

*Courting Legitimacy or Delegitimizing
Custom? Sexuality, Sambandham, and
Marriage Reform in Late Nineteenth-Century
Malabar*¹

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

K. P. Padmanabha Menon²

The Malabar Marriage Act, 1896 (Act IV of 1896) was the culmina-

¹ I am grateful to Dr D. Narasimha Reddy and Dr Sanjay Palshikar for the sustained criticism that helped in developing this paper.

² K. P. Padmanabha Menon, *History of Kerala*, Vol. 3 (Madras: Asian Educational Services, 1984) (reprint of 1933 edition), p. 199.

Inscribed onto the framework of Victorian morality in the nineteenth century, the exposure of a woman’s upper body was marked as shameful and coded sexually in a way it had been innocent of. The breast-cloth controversy grew out of efforts, particularly by Christian missionaries, to secure for *chanar* (a lower caste) women in Travancore the right to wear the upper garment. The controversy reached its peak in 1858–59, with acts of violence by the upper castes against the introduction of such a practice. As Cohn suggests, interpretation of the controversy as merely an instance of lower caste assertion against feudal privilege underscores many aspects. Changes in dress became the tokens of much wider social, economic and political changes. Particularly significant was the functional alliance, suggested by a missionary, between the economic potential for imperial industry from the demand for cloth and the civilizing mission. Bernard Cohn: *Colonialism and its Forms of Knowledges: The British in India* (Delhi: Oxford University Press, 1997), p. 143. For interpretation of the case as a site of articulation of colonial modernity see also K. T. Rammohan, ‘Material Changes and Developmentalism: Interpreting Economic Change in Colonial Travancore, 1800–1945’, Unpublished Ph.D. Dissertation, Centre for Development Studies, Trivandrum, (1996), pp. 37–41.

tion of efforts in the late nineteenth century to alter by statute the personal law of the 'Hindu' matrilineal castes of Malabar and South Canara districts of the erstwhile Madras Presidency. It was a permissive legislation that made it possible for people following *marumakkatayam* and *aliyasantana* law (matrilineal law)³ to register their marriages, if they so wished. The Act enabled people to be legally married, something that was not possible under matrilineal law as interpreted in the colonial civil courts. *Sambandham*,⁴ the customary institution that framed sexual relations between men and women following marumakkatayam (matrilineal), was not recognized in the official discourse⁵ as a legally valid relationship, i.e., as constituting marriage. On the other hand, it was seen as comparable to concubinage. Two reasons cited for this were that dissolution of *sambandham* was fairly easy and that it did not give rise to property relations. Act IV of 1896 was the outcome of efforts by early reformers to redress these 'gaps'. The impetus for reform through legislative intervention in the late nineteenth century came from sections of the Nair community, with roots particularly in south Malabar. The Nairs unlike the other major social groups followed marumakkatayam throughout Kerala. As a caste, the Nairs figured between the Nambudiris (Malayalee Brahmins) at the upper end and the Ezhavas (a small-peasant and agricultural-labour caste, better known for their 'caste occupation' of toddy tapping) at the lower.⁶

In the 1870s and more frequently in the 1880s, signs of discontent with marumakkatayam were apparent prominently in newspaper

³ Marumakkatayam referred to the practice of tracing 'depth' or lineage through one's sister's children. Here 'ego' is necessarily male. However, the andro-centricity that this suggests needs to be considered in the context of the understanding of marumakkatayam in opposition to makkatayam (patriliny) the practice of the more dominant community. Aliyasantana is the kannada equivalent for marumakkatayam, and referred to matrilineal practice by a number of Tulu-speaking social groups in South Canara.

⁴ The term *sambandham* has been used very generally. The term used to denote marriage is known to have differed according to region and social group. While *sambandham* was used by Nairs in south Malabar and understood across Malabar, *podamuri* seems to have been used more widely by Nairs in north Malabar. The Tiyas in north Malabar used the term *mangalam*. Report of the Malabar Marriage Commission (henceforth RMMC) I (Madras: Lawrence Asylum Press, 1891), p. 98. Appendix A, Home Judicial Proceedings (May 1896), no. 245–55, Part B. National Archives of India (henceforth NAI).

⁵ By official discourse I mean a way of understanding local customs that was elaborated through the legal, judicial and other administrative processes of the colonial state.

