion in the father. The extinction of individuals in the general family system, did have its value in an earlier age of civilization, under the patriarchal system of which the Tarawad is the latest survivor. Under such a system, there was no separate acquisition for each member, and no partition, and the head of the family had despotic power over the other members. But these are inconsistent with modern enlightenment, and they have accordingly been superseded in all enlightened countries, and are being virtually superseded in Malabar with the progress of education. It is said that the Tarawad may engage in joint speculations, and that a joint-stock company of relations would work better than one composed of strangers. This would no doubt be true, if all the members have good business capacity, which unfortunately is not governed by Tarawad relationship. A system that does not recognise individuality is highly detrimental to the growth of enterprise, and the progressive development of the nation.

31. Some contend that a change in the existing law will cause a diffusion and dissipation of wealth, which now accumulates in rich Tarawads, and thus perpetuates aristocratical families. The interests of the community as a whole, i. e. according to the principle of the greatest happiness of the greatest number, which is also cited by those who urge the above reasons, are according to sound principles of political economy promoted by any measure which tends to the diffusion of property rather than to its accumulation in a few hands.

32. Some say that the proposed change will introduce heirship inconsistent with the accepted notions of Hindu Law, by giving for instance to the children of a Brahman, or Kshatria, by a Sudra woman a legal right to the separate acquisition of their father, to which the Brahman relations would be heirs. There are it is true many highly respectable members of the superior castes who look to Sudra families for wives. It might be injudicious to throw any obstacles in the way of such unions. But it is difficult to see why even in such cases the Sudra sons should not get a share of the father's self-acquisitions. The practice now is to make ample provision for them from such earnings and in fixing a share the law will be simply legalizing that practice. The old Hindu Law did give such a share to Sudra sons and such cases of Marumukthayam sons claiming from Makkathayam fathers are not unknown to Malabar Law (see the case reported at p. 238. I. L. R. Madras). It may be said that the passing of the law is unnecessary as in most cases such provisions are made, and in such unions the wife will hardly require a legal sanction. This objection will be fully removed by giving the legal share only to the offspring of registered marriages and making registration optional. In the case of respectable and well-to-do high caste men such registration may not be necessary, and the altered law will not apply to them. But with regard to others, the heirs will not be deprived

of anything more than what under the existing Hindu Law, the deceased may himself dispose of by gift, alienation, or will. Then as to the principle of taking off a share of the self acquisition of a high caste man to be given to one who is a stranger under the Hindu Law, it rests on the same ground on which I have already rested the right to bare maintenance.

33. Some apprehend confusion and increase of litigation if makkathayam is brought into existence side by side with marumakkathayam, and they point to the litigation in Mappilla families in Malabar. This however is not felt in Travancore among Nanjanad Vellalars and Thiyaars, who have a peculiar usage as already stated, and as to Malabar it is a question whether the increase of litigation attributable to the co-existence of the two rules of inheritance, is more than the increase due to alienations by Malayalis to make provisions for sons. If this question is answerable in the negative, then the change in the law will be productive of some good and no harm.

34. One difficulty that has been suggested, that namely of determining the extent of a Karanavan's self acquisition for the purpose of division is no doubt a real difficulty. The amount of litigation is great even now, notwithstanding the presumption in favour of Karanavan's acquisitions being all made from Tarawad funds. It will be more when it becomes necessary at the death of each Karanavan to ascertain the exact amount of his self acquisition for the purpose of division. To apply the existing Law to registered marriages, would be virtually denying a share to the sons, for it is very rarely that with the burden of proof on them the sons can make out self acquisition. On the other hand to create a general artificial presumption opposed to the existing one, would not only be an encroachment on vested rights, but would also be unreasonable as a Karanavan being in the Tarawad and working with the other members of it, ought in fairness to be assumed to have made all accessions by the joint exertions of all. The rule is one of general justice applicable to all trustees and also to managing members under the Hindu Law.

35. It is hardly possible to propose an unobjectionable measure that can fully obviate this difficulty. It may however be suggested that as the question generally arises only between the sheshagars of Sudra fathers and their sons, and as the object of the altered law will be to promote cohabitation between the Karanavan and his wife and children, it would be only fair that the latter too contributed towards the increase, quite as much as the sheshagars where all live together. In such cases therefore it would not be a violent presumption to hold that the wife and children and the sheshagars equally co-operated with the father in making the acquisition in the case of registered marriages. In such cases therefore the principle of equal division of the Karanavan's acquisition between his Tarawad, and himself and children, may be applied. This half may be considered as the Karanavan's separate acquisition for division between sheshagars and sons. In the case of registered marriages, it would be the interest of sheshagars to make all really Tarawad acquisitions in the names of others than the Karanavan, as they know that otherwise they would have to divide them with the sons. But no acquisition made under the existing law, where cohabitation has not begun under a registered marriage, and on which therefore the existing legal presumption has already operated, should be affected by the above rule.

36. I have thus considered the defects of the existing system of marriage, and its consequences to the wife and children. A change of the marriage system

is demanded by educated Malayalis and would be welcome by all classes of marumakkathayees. The obligation of making some provision for wife and children from the earnings of the husband is universally felt, and a legal recognition of such obligation would, far from increasing litigation, diminish it by removing one of its main sources. I have also considered the objections that I have seen and heard urged by some against a change. Such objections however seem to me to have reference to the total disinherison of the Tarawad in respect of self acquisition, and the consequent gradual destruction of the Tarawad system. But I do not apprehend any serious opposition to a measure which without going to that extent may give the children a substantial share of the self acquisition of the father. There may be some opposition even to this limited change. But such opposition can come only from an interested and insignificant minority, and should have no weight in an enlarged view of public policy. Nevertheless, to be on the safe side, legislation on the subject may begin with a permissive Act. There can be no reasonable opposition to such a procedure.

37. I next proceed to complete the discussion of the 4th division of the subject, i.e., on what lines I would propose a change and on what grounds. It will be seen that under the preceding head, viz., the defects of the existing system, I have also discussed most of the changes that I would propose, and I have done so as I thought it best to place the proposed remedy side by side within the diagnosis of the disease. Before summing up the changes I would propose, I shall state shortly the principles that we ought to follow in legislating on the subject.

38. (1) A change in the law of marriage, and devolution of separate acquisition ought to be made agreeably to the moral sense of the community.

(2) Provision ought to be made to secure permanence to the marriage union and to ensure its continuance.

(3) The change should go no further than is required by the altered moral sense of the community.

(4) The change ought to be in some known direction.

(5) The provision for sons, while it satisfies a felt necessity, ought not to place inducements to idleness, and should promote a healthy diffusion of property as far as possible.

(6) Some arrangement ought to be made which will enable the father to remedy the inequalities of the law, as, otherwise, the attributes of ownership would not be complete.

(7) Though the change may be in the right direction and based on sound principles, yet it is safer, to begin legislation as a tentative measure, and pass only a permissive law.

39. In the first place I have already stated that the necessity for a permanence in the marriage law is universally felt, some durable evidence as to the fact of marriage, and a guarantee against capricious dissolution. Registration of marriages would secure a permanent record of the union, and as important consequences are to follow that union, it is necessary that the event should be placed beyond the possibility of a denial. It is resorted to in civilized countries, and would be highly useful for purposes of Government. It is true the people are not accustomed to it now, but when they see that it is harmless while it is productive of much good

they will become as accustomed to it as to the taking of the Census. It is true that marriage under the Hindu Law is never denied though there is no marriage register. If marriages among Malayalis were equally free from repudiation, there would be no necessity for registration. But unfortunately repudiation is by no means uncommon. The absence of the religious element is another reason for resorting to all available means to secure evidence of the union. It would be desirable to enact that marriage coming under the Act ought to be registered under the Registration Act, the deed being drawn up in the presence of the leading villagers and attested by the local officer. A registered marriage may be presumed to continue until a dissolution deed is similarly registered.

40. The moral obligation to provide for wife and sons is universally felt. I have already discussed the grounds on which maintenance and a share from the self-acquisition ought to be provided.

41. Granting that the above changes are felt as a moral necessity, it would be hardly consistent to object to them on the ground that the law ought not to be changed to suit the convenience of particular individuals, or even particular sections of the community, as the provisions of the law are all based on public policy. Those who contend this are, no doubt, right in saying that the law is based on public policy, but they ignore the fact that public policy changes with progress. The policy of the ancient Hindus gave the sanction of marriage almost to every casual union between man and woman, and there were 8 sorts of marriages as they called it. This policy changed with progress, and at the present day we have practically only two sorts of marriage, the Bramham and Asooram. It was the policy of the ancient Hindu Law to ignore self-acquisition and to give the father absolute power to divide ancestral property as he liked. The gradual recognition of individual, as distinguished from corporate, existence necessitated a change. The Hindu Sages wisely provided "good usage" (Sadâchâram) as one of the sources of law. The function of the sage is now performed by the Legislative, which in the exercise of its wisdom and foresight ought to make such changes in the law as are called for by the moral needs of the community.

42. But, thirdly, no change ought to be made, however good in the abstract, unless demanded by Sadâchâram and the moral needs of the community. Permanence should be secured to the marriage union, and the wife and sons must get maintenance and a share. To secure the former, it is not necessary to go through a preliminary investigation first before the Registrar, and then before the District Judge, or to solemnize the marriage before the District Registrar, or to carry on a divorce suit in public court at the instance of either party. Such procedure will be quite antagonistic to the feelings of a community whose females, unlike European ladies, would consider it a disgrace even to appear to give evidence in a court of justice. These feelings ought to be respected as an interference with them is not called for by the requirements of the case. Dissolution, if both parties disagree, would be desirable, but this may be evidenced by a deed, similarly executed as a deed of marriage and similarly registered. A conviction for adultery may be made another ground for dissolution, at the option of the parties. In the two cases of dissolution, provided for the convenience and comfort of the husband and wife, the children, if any, ought not to be made to suffer. They must get their share in any case. To allow dissolution in other cases would be to encourage conjugal disunion, and will prove detrimental

to the growth and education of the rising generation, which are the main objects of the proposed change.

43. Again the proposal to allow marriage beyond a certain degree of blood-relationship, but within degrees prohibited under the existing customary law, is another uncalled for and highly prejudicial interference. The existing practice in these respects is in no way inconsistent with the proposed improvement. In these respects we can aim only at improvement and not re-construction. As Sir Arthur Helps says "We are apt to imagine for ourselves a *tabula rasa* in any department of human affairs that we wish to meddle with, and we think that it will be so pleasant to inscribe, as it were upon blank leaves what we wish to indite. The misfortune, however is that there remains hardly anything in human life which can be begun again in this trenchant manner. As an example it may be noticed that several socialistic schemes for equalizing conditions would require a total demolition of most of the buildings which are at present on the earth. Now these buildings represent the work of ages, and the humble improver does not by any means desire to demolish them" (Thoughts upon Government page 155.) What we are is due mostly to what we have been, and though we are not always to be what we are, yet it would be unwise to ignore what we are in deciding what we shall be. I would, therefore, strongly object to the introduction of the provisions of the Bramho and Parsi Marriages Acts among Malayalis. The break up of the Tarawad system which would be the necessary consequence of disinheriting it of all self-acquisition, would be also objectionable on the same grounds. This too is not called for by the necessities of the case, and would be highly resented by the great majority of the Malayalis.

45. 4thly.—The question next arises what provisions ought to be made as to cases of cruelty, insanity, barrenness, and so forth. If any provision on these points is necessary, we ought rather to resort to a system of law well-known to the people, and daily observed and administered before them, and which has had such a salutary effect in promoting the purity and growth of families, rather than one existing under a foreign social organization, the beneficial consequences of which, in these respects, are at best doubtful. I would, therefore, propose that the legal consequences of marriage between husband and wife not specially provided in the act, shall be as under the Hindu Law.

46. I next come to the fifth of the principles noted in para 38 viz., on what data the sons' share should be fixed. I have already stated that the sons ought to get only a share and not the whole. The practice prevailing now among marumakkathayees is one of the data on which to fix the share. Many give more than half, while others give much less. Among the Thâyars of middle Travancore, one half is the fraction and this on the ground that the father on the one hand, and the mother and children on the other, must be presumed to have contributed in equal shares to the acquisition. In case of cohabitation, this would, no doubt, be an intelligible principle on which to proceed. I think it would be generally in accordance with public feeling to fix the proportion of children's share at one half of the father's separate acquisition.

47. A distribution of the property of a Malayali between the children and his Tarawad would tend to a greater diffusion of property than if it went to one of the parties alone, and that is for the public good, while in that respect the devolu-

tion of the whole to children alone, is open to the same objection as its accumulation in the Tarawad. The confinement of property now within the Tarawad with all the existing restraints on alienation, too often prevents all improvement, on the principle that "what is everybody's is nobody's." Any arrangement that will increase the incentives to individual exertion would be conducive to public good. It is not sound policy to bequeath large fortunes to one set of heirs, because such bequests, while they withdraw property from hands which would have made a better use of them also increase the inducements to idleness on the part of the recipients. The distribution of a man's self acquisition between the shêshâgars and children will tend far to counteract this tendency and would, therefore, be productive of some public good.

48. I come next to the 6th principle i.e. that of testamentary disposition. The existence of this power among the Malayalis as among the other Hindus has been treated as indisputable in recent decisions of the Madras High Court. In the first place the notion of ownership would not be complete without this power. It would be rather inconsistent to allow a man to dispose of property by gift, or alienation; and at the same time to refuse the power of making an arrangement to be effected after death.

In the next place, the exercise of the power would be often beneficial to remedy the inequalities incidental to a division by the law, without a knowledge of the merits of each object which could be always possessed by the testator. Some sons may not deserve a share at all, while some may deserve more. Thirdly there may be strangers whose services, especially in the last moments, may have proved more valuable than sons or shêshâgars, and who therefore deserved recompense for such services. I am therefore, of opinion that testamentary power should be allowed to all Malayalis to the same extent as power of alienation *inter vivos*.

49. I come now to the last point, viz., whether the legislation must be made generally applicable to all Malayali marriages or only permissive i.e. attaching the marital consequences as to permanency, divorce, maintenance, adultery, and inheritance only to such marriages as the parties choose to register under the Act? If all Malayalis are prepared to welcome the change, there would be no necessity to resort to permissive legislation. If the law is made compulsory on all, it is probable that many high caste men, who now require no compulsion to make ample provision for children, will rather forego such unions. Malayali women will be the sufferers. Again the division of the acquisitions of existing Karanavars in aristocratic Tarawads at present will give rise to some discontent and anxiety in Malabar, whereas that unpleasant consequence may be most effectually averted by allowing the law to work itself as education progresses and as Malayali men and women come gradually to understand its beneficial tendency. It is true that people will be gradually reconciled to the law as they see that it simply enforces what every good Malayali would do. But even this could not be understood at once. It will be the work of time. Last and not least of all, in interfering with established customs, however good and necessary such interference may be, it is wise to proceed by cautious steps, especially when such procedure cannot be productive of evil.