⁶ In north Malabar there were few Ezhavas and more Tiyas. It must be mentioned that though in colonial and later reform narratives the Ezhavas and Tiyas were reckoned on par, they did observe caste distinctions.

reports.⁷ William Logan, an administrator with long experience of Malabar, took up the issue in 1881–82 in his tenancy report and made out a case for change.⁸ On 24 March 1890, Sir C. Sankaran Nair, a prominent lawyer of the Madras High Court introduced in the Madras Legislative Council a bill to provide for marriage. It was in the wake of this bill that the Malabar Marriage Commission was formed in 1891 by the government in Madras under directions from the Government of India to collect more information.⁹ The Commission was to inquire into matrilineal customs among the ‘Hindus’ and explore the desirability of introducing changes in marriage, inheritance and family organization through legislation.

Discontent with marumakkatayam grew out of importantly the sexual access claimed and received by Nambudiri men to Nair women. This was facilitated by a system of land ownership and tenancy. At the top of a system of mutually non-exclusive hierarchical interests in land were the janmis (interpreted by the colonial civil courts as absolute proprietors of land) who were a rentier class. Holding land from the janmis were intermediate (rent receiving, rent paying) and/or cultivating tenants (*kanakkar*) with distinctions according to the terms and conditions of tenancy (*kanam*). The Nambudiris as janmis and/or as trustees of temple lands controlled the greater part of land in south Malabar, which they gave on tenancy. The Nairs in south Malabar, from where the reform process in the late nineteenth century drew greater support, were mostly intermediary tenants, though they counted among them a number of dominant janmis. Under these conditions the Nambudiris were able to use their position of dominance in the land hierarchy to ensure access to women of Nair tenant taravads (matrilineal joint families).¹⁰

Sexual access claimed by Nambudiri men to Nair women was within the framework of sambandham. The Nambudiris had institu-

⁷ For a consideration of such reports see K. N. Panikkar, *Culture, Ideology and Hegemony: Intellectuals and Social Consciousness in Colonial India* (New Delhi: Tulika, 1995), pp. 183, 189–94. The relevant chapter is a revised form of a paper which appeared in *The Indian Historical Review* in 1977.

However, the first expression of discontent with matriliney on the west coast of India available to us came from people following aliyasantana law in a memorandum addressed to the Government of Madras in 1869. RMMC I, p. 38. See also copy of memorial in Appendix III, RMMC II.

⁸ Malabar Special Commission, *Malabar Land Tenures Report, 1881–82* (henceforth RMSC), Vol. I (Madras: Government Press, 1882), p. 108.

⁹ Panikkar, *Culture, Ideology*, p. 195.

¹⁰ In the legal discourse the taravad referred to the matrilineal joint family as a coresidential unit with a joint estate. In a wider sense, it comprised all descendants, in the female line, of a common ancestress.

tionalized primogeniture, permitting only the eldest son to marry within the caste. Younger sons in Nambudiri families were expected to establish sambandham with Nair and Ambalavasi (temple service castes) women. However, sambandham denoted hypergamy between Nair women and Nambudiri men as well as reciprocal marriage among Nairs. Hypergamy between Nambudiri men and Nair women was known to exist long before the colonial period. M. G. S. Narayanan and Kesavan Veluthat indicate the existence of mechanisms that could have served to prevent the misuse of sambandham during the later Cera period, with Nambudiris being proscribed from establishing sambandham with women of taravads, which held land under tenancy from them.¹¹ Referring to the ninth, tenth and eleventh centuries, they suggest that tenancies were regulated strictly using punitive measures but also that tenancies were favourable to the tenants and that sambandham was used to their advantage by brahmin and non-brahmin groups alike.¹² Changes in sambandham, it may be argued, reflect the changing historical dominance of particular social groups. K. N. Ganesh's discussion of the changing historical dominance of specific social groups with reference to land in south Malabar is instructive in terms of the resonance likely on institutions like sambandham of changes in land relations, sharing as they did a common network of socio-economic relations.¹³ Ganesh argues that by the eighteenth century the indigenous tenures underlined the autonomy of the intermediate tenants growing out of the long duration of permanent leases and their mediation of the customary rights of the janmis.¹⁴ The intervention of the Mysorean regime in the immediate pre-colonial period with the introduction of revenue assessment made further inroads into the customary authority of the janmi, strengthening the hold of intermediary tenants in south Malabar.¹⁵ Panikkar suggests that the emergence of a Nair middle class, with roots in the intermediary tenant class, in the second half

¹¹ Members of the Sabhas (assemblies that administered temples) at Avittattur and Sukapuram (Nambudiri settlements) were thus proscribed. M. G. S. Narayanan and Kesavan Veluthat, 'A History of the Nambudiri Community in Kerala', in Frits Stal (ed.), *Agni: The Vedic Ritual of the Fire Alter*, Vol. 2 (Delhi: Motilal Banarasidas, 1983), pp. 262–3.

¹² *Ibid.*, p. 272.

¹³ K. N. Ganesh, 'Janmam–Kanam Maryadai: Changing Land Relations in Sixteenth and Seventeenth Century Kerala', *The Indian Economic and Social History Review*, Vol. 28, no 3 (1991).

¹⁴ *Ibid.*, p. 316.

¹⁵ *Ibid.*, p. 321.

of the nineteenth century was mediated by favourable tenancies from Nambudiri janmis.¹⁶ Colonial interpretations of land relations, wherein the janmi was defined as a landlord, and of marumakkatayam, wherein sambandham was held to constitute concubinage, came to the fore in the latter half of the nineteenth century, with sections of the tenants/Nairs contesting the legally imputed rights of janmis. Interlocking interpretations on both these sites provided ample scope for exploitative and coercive use of sambandham.

The Malabar Marriage Act, 1896 was a tame version of the kind of law suggested by the more radical section of the reformers, its permissive character reflecting the effort to reconcile contrary opinion. Nevertheless, it represented a significant moment in a process of reform that started to take shape in the 1880s. The process leading to the Act assumes importance as it brings together two aspects of the transformation of marumakkatayam—the interpretation of customary practices by the civil courts¹⁷ and reform efforts by a section of the community. Importantly for us, customs that were being addressed in the debate were in a recognizable process of change. If these customs had crystallized in association with a process of interpretation by the civil courts, then during the process of reform they were framed as ‘authentic’ by the colonial government and by a section of the Nairs. By the closing decades of the nineteenth century, a section of the Nairs had moved away from the taravad. Their association with the institutions of the colonial state, through education and employment, and the influence upon them of a set of ideas and morality, which were part of the common sense of colonial administrators, were instrumental in shaping their particular response to marumakkatayam.¹⁸ In the official discourse on maru-

¹⁶ Panikkar, *Culture, Ideology*, p. 188. Panikkar shows that the battle for land in the late nineteenth century and early twentieth century, up to the enactment of the Malabar Tenancy act, 1930, was between two affluent sections with interests in land i.e., the janmis, mostly Nambudiri and the intermediary tenants, visibly Nair. Panikkar, ‘Agrarian Legislation and Social Classes: A Case Study of Malabar’, *Economic and Political Weekly*, Vol. 12, no. 21 (1977), p. 880.

¹⁷ For interpretations of this aspect of the transformation see G. Arunima, ‘Multiple Meanings: Changing Conceptions of Matrilineal Kinship in Nineteenth and Twentieth Century Malabar’, *The Indian Economic and Social History Review*, Vol. 33, no. 3 (1996); Praveena Kodoth, ‘Immutable “Custom”, Contesting Practices: Matriline, Women and Property in Colonial Malabar’, *South Indian Studies*, (forthcoming).

¹⁸ Fuller writes, identifying a perceived crisis in the taravad in the late nineteenth century, that the important point was that Nair leaders and reformers, though in a small minority, were ‘prone to quote Bentham and Mill, who they thought provided some kind of philosophical backing to their arguments’ that the taravad was linked

makkatayam, particular conceptions of marriage and the family, held together by Victorian morality, were seen as conforming to what was 'natural'.

Two kinds of liberal aspirations were arrayed conflictually during the debate on a marriage law. The first kind of opinion, which I will refer to as 'progressive', was thorough-going in its disavowal of marumakkatayam, making little distinction between marumakkatayam as a legal construct and as a practice. In contrast, the second set of reform opinion, which I will term 'progressive' dissension, resisted the implications of the marriage bill that sambandham did not constitute marriage. In doing so the latter position questioned the centrality of conjugality to any form of family. More importantly, however, I will illustrate how both positions were premised upon a 'conformative' sexuality, which required confronting the picture of permissive sexuality of women so much a part of the colonial discourse on Malabar.

I do not seek to posit sambandham during the pre-colonial period or the colonial period as enabling/embodying 'liberated' sexuality for/of women. I have noted that sambandham was defined within distinct but changing socio-economic contexts. It might then be argued that it constituted a site for the articulation of power relations. However, I will sidestep this issue in an attempt to understand the construction of sambandham as concubinage in the official discourse. I will argue that it was precisely a dominant conception of sexuality that underwrote the non-recognition of sambandham as a legally valid relationship i.e., as marriage, in the case of the colonial civil courts in Malabar and South Canara. I understand sexuality to be a social construct in so far as it is an aspect of the human condition that responds to social conditioning. By its dominant form I mean sexuality 'as a social construct of male power', such that dominant or 'conformative' sexuality corresponds to 'the sexuality of (male) dominance and (female) submission',¹⁹ such as embodied in the conception of 'marriage as contract'.