51. It is now for me to state what, according to the above views, is the legislation I would propose. I would propose a bill like the following:

MALABAR MARRIAGE BILL.

1. "Marriage" means the union of man and woman, intended to be for life (unless dissolved as provided in this Act), independently of any ceremonies attending its celebration.

2. Marriage of a Marumakkathayam woman with a Marumakkatayam, or Makka-thayam, husband may be evidenced by a deed attested by leading villagers and a local officer (not lower in rank than an Adhigari) and such deed may be registered under the Registration Act.

3. Such marriages shall be presumed to continue until dissolution by mutual consent of parties, embodied in a deed executed and registered as above: or at the option of either party, by a similar deed, in case of conviction for the adultery of the husband or the wife.

4. Except as provided in the preceding section, during continuance of the marriage, all marital rights and duties of husband and wife, including guardianship and maintenance, shall be governed by the Hindu Law.

5. The children born during the continuance of all marriages registered under this Act shall in all cases (including cases of dissolution under section 3) be entitled on the death of their father to one half of the separate acquisition left by the father.

Explanation.—In case of registered marriages under which cohabitation has followed under this Act, of all accessions to Tarawad property from date of marriage made by the husband as Karanavan, not proved to have been made from separate funds, one half shall be presumed to be his separate acquisition for the purpose of division under this section.

6. Every Marumakkatayee shall have the testamentary power to the same extent as power of alienation *inter vivos*.

7. The existing Marumakkathayam law shall apply to all other matters not expressly provided in this Act.

8. Marriages contracted before this Act may be registered under it, and its provisions shall apply only to registered marriages.

(Signed) A. GOVINDA PILLAY.

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Answers to Interrogatories

BY

M.R.Ry. E. K. KRISHNAN AVARGAL, B.L.,

Sub-Judge, South Malabar,

CALICUT.

NOTE.—Marumakkathâyam Tîyan of North Malabar.

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Answers.

1. Yes.
2. No, but I have heard that in some parts of Cochin and Travancore a Nayar woman is permitted to consort with men of an inferior sub-division of caste.
3. In the instance mentioned, viz, between a *Chârna* Nayar and *Sudra* woman and *vice versa*, *Sambandham* is usually not permitted from pure sentimental objection, or pride of caste. *Chârna* Nayars, of whom one class known as *Parisha Menon* are hereditary servants of the Zamorin, are generally *adima* to some ruling family and do not acknowledge as their equals *Sudras*, so called, who are *adima* to Nambûdiri Illams. Their masters are rather prone to encourage this rivalry.
4. Yes. The delinquents are not invited to festival, or social, gatherings, and not permitted to enter the cook-room.
5. I do not know.
6. The *Kottapuzha*, or Murât River. The principal ferry to cross it in olden times was *Thorashêri* and the river itself was known by that name.
- 7 and 8. As a general rule Nayars of South Malabar are not permitted to form *Sambandham* with Nayar women of North Malabar. But Nayars of North Malabar are welcome *Sambandhakarans* to South Malabar Nayar women, provided they are not inferior in caste. I can assign no reason for the first mentioned prohibition except rigidity of caste rules observed in North Malabar, and possibly hostility between the former rulers of North and South Malabars, who did not permit inter-marriages amongst their subjects from political reasons.
9. No. But on plea of pilgrimage the prohibition is sometimes overlooked.
10. The prohibition as already stated had its origin in the rivalry of rulers in North Malabar and South Malabar, viz., the Kolathiri and Konâthiri (Zamorin).
11. *Tâlikettu* is a regular marriage ceremony, except that the person selected to tie the *Tali* is not necessarily the husband of the girl. Mr. Logan's description of the ceremony at pages 134 and 135 of his work appears to me correct.
12. An *Enangan* (fellow-caste man) or a man of higher caste than the bride should tie the *Tâli*. He is called *Manavâlan* (bridegroom). Amongst North Malabar Nayars the *Tâli* is invariably tied by a Brahman.
13. Yes, in case it is tied by *Manavâlan* who is not an *Enangan*.
14. No. By custom he has not the right. I can only explain it by the surmise that Brahmans, who colonised the country, successfully tried to abolish regular marriage for their selfish ends, that is to say to permit of concubinage between younger members of Illams, who are not permitted to marry caste wives, and the Nayar women. The miscegenation I believe is the very foundation of Marumakkatâyam rule, though in an ethnological point of view it has vastly improved the Malayali races.
15. None whatever.
16. No. Amongst Tiyans however the *Enangan* who ties the *tâli* is the betrothed husband, and he is never displaced unless divorce takes place.

17. Yes, I believe when the bridegroom is an *Enangan*.

18. Yes, when the family is very poor and cannot afford to defray the expenses of a Kalyānam. Amongst Tiyan of South Malabar maternal aunt ties it, amongst those of North Malabar the eldest female of the girl's Tarawad ties it.

19. (a) Yes.

(b) I believe so.

20. Yes, in most cases. The *Gandharva* form also prevails in South Malabar. Some formalities are observed, but they differ very much in different localities. The simplest form is for the bridegroom to go to the bride's house accompanied by some male friends, and after giving her some pecuniary present, *Sambandham* is consummated.

21. I do not know.

22. (a) Not the same.

(b) In North Malabar *Sambandham* is of two kinds *Pariamchēyga* (പരിയച്ചേയ്ക) and *Pudamuri* (പുദമുരി). In the former form which is more akin to South Malabar *Sambandham*, the bride is not taken home by the bridegroom. In the latter case she is. There is a regular banquet given to the united guests and *Dakshina* is distributed amongst Brahmans by the bridegroom if he is a man of means, in *Pudamuri* amongst the Nayars of North Malabar.

(c) I do not know.

23. No. The practice once prevailed in South Malabar about Walluvanād Taluk, and even there rarely. It is now repudiated. It is considered a disgrace for a woman to have more than one *Sambandhakāran*.

24. I do not know.

25. Legally speaking she can terminate *Sambandham*. But practically she seldom does so without the consent of her Karanavans. In this respect a woman is accorded greater liberty in South Malabar. I never heard of a Nayar woman of North Malabar dismissing her husband, but in South Malabar, I have heard of women coolly dismissing their *Sambandhakaran* and forming alliances with other and more eligible *Sambandhakaran*.

26. I am not aware of any formality necessary for dissolution of connection amongst the Nayars of South Malabar. Amongst *Marumakkatayam* Tiyan the custom is for the husband to send a message of divorce by the *Nadukāran* (middleman) who negotiated the *Sambandham*. It is called *Nyāyam koduka* (giving her rights). A Tiyan woman is seldom allowed the liberty of putting an end to *Sambandham* without the consent of her Karanavan.

27. Yes.

28. None whatever.

29. In her husband's house in North Malabar, and mostly in her own house in South Malabar.

30. No.

31. Yes.

32. Changing *Sambandham* is the exception. Living together as man and wife till death is the rule, certainly in North Malabar.