This paper is in seven sections. In the following section I explore a context of social reform for the efforts at legislative intervention to alter the form of marriage, inheritance and family in Malabar.

to their economic failure. C. J. Fuller, *The Nayers Today* (Cambridge: Cambridge University Press, 1976), p. 130.

¹⁹ In understanding the dominant conception of sexuality, I have drawn upon Catherine A. Mackinnon, *Toward a Feminist Theory of the State* (Cambridge: Harvard University Press, 1989), pp. 124–54.

Section three is a critical review of academic engagement with marumakkatayam, particularly in the concern with issues such as sambandham. In section four, I trace the influence of the conception of 'marriage as contract' and an inhering understanding of sexuality in the official discourse on sambandham. Section five deals with the debate on reform of marriage in Malabar with emphasis on two strands in the debate in order to grasp the conception of sexuality that sustain them. Section six is an effort, preliminary and tentative, to understand women's silence in the context of resistance to the legislation proposal. In the conclusion I attempt to bare the uneasy links, so acutely incumbent in the debate on a marriage law for Malabar, among sexuality, sambandham and marriage.

Social Reform, the Women's Question and Sambandham

It is tempting to place the efforts to reform matrilineal practice through legislative intervention in the context of the nascent nationalism of the closing decades of the nineteenth century. Partha Chatterjee has argued that the disappearance of social reform, within which framework the 'women's question' had been addressed earlier, from the agenda of public debate at the close of the nineteenth century was the expression of the refusal by the nationalist elite to let the colonial state intervene in matters that were crucial to the cultural identity of the nation. 'This did not mean a halt to the project of reform; all it meant was a shift in the agency of reform—from the legal authority of the (colonial) state to the moral authority of the (national) community.'²⁰ The nationalist elite proceeded to do this by dichotomizing the domain of culture into the outer and inner. Even as the outer/material domain represented the subjection of the Indian people, the inner/spiritual domain, which corresponded to the home and family, represented a sphere of autonomy, even sovereignty; an area that was outside the purview of the colonial state.²¹

²⁰ Partha Chatterjee, 'Secular State: Reflections on an Indian Impasse', *Public Culture*, Vol. 8, no. 1 (1995), p. 16.

²¹ Partha Chatterjee, 'The Nationalist Resolution of the Women's Question', in Kumkum Sangari and Sudesh Vaid (ed.), *Recasting Women: Essays in Colonial History* (New Delhi: Kali for Women, 1989), p. 237. More recently, Sarkar has argued that colonial rule in the second half of the nineteenth century tried to keep its distance 'from the more intimate areas of human existence—family relationships, family property and religious life', adding to the nationalist conviction that this was 'an interior space that was as yet inviolate'. Tanika Sarkar, 'Rhetoric against Age of

However, in Malabar it is precisely at this juncture that the state is called upon to legislate on the question of marriage, a project of reform that continued under nationalist guidance into the twentieth century. The imperative for such reforms came from what has been described in the official discourse as the ‘difficult’ condition of the family and property in Malabar. Through a marriage law for the ‘Hindu’ matrilineal castes the ‘progressive’ sought to ‘introduce’ a form of marriage, implicitly denying the legitimacy of sambandham. The marriage law that was suggested tied marriage to provisions that would facilitate and recognize a new form of family/household centered importantly around conjugality. Hence, the inner domain or the family in Malabar had to be reconstituted radically. Women were to form the terrain of this reconstitution. In order to establish the primacy of conjugality to any form of family, women had to be ‘marked’ differently or recast—as monogamous, ‘chaste’ and dependent upon husband and father (both of whom were in the official discourse on marumakkatayam, legal nonentities). The willingness of the colonial government to intervene through legislation in personal law in Malabar, despite their avowed preference for non-interference in matters relating to religion, was perhaps linked to the ‘correctness’ of this agenda. For as Tanika Sarkar points out, after decades that had seen profound changes in England in family law as a result of feminist intervention, colonial officials turned with relief to the relative stability and strictness of Hindu rules.²²

Restructuring involved importantly positing a new set of ‘rights’ for women, necessarily editing out those ‘rights’ that had prevented legal recognition of sambandham previously. At the core of the reforms, as we have pointed out, was the need to redefine sexuality. There were two aspects to this: i) control over women sexually by men within the conjugal family and, ii) the production of the conjugal family as the property space, by defining property relations within it.