33. He does. The Tarawad's liability to provide maintenance to the wife and children of a North Malabar Nayar living with him in the Tarawad house, has been recognised by a judicial decision.

34. (a) None except maintenance

(b) They do.

(c) Yes.

35. I know many who do work for their Tarawad, and others who try to earn something for themselves. I think the general practice is for Anandaravans to earn something for himself. A Karanavan more often employs *Kāriastans* (agents) to manage family property.

36. Very few Anandaravans hand over their earnings to their Karanavan, and many support their wife and children with them.

37. *Puthrāvākāsam* is a meaningless word, and no son of a *Marumakkatāyam* man has any right (*avakāsam*) to his property that is not given to him in his lifetime or bequeathed by will. Property given by father is generally called *Puthrāvākāsam* property. The moral duty of providing for one's offspring is better understood and practised in North Malabar. Hence the coinage of this word there. This practice is coming into vogue in South Malabar.

38. In my opinion there is no valid objection to providing a permissive Marriage Law for Nayars. Its tendency will no doubt be to destroy Tarawad system by diverting self-acquisition of individual members from its grasp, but the happiness of the greatest number of Malayalis is not, in my opinion, bound up with the maintenance of Tarawad system.

39. I would retain the customary form of marriage amongst Nayars, and make registration compulsory if legal sanction is to be accorded to it. I see no sufficient ground for substituting the form subjoined to the question. I shall dispense with the presence of Marriage Registrar. I would suggest that a declaration of marriage, in an approved form, be signed by the bridegroom and bride, and countersigned by the guardian of the bride if she is below 18 years of age, and be attested by two or more witnesses. Let the declaration be filed in the Registrar's office in the same manner as declaration of naturalization is filed in appointed offices in the United States of America. If the Registrar is a fellow-casteman and invited to the marriage ceremony, he may then and there attest the declaration if asked to do so. I would certainly object to a civil marriage being solemnised before a Registrar of assurance in his office, seeing that he may be of any caste or creed.

40. The conditions of valid marriage mentioned in the question do differ from the *Sambandham* recognised in practice. In the first point, under the custom now prevailing, a man may have any number of *Sambandham* wives. Can a man having a wife of that status be competent to marry another woman in legal form would be a question? I would never permit him. But *Sambandham* is a very elastic word. Every fugitive connection is not a *Sambandham*. When a man has a recognised *Sambandham* wife he shall marry her, and nobody else, unless he has put her away for sufficient reasons. This I conceive would be one of the difficulties of the scheme.

No. 2. The age question presents this anomaly. The Bill enacts 14 as the age of marriage and therefore of consent, whereas the Imperial Legislature has drawn it at 12 years. However it will work no hardship in Malabar. Amongst the higher classes, infant marriage is almost unknown.

The other conditions do not conflict with Sambandham conditions.

41. I consider a provision for divorce an indispensable part of the proposed law. I would certainly hesitate to invest courts with matrimonial jurisdiction over persons solemnising marriage under it. It may be delegated to a caste Panchayat composed of persons chosen by each party. According to the principles of English law of divorce, adultery on the part of wife ought to be a sufficient ground for a decree *nisi* if the suit is by the husband; adultery and cruelty, or hopeless disease ought to be the ground for dissolution of marriage if the suit is by the wife. In this connection I must say that I would tolerate no Mrs. Jackson of Clitheroe abduction case notoriety, amongst Malayali ladies. I would give a *decree nisi* against a woman who persistently refused to submit to marital rights of her husband. I would also make change of religion a ground for divorce.

42. Adultery on the part of wife is the chief ground, neglect and cruelty in the part of husband are also grounds.

43. They ought to be maintained by the husband.

44. I have no objection to make to these provisions.

45. Yes.

CALICUT,
8th May, 1891.

E. K. KRISHNAN,
Sub-Judge.

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Answers to Interrogatories
BY
M.R.Ry. C. GOPALAN NAIR AVARGAL,
Sub-Judge, North Malabar,
TELLICHERRY.

Answers.

1. Yes; he can.

2. No.

3. The general rule is that no Nair can have Sambandham with a woman whom he cannot touch without pollution, nor a man of a lower division with a woman of a higher division. No Nair—man or woman—of the *Chârnatha* (ചാർനത) caste can form Sambandham with a woman or man of the *Sudra* or any other recognised division of caste. A *Sudra* Nair cannot also have Sambandham with a *Chârnatha* woman. Even among the several recognised divisions of castes there is any number of subdivisions, and these do not always inter-marry.

4. It does. The man or woman of the higher division, who forms such connection with one of a lower division, forfeits his or her caste.

5. Not that I am aware of.

6. The proper recognised boundary is *Thorashêri puzha* (river) dividing the old dominions of the Zamorin from those of the *Kolathiri* or Chirakkal Rajah. *Korapuzha* is now spoken of as such boundary line, but it's correctness may be doubted; and, so far as I can understand, the old Kurumbranâd Taluk, lying between *Thorshêri puzha* and *Korapuzha* is a part of South Malabar. This view will receive confirmation from the fact that the old Pynad Munsiff, which covered the old Kurumbranâd Taluk, was till some time back a part of the Zillah of Calicut.

7. Nairs of North Malabar do form Sambandham with those of South Malabar, but the reverse is not often the case, though instances may be quoted.

8. The Nairs of North Malabar do not, as a rule, allow women of their district, to have Sambandham with men of South Malabar. It is difficult to give the reason unless we are to suppose that the Rajah of Kolathiri, who was the king of the best part of North Malabar, was jealous of any connections between women of his country and the subjects of the Zamorin.

9. The Nair women on the North of *Thorashêri* river do not as a rule, cross to it's South, and recently people of the old Kurumbranâd Taluk have also made a rule not to cross to the North of *Thorashêri* or to the South of *Korapuzha*; but I do not think that the Kurumbranâd rule is so stringent or absolute.

10. The prohibition is, I believe, due to the difference of allegiance between the subjects of Kolathiri and the Zamorin, and the consequent difficulty of travel and protection of the people of the one country in the other. Somewhat similar prohibition had also, I am told, existed, for the same reason, in the several states of Germany which were subject to different Governments.

11. *Tâli Kettu Kalyân* is a mimicry of the *Mangalia Sutra*, or the *Tâli* tying ceremony of the Tamilians, and the Telugus, probably introduced to assuage the feelings of the Malabar ladies for the absence of a regular marriage. A farce of most of the ceremonies among the Tamilians and the Telugus, on such occasions, is also gone through in *Tâli Kettu Kalyanam*.

12. In the case of the females of the Rajahs, the *Koyi Pandārams*, or the Rajahs of Beypore, or Cranganore, tie the Tāli, and also the Nambudiris in the case of the Kovalagam of Cochin, and of the *manas* (Nambudiri families) in the Payanur Grāmam. In the case of some aristocratic families, *Thirumalpāds* discharge the same office. Nedunngādis tie the Tāli for the Chārnatha (ചാന്നാട്ട) people. In the case of all others, a man of the same Enangan (എണങ്ങൻ) or Kiriyaṭhil (കിരിയത്തിൽ) caste, does the same. The person so tying the Tāli, is called *Manālan* (മാനാലൻ) or *Manālapilla* (മാനാലപ്പിള്ള).

13. Yes; in some cases it is so.

14. Certainly not, except perhaps in the cases of *Koyi Pandārams*, who tie the Tāli to the Ranis of the royal family of Travancore, and the Numbudiris who do the same to the Ranis of Cochin, and the ladies of the *manas* of the Payanor Grāmam.

The reason for the man tying the Tāli not thereby obtaining a right to cohabit with the girl is evidently the fact of the marriage being not in itself a binding ceremony.

15. Certainly not; while, on the other hand, if such connection can be effected it is considered the most becoming.

16 I have.

17. When the person, who ties the Tāli, is a Nair, or Enangan എണങ്ങൻ, there is the same pollution as if the Sambandhakāran of the girl were dead.

18 When the people are poor, the Tāli, I am told, is sometimes tied by the mother, or the Embrandiri of the temple before which the ceremony is performed.

19. As the Tāli Kettu Kalyanam is the mimicry of the proper Hindu marriage, it follows, as a matter of course, that every Marumakkatāyam girl must undergo that ceremony before reaching the age of puberty, lest she lose her caste.

I can however see nothing but the custom in justification of this.

20. Yes. After Tāli Kettu Kalyanam, before a girl can consort with a man, there must be between them the ceremony called Pudamuri, or Kidakkora.

21 The same formalities are not always observed, though an attempt is made at times.

22. In North Malabar the ceremony of Sambandham is called *Pudamuri*, and the husband gives clothes to the woman on the night of the wedding in the presence of a large assembly. In South Malabar the ceremony is called *Kidakkora*, or *Kidakkorakalyānam* and, instead of clothes as in North Malabar, the husband gives betel leaves and nuts to the girl. The *Kidakkorakalyānam* in the Palghat Taluk is celebrated with nearly as much pomp and show as the Pudamuri in North Malabar, but I do not think that the other Taluks of South Malabar are equally particular.

23. Not now at all events; nor did such a practice ever exist in any respectable family. I have however heard cases some years back, but they rather prove the exception than the rule. The practice was always looked upon with abhorrence.

24. I do not think it is prohibited in so many words, nor can I quote any

authority for such prohibition, as there is no written law on such usages.

25. She can.

26. No sort of formality is now observed in dissolving the connection, unless it be the giving of notice to the members of the girl's family. Till a few years ago, a custom had prevailed in the Palghat Taluk, of the husband giving the girl a couple of gold fanams, when notice of dissolution was given; but I am not sure whether there was a similar rule in the other Taluks of Malabar.

27. Yes, just as a Tamil or Telugu Brahmin can have more than one wife at a time.

28. Though no respectable man would care to have more than one Sambandham at a time, there is nothing to prevent him from having more than one, if he so chooses.

29. In South Malabar, except perhaps in the Palghat Taluk, the woman usually sleeps and takes her meals in her own house, except when she is on a visit, or *virunnu*, to her husband's.

30. In North Malabar she usually lives in her husband's (or Sambandhakāran's) house.

31. According to recognised custom, a man is not bound to support the woman and her children during Sambandham when they live, not under his immediate protection, but in their own house or Tarawad; but he is bound to do so whenever they live in his house or under his immediate protection. There has been a Judicial decision to this effect in the case of a well-known family in North Malabar.

32. The rule certainly is not to change Sambandham frequently, but for one man and one woman to cleave together for life. Several instances to the contrary may however be quoted.

33. He does.

34. Yes; if Anandiravar work for the Tarawad, the Karanavan, in addition to feeding and clothing him, also finds enough for the clothes and oil for his wife and children. He also feeds the Anandiravan's wife and children when living in the Tarawad.

Yes.

Yes.

35. Till very recently they generally worked for the Tarawad, but a tendency in the other direction may now be traced.

36. There is no invariable rule. It depends upon individual pleasure and benefit, though the tendency now is for each man to keep his own earnings with himself, so that he may pass them over to his near blood-relations of the Tarawad or to his wife and children, as he likes.

37. Yes. Putrāvākāsam gifts are well-known among Nairs and Marumakkatāyam Tiyars in North Malabar. Such gifts are made by a man to his wife and children, and the property so gifted descends to their descendants in the family to the exclusion of its other members.

Though not to such an extent, except perhaps in the Palghat Taluk, such gifts are made in the whole of South Malabar also.

38. I can see no objection to providing a permissive Marriage Law for Nairs, provided that *it does not infringe the present rules of the caste, or interfere with the Marumakkattayam law of inheritance.*

39. I would prefer to retain the customary form and have the marriage registered before a Registrar, or a Village Munsiff or three witnesses, the declaration being sent to the Registrar, without any unreasonable delay, when the marriage itself is not solemnized before that officer.

40. I should think they do. In the 1st place a man, having one woman, does now take in a second. Even a woman of 21 years or more does not, as a rule now contract a marriage without the consent of her Karanavan or Guardian. As the 1st and 2nd provisos are now worded, there is nothing to prevent a Marumakkattayam Brahmin, or any high caste Nair from contracting a legal marriage with a barber, washer-woman, or Tiyyar woman, whom he cannot either approach or touch without pollution, nor the members of one Tarawad from marrying a descendant of his great-great-grandmother, though they still continue to be members of the same Tarawad and offer *Bali* and *Pinnams* at the same *Tara*.

41. In condition No. 1, I would take away the words "a wife or," leaving the law as it now obtains among the Brahmins and Mussalmans. In clause 2, I would reduce the age of the woman to twelve, as they are usually now married and obtain puberty by that time. To proviso 1, I would add, after the words "marrying," the words "if they belong to the same class or division of the caste or if Sambandham between them would not be forbidden by the custom hitherto in force." To the 2nd proviso, I would add the words, "unless they be members of the same Tarawad, or unless Sambandham between them would not be permitted by the custom hitherto in force."

42. Adultery, gross disobedience to the husband's orders, or incurable or loathsome disease.

43. See answers to questions 31 and 33.

44. I have no objections to the clauses (a) and (b), the 1st part of (c) and the whole of (f). But in (c), I doubt whether the guardianship should not at once go to the Tarawad after the husband's or father's death—a woman being never fit for independence under the general Hindu Law. I would certainly object to clause (d) as it would be virtually interfering with the Marumakkattayam law of inheritance, which the majority of the people do not, as yet, want to be set aside. As I learn from the Hon'ble Mr. C. Sankaran Nair's speech before the Council when introducing the bill, his object is to have a Law to provide, for such of the Marumakkattayam Hindus as wish it, a form of marriage which the Law will recognise; and, so far, I am with him. But I do not see, why, with a view of merely obtaining this object, we should startle the people of Malabar with innovations in their Property Law, which the majority do not, as yet, want and which the exigencies of the case do not necessarily demand. In my opinion, it will be sufficient if we confine the legal incidents of any marriage under the Act to

i. the transfer of the guardianship from the Karanavan to the husband or father,

all these properties, according to the above law, go to the Karanavan of the tarawad, who perhaps belongs to a totally different branch of the family. The near relations of the deceased are thus left to starve.

(2) The nature of deeds of gift, as they are at present, is such that it gives power to the party that got the gift to deal with the gift property at his pleasure irrespective of the wishes of the donor, thus rendering the donee too independent.

I beg to remain,

Sir,

Your most obedient servant,

K. V. CHAPPUNNI NAYAR,

Sheristadar.

(True translation as near as may be).

H. M. WINTERBOTHAM.

Collector on Special Duty.

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Answers to Interrogatories

BY

**M.R.Ry. KARIMPETTE KRISHNA MENON AVARGAL, B.A. B.L.,
High Court Vakeel.**

CALICUT:

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Questions 1, 2, 3.—The general rule is that males of the same, or any higher caste, may form Sambandham with the females of the same, or any lower caste. This rule answers the 2nd question in the negative. But as this general rule is subject to numerous exceptions, it requires some explanation:—

1. There are 8 classes of Malabar Brahmans of whom the Elayathu (ഇലയതു) caste forms the lowest sub-division. An Elayathu may form Sambandham only with Nayar females, but not with the females of any of the intermediate classes.

2. Patters (foreign Brahmans) may form Sambandham in any but the Brahman caste.

3. Kshatrias may form Sambandham with Kshatria females as well as with the females of any other caste lower to it.

4. The Sâmanthas may form Sambandham with Sâmantha as well as Nayar females. But notwithstanding this rule the members of the Zamorin Maharajah's family, which is admittedly a Sâmantha family, are not allowed to consort with the women of the Kiriya and Sudra Nayar castes, although there have of late been at least two instances in which this peculiar custom has been broken through.

5. Of the Ambalavâsi (temple-servant) castes a Pishârodi, or a Vâriar, may form Sambandham with the females of his own caste, as well as with any Nayar females, although in some parts of North Malabar these castes are denied this privilege. The Pishârodi caste being considered higher than the Vâriar caste, the males of the former are allowed to consort with the females of the latter caste. The other classes of Ambalavâsis are allowed to form Sambandham only with females of their own respective castes. I may here observe, however that according to Kêrala Mahâtmyam, a work considered by the Nambudiris to be an authority in these matters in Malabar, a Mûssathu (മുസ്സതു), the highest class Ambalavâsi, may only marry a female of his caste but may not cohabit with her. This right is mentioned in the work above referred to, to have been taken away from him, and assigned to the Brahmans by Parasu Rama by way of punishment for an offence alleged to have been committed by one of his castemen during the reign of Rama. But this theory is denied by immemorial practice to the contrary.

6. Of the Nâyars the Kiriya caste being the highest, a man of that caste may form Sambandham with a woman of any Nayar caste. The Sudra Nayar caste being the next lower one, a male member of that caste may form Sambandham with a female of any Nayar caste except the Kiriya. But the Chârnathu (ചാർനതു) caste in South Malabar and the Sudra Nayar caste deny to each other the right of intermarriage. The male members of the Chârnathu, and all the divisions of Nâyars lower to it, may form Sambandham only with females of their own respective castes.

7. The washerman and the barber castes form the lowest sub-divisions of the Nayar community. No man of a higher caste may form Sambandham with a woman of either of these castes without social degradation.

Questions 4 and 5.—The Vaidikas (Nambûdiri doctors of law) maintain that according to the Sastras no Nayar lady shall be subject to social degradation on account of her Sambandham with a man of any other Nayar caste. They say that all the sub-

divisions of the Nayar community are of the same caste, and that there is therefore no Sastric distinction between them in regard to their social position. It is evident therefore that there cannot be any Prâyaschittam provided for by the Sastras for such a union. An innocent act can have no Prâyaschittam. But notwithstanding this theory such a union is regarded by the society as disgraceful and in practice entails social degradation, its rigor being proportionate to the difference in social position of the respective castes of the parties.

Question 6.—The river Korapuzha is the recognised boundary between North and South Malabar for caste purposes. But the inhabitants of the regions adjacent to the river on both sides do intermarry, and in every respect treat each other as castemen.

Question 7.—The North Malabar Nayars of higher ranks are treated in the South as of Kiriya castes and are therefore allowed to form Sambandham with Nayar ladies of all castes in South Malabar. But the other divisions of the Nayars of North Malabar are denied the privilege even with respect to their own castes in the South.

Question 8.—The Nayars of South Malabar, whether of the Kiriya or any other caste (subject to the custom mentioned in my answer to question 6), are not allowed to form Sambandham in the corresponding families in the North. But among some of the lower sub-divisions of the Nayars both in the North and in the South this custom is not always very rigidly adhered to. This custom, I believe must have originated,

(1) from the utter ignorance of the people in ancient days as to the social positions of the people in any distant district,

(2) from the national hostilities which existed between the peoples of different and neighbouring principalities consequent upon the constant fight between their respective chieftains, and

(3) from the contempt engendered by the comparatively low morality of the people in the South in matters of sexual relations.

Questions 9 and 10.—The reasons mentioned in the above para must also, I believe, account for the absurd prohibition referred to in question 9. There is no valid reason now for the observance of the custom. There have of late been several breaches of the absurd prohibition. There were also similar prohibitions regarding the Châlliam and the Kallai rivers which have long since become obsolete. A similar prohibition regarding the Putiyapâlam river is still respected by the ladies of the orthodox Nayar families of Kizhakkumpuram and Vadakkumpuram. All these restrictions must have originated from various social and political reasons, and their observance even at the present day is simply an instance of the survival of effects after the cessation of their causes.

Questions 11 and 18.—The Tâli-kettu Kalyânam is the ceremony of tying the Tâli (neck-ornament) on a girl. Among all the Marumakkathâyam classes down to the Nayars it is performed with all the pomp and details of an actual marriage ceremony without its reality. But seeing that among the Nambudiris it is the father who ties the Tâli on the girl about to be married, that they have no manthram to repeat as they do it, and that their real marriage ceremony consists in Pânigrahanam (receiving of the hand), I am strongly inclined to doubt whether the Tâli-kettu Kalyânam among the Nayars, which must have been copied from that of the Nambudiris as is evidenced by their close resemblance to each other in almost every detail, really imports anything like marriage.

Question 12.—In support of this view I may also state that it is only among a very small portion of the Malayalis that each girl has a separate man to tie the Tâli on her. Throughout the whole of North Malabar among the Nayars the Tâli is tied by a lowcaste Nambudiri, or an Emprân (Canarese Brahman). Among the Sâmanthars, Nâduvâzhi Nayars, and Atiyôtis in all Malabar it is a Kshatriya who performs the act. Among the Chârnatu caste it is a Sâmantha and among all the Nayar castes in Cochin who have no Enangars (classmen) it is again a Kshatriya, who performs the act.

Question 13.—Nor is it necessary in these cases that each girl should have a separate individual to tie the Tâli on her. A single individual, moreover, may tie the Tâli on any number of sisters and cousins on one and the same occasion, or on persons standing in the relation of grandmothers, mothers, daughters, and grand daughters to each other, provided he could live to be present at the successive Tâli-kettu ceremonies of all these women.

Question 18.—Among some classes even the very mother of the girls ties the Tâli on her. These facts very strongly suggest that the Tâli-kettu Kalyânam hardly imports real marriage. But on the other hand there are also facts which tend to support the opposite view. In South Malabar, Cochin, and Travancore, the Enangu or clan system prevails to a more or less extent, and in these parts of Kêrala where a girl has her own Enangars, or classmen, the right (or duty) of tying the Tâli on her is assigned to one of her Enangars. For three days and nights after the tying of the Tâli both the girl and the Enangan, who tied the Tâli on her, are made to sit and sleep together in the same room—except in the cases of grown-up girls who are generally taken away from their male companions during nights. The Enangan who tied the Tâli on a girl is called her Manavâlan (മാനവാലൻ=husband); he is made to cut asunder a piece of cloth in token of his divorce on the 4th day; and even in spite of such a divorce the girl has to observe pollution on the death of her Manavâlan. In various other religious acts also such a woman is treated as a widow. For instance in performing srâdha to her mother or other relations a woman whose Manavâlan is dead cannot offer a Pinda, but must sprinkle the rice on the grass. Again when a Nambudiri bride is brought to her husband's house i.e. on the occasion of the Grahapravêsanam (ഗ്രഹപ്രവേശനം) ceremony some Sudra woman are sent to meet her. No woman whose Manavâlan is dead will be sent to meet the bride on such occasions. For the Brahmans regard them as widows.

Question 14.—It is also the general impression that if a Manavâlan did not sever the cloth in the presence of the girl and her relations he shall remain as her husband in reality also. He is therefore invariably requested to do so.

Question 15.—Even after this he may form Sambandham with her by performing Putavamuri ceremony. The Manavâlan of one of the nieces of Mr. K. R. Krishna Menon, the late Sub-Judge of Tanjore, has thus formed Sambandham with her subsequent to the cutting asunder of the cloth on the 4th day of her Tâli-kettu Kalyânam.

Question 16. The whole of the above para has reference only to those Nayars in South Malabar who have Enangars—viz., Kiriya, Sudra, Pallichân, Vattakkâdan, Attikurissi &c.

Question 17.—It is also amongst these classes that the mother sometimes ties the Tâli on the daughter where a Manavâlan, whose horoscope agrees with that of the girl, cannot be had.

Question 19.—Tali-kettu Kalyanam before the age of puberty is almost invariably the rule. Custom can alone be pleaded in justification of it. This restriction does not obtain among the Nambudiris.

Question 20.—Putavamuri ceremony is necessary. The Karanavan of the man in consultation with the Karanavan of the girl and their friends and relations fixes an auspicious day for the performance of the ceremony. The bride-groom with his friends goes to the bride's house on the appointed night and gives her a few pieces of cloth in the presence of their friends and relations. These are the essentials of the ceremony although there may be considerable local differences in matters of detail. If the girl be of the same caste with the man, his sisters go to her house and bring her to their Tarawad house.

Question 21.—None of these formalities are, as a rule, observed where the Sambanthakkaran is a Patter or a Nambudiri.

Question 22.—As I have observed in my answer to the 20th question the essentials of the ceremony are the same in the North and the South, although there may be considerable local differences in matters of detail.

Question 23.—According to the present public opinion she may not have more than one husband at a time. But in some parts of Nedunganad and in the Northern parts of the Cochin State, it has been the custom for a woman to have more than one husband or Sambanthakkaran at a time. Polyandry of the Thoda type still prevails among the artizan classes and Tiyaars in various parts of South Malabar, Cochin and Travancore, and also, I am told, among some of the Nayars in Travancore. Kerala Mahatmyam also says that in South Kerala a woman may have 3 or 4 lovers at a time (vide sloka 26 ch : 49) but that in the middle country one woman may have only one lover at a time (vide sloka 5 ch : 50). The text and its English translation of both these chapters are given as an appendix. Although the practice of one woman having 3 or 4 lovers at a time has now become almost extinct among Nayars in South Malabar, and is fast dying out in other places and among other castes as well, yet its recent existence taken along with the allusion to it in Kerala Mahatmyam leads to the supposition either that at the time of the composition of Kerala Mahatmyam polyandry was very prevalent in South Kerala, or that in order to support the Brahmans with puranic authority in their endeavours to force this custom on the Sudra section of the people of South Kerala, they invented this ridiculously absurd story of celestial houries (vide Appendix) and succeeded in the attempt. Be this as it may, according to the intelligent public opinion that now prevails polyandrous customs are strictly prohibited in South Malabar as well as Cochin and Travancore. In North Malabar the custom seems to have existed in no known time as is evidenced by Kerala Mahatmyam.

Question 25.—She may, according to the custom that now prevails.

Question 26.—There is hardly any sort of formality for dissolution of marriage worth the name.

Question 27.—Yes.

Question 28.—No.

Questions 29 and 30.—In North Malabar she mostly lives in her husband's house. In South Malabar it was formerly considered a disgrace to send a woman with her husband to his house. It was regarded in the light of a sale of her. But the present generation is now rapidly adopting the northern custom of wives living with their husbands in the latter's house.

Question 31.—According to the recognised custom the husband has to give his and children clothes and oil wherever they reside. As for their food they are to have it out of their own Tarawad so long as they reside in their Tarawad house, and out of her husband's Tarawad so long as they reside in his Tarawad house. In North Malabar as the wife always resides in her husband's house it has come to be considered that her food also is a quasi charge on his Tarawad. This is certainly a mistaken notion. There is really no difference in this respect between the North and the South.

Question 32.—If either party is determined to cease all connection with the other, there is no custom or law to prevent it.

Question 33.—Please see my answer to question 31.

Question 34.—There is no customary allowance made in such cases. But in justice to such an Anandaravan the Karanavan would make a more liberal provision for his necessities than usual. For it is only by conciliatory means that Karanavans can make an Anantharavan willing to work for the Tarawad.

The Anandaravars are often allowed to cultivate Tarawad lands for a rent and are permitted to deal with the surplus, if any, at their pleasure.

Question 35.—Wherever it is possible for the Anandaravars to earn anything they keep it for themselves.

Question 36.—With their earnings they support their wife and children and also their mother, sisters, and their children. They make provisions for all these relations according to circumstances, and whatever remains with them after all this, lapses to the Tarawad on their death. The proportion of their earnings that go for the benefit of their wife and children is now gradually increasing to the detriment of their Tarawads.

Question 37.—'Putravakāsam' as used by the people of North Malabar simply means the gift made to one's children as such, free from any claim to it on the part of those children's Tarawad. As similar gifts are generally made in South Malabar also, I do not think there is any distinction in this respect between the North and the South.

Question 38.—I do not see any objection to it. On the contrary a legally binding form of marriage is absolutely necessary in any society for the maintenance of a high degree of sexual morality.

Question 39.—I would prefer the former.

Question 40. (1) At present a man may have Sambantham with more than one woman.

(2) There is at present no restriction as to marriageable age.

(3) Consent of the Tarawads of both the parties is necessary now, quite irrespective of their age, in order that those Tarawads may recognize the union.

(2nd Proviso).—This proviso totally ignores the present custom as to consanguinity. It may be very shocking to the people and ought therefore to be taken away for the present at all events.

Question 41.—Nil.

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- Question 42. (1) Adultery of the wife,
 (2) Abandonment by the husband for a reasonably long period,
 (3) Unaccountable absence of either party from the other for reasonably sufficient time,
 (4) Husband's forming a second Sambandham,
 (5) Loss of caste by either party,
 (6) Incompatibility of temperament and consequent mutual disgust, are now regarded to be reasonable grounds for a dissolution of Sambandham.

Question 43.—Please see my answer to question 31.

Question 44.—In clause (d) the Tarawad of the intestate is made only a contingent heir to his property. But in justice to his Tarawad, which had to maintain and educate him in his early days, and particularly to his mother and sisters and other near relations, I think this clause ought to be so altered as to entitle the intestate's Tarawad to a share of his property equal to the shares of his wife and children put together. The same remarks are applicable to the case of a woman dying intestate.

Question 45.—As a general rule men from the North are allowed to form Sambandham with the women in the South. Caste, as an obstacle to the formation of Sambandhams, exists only in British Malabar and the North of the Cochin State. In South Cochin and Travancore Sambandhams are permitted without any regard to the respective castes of the parties, provided both of them are Nāyars. Hence Travancorians and Southern Cochinites are not generally allowed to form Sambandham in the Northern division of the Cochin State and in British Malabar. The above remarks apply to the higher classes of Nāyars in these parts of Malabar.

APPENDIX.

A Translation of Chapters 49 and 50 of

The Kērala Mahātmyam.

1. Subsequently the resplendent Rama came to Srimūlastānam (Trichur) and thus addressed the Brahmans of the four and sixty villages.
2. "O best of Brahmans! I shall go to the Indra's world and come back." Taking leave of all the Brahmans he went towards Indra's world.
3. Seeing the approach of Bhargava (Rama) Indra speedily rose up and taking the "Arghya pātram" (the vessel for taking water for washing the face) performed 'Pooja' to him (Bhargava).
4. Placing him on a magnificent seat Indra accosted him in a low and respectful tone: "O Son of Bhrigu! endowed with divine knowledge! tell me the cause of your coming:
5. Tell me O princely sage! what is it that you wish to have." Being thus accosted Bhargava said:—
- 6-7. "Hear O Lord of the gods! I shall tell you what brought me here. O beloved of gods! give me celestial hours for the sexual intercourse of the Brahmans who have settled in my land, and who are devoted to the exercise of religious austerities."
- 7-8.—Upon this Indra gave him three young, charmingly handsome, moon-faced maidens skilled in the art of copulation.

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9. One of these was the beautiful daughter of Jayantha (Indra's son) called Subhaga. She was given to Bhargava with six maids.

10. Then was given to Bhargava a beautiful lady who was the daughter of a Gandharva with six maids.

11. And then a woman of the Rākshasa tribe also with six maids. Bhargava was much pleased with the lord of the heavens when

12. he received these three charming maidens with eighteen maids. Indrani (wife of Indra) gave him fruits of the

13. Indra-plantain (നീരൂപാഴ) and also their sprouts; a strange sort of Urvārūka (cucumber) and the pepper seeds.

14. Then taking all this Rama started on his journey (back), when the celestial women addressed the son of Bhrigu thus:—

15. "Let us have male and female dancers and drummers and then we shall follow you along with them."

16. Thus requested the even-minded Rama informed Indra of it, and the Lord of the gods then gave him all this, viz.,

17. An accomplished dancer, a female dancer, and a drummer of the gandharva tribe with the pot-drum and cymbals.

18. Taking all this Bhargava took leave of the Lord of the gods and returned greatly pleased.

19. The King (Rama) brought all this to his own place.

20. Coming to Vrishadripura (Trichur) he saluted all the Brahmans assembled at the Mandapam of Srimūlasthānam, and thus spoke to the learned Yogachariar (preceptor of the Nambudiris):—

21. I have brought from the celestial regions young and beautiful maidens for the constant sexual intercourse of all the Brahmans. O! Superior Brahmans

22. Such of you as are not householders may constantly have sexual intercourse with these beautiful women for the sake of your personal enjoyment, as well as for the purpose of procreation."

23. Rama settled the Dēva woman with her six maids in the midst of the town of Vrishabhadri (Trichur) and gave them six houses to carry on their amorous dalliances

24. to the enjoyment of the Brahmans, saying, "May you all O best of Brahmans, with the exception of the eldest sons, constantly have sexual intercourse with

25. Subhaga and her maids so that no wicked Sudra may be born in my land.

26. The Brahmans may have their sexual cravings satisfied as (freely) as the Devas do in heaven, viz. one woman may be enjoyed by three or four persons in common.

27. And the Brahman shall not be amenable to the imputation of adultery; for are not the celestial beauties so enjoyable in heaven?

28. Hence no Brahman shall be guilty of adultery in my land. O! superior Brahmans! let all the Brahmans satisfy their sexual cravings.

29. Let the women lie superincumbent during the time of copulation, let not the women have any cloth to cover their breast with.

30. And let the celestial women remain in my Kêralam land cohabiting with Brahmins according to their pleasure."

31. Thus the Brahmins began to live happily in the enjoyment of the sweet embraces. Bhargava then established

32. a daily festival in the Siva's pagoda at Trichur where the dancers and the drummers were to take part.

33. Thus ends the 49th chapter of the discourse between Garga and Yudhisthira on the early history of Kerala in the Bhugola Purana.

1. Bhargava planted the sprouts of Indra-plantain (നെന്മുള) and sowed the seeds of pepper and cucumber, and then

2. proceeded (further in his work). Bhargava then settled the woman of the Gandharva tribe with her six maids in the town of Lakshmipuri (Taliparamba) (and proclaimed thus:)

3. "Let all the Brahmins accept (them) daily for their sexual enjoyment. Let the superior Brahmins (also) have sexual intercourse with these beautiful women.

4. Let these women remain for the enjoyment of Sâmanthas (subordinate chiefs), Brahmins, and even Brahmins of other countries. But these

5. women shall conduct themselves as they have been doing in the Gandharva regions—viz:—only one man shall consort at a time with a woman dwelling in the middle country. With the proud (or beautiful)

6. women of the Gandharva tribe let Sâmanthas and Brahmins have intercourse every day; and

7. let all the Brahmins enjoy them as they please, observing the rule of superincumbent embrace".

8. Then Rama settled the woman of the Râkshasa tribe with her six maids, who were in the prime of their youth, in Ambica's town (Moocambi) for the daily enjoyment of the Brahmins (and thus said):—

9. "Remain here for ever for the sexual enjoyment of Brahmins conducting yourself as you were used to do in the Râkshasa regions.

10. You may carry on your amorous dalliances with all the Brahmins except their eldest sons.

11. After the lapse of several years since the above mentioned three lovely ladies and their respective maids established themselves in Kêralam, the women of the Râkshasa tribe grew lusty and began to drink liquors and have intercourse with Brahmins every day.

12. Just then Bhargava observing all this thus cursed the inhabitants of the Northern country.

13. "O! You worst of Brahmins! You have become the source of ruin to my country through your wicked sons, living in your country.

14. I shall undergo an incarnation myself and annihilate the children of your Râkshasa tribe."

15. Thus saying he appointed a second subordinate chief to rule over them, and proceeded to

16. Srimûlasthânam where he saluted the Brahmins and performed Pooja to the God of Vrishâdri (Trichur). This is the account of Parasu Rama's acts as I have heard.

Thus ends the 50th Chapter of Kêrala Mahâtmyam a discourse between Garga (Guru of Yadus) and Yudhisthira (the eldest of the Pândus) in Bhugola Puranam.

SUMMARY OF THE 51ST CHAPTER.

Rama gives the name of 'Nayakas' (Nayar) to the issue of these Deva and Gandharva women. The sons of the Deva women are allowed to cohabit with the daughters of the Gandharva women, and vice versa. Their issue, the Nayakas, are enjoined to follow the Marumakkathâyam Law both in respect of inheritance and in respect of funeral ceremonies. He then arms these Nayakas, for the protection of temples and Brahmin house, and establishes 'Kalaris,' or military schools, for the training of these Nayakas in the use of arms. And lastly directs the Nayakas and the Brahmins to do mutual services in all their (religious?) acts.

(Signed) K. KRISHNA MENON.