Transformation of Marumakkatayam: A Critical Review

Much of the literature on the transformation of matrilineal society in Malabar has emerged within the discipline of anthropology with

Consent: Colonial Reason and Death of a Child-Wife’, *Economic and Political Weekly*, Vol. 28, no. 26 (1993), p. 1871.

²² *Ibid.*

an accent on kinship and family, economic and political factors serving mostly as useful backdrops.²³ In dealing with marriage reform, K. N. Panikkar, a historian, foregrounds two sets of issues i.e., i) socio-economic changes which came with European trade and which gained momentum during British colonial rule, and ii) the emotive issue of sambandham as hypergamy.²⁴ For Panikkar as for Kathleen Gough the emergence of a modern capitalist economy was a crucial factor in the disintegration of the taravad.²⁵ However, while Gough identifies the seeds of disintegration more recently, in economic changes, particularly the entry of land into the market, during British rule, Panikkar suggests that the fault lines in the taravad began to appear with the inception of trade with Europe and the expansion of the money economy in the post-fifteenth century-period. Implicit in Panikkar's argument is the essential incompatibility of marumakkatayam with a modern capitalist economy, emerging, as a section of Nair reformers had believed and propagated, from the inability of marumakkatayam, systemically to cradle 'enterprise'. The rejection of the dominant ideology, Panikkar suggests, was made possible by socio-economic changes and by the British policy of creating an English-educated middle class for administrative purposes.

Panikkar views matrilineal institutions as mere support structures of a Nambudiri-dominated value system.²⁶ He argues that sambandham was welded into a network of exploitative land relations between Nambudiris as janmis and Nairs as tenants. Serving to facilitate sexual access for the Nambudiri male to Nair women, it underlined the exploitative edge of hierarchical land relations.²⁷ However, Panikkar fails to interrogate the specific resolution of the

²³ Kathleen Gough, 'Changing Kinship Usages in the Setting of Political and Economic Change among the Nayars of Malabar', *Journal of the Royal Anthropological Institute*, Vol. 82 (1952), pp. 71–88; Gough, 'Nayars and their Definition of Marriage', *Journal of the Royal Anthropological Institute*, Vol. 89 (1959), pp. 23–34; Joan Mencher, 'The Nayars of South Malabar', in M. F. Nimkoff (ed.), *Comparative Family Systems* (Boston: Houghton Mifflin, 1965); Fuller, *The Nayars Today*; Melinda Moore, 'Taravad: House, Land and Relationships in a Matrilineal Hindu Society' Unpublished Ph.D. Dissertation, Department of Anthropology, University of Chicago at Illinois (1983).

²⁴ Panikkar, *Culture, Ideology*, pp. 176–99.

²⁵ Gough, 'Nayar: Central Kerala; Nayar: North Kerala; The Modern Disintegration of Matrilineal Descent Groups', in D. M. Schneider and Kathleen Gough (ed.), *Matrilineal Kinship* (Berkeley: University of California Press, 1961), p. 640. Panikkar, *Culture, Ideology*, pp. 184, 198.

²⁶ *Ibid.*, p. 198.

²⁷ *Ibid.*, pp. 182–3.

question of sambandham by Nair reformers in the realm of the 'Paternal family'. Worked out in the interlocking interests of morality and 'enterprise', this resolution went beyond 'liberating' women from the exploitative 'land for sexual relations' network, seeking as it did to establish a form of access to and control over women that was hitherto unavailable to Nair men.²⁸

As Panikkar recognizes, sambandham was not confined to alliances with Nambudiris. Moreover, Nambudiri influence and the preference for sambandham with them was not as pervasive throughout Malabar as it was in the southern taluks.²⁹ North Malabar, for instance, supported a large body of small janmi-tenant cultivators, apart from a few major janmis, most of whom were Nair or Mappilla.³⁰ While this is not to suggest the absence altogether in north Malabar of exploitative sambandham relations between Nambudiri men and Nair women, it certainly questions its extent and importantly the bargaining position of Nambudiri janmis. It must be pointed out that situating the reforms as Panikkar does, serves to obscure any positive implications that matriliney could have had for women.³¹ Further, the

²⁸ Srinivasan cautions that the leading role played by men of the community in the reform movement in the twentieth century to abolish the female profession of temple dancing cannot be understood without reference to the absolute non-availability of the devadasi to their own men. This aspect was underscored by their privileged access to rich patrons and their wealth, which combined to underline the power and influence of the devadasi as women and as artists. Amrit Srinivasan, 'Reform or Conformity: Temple "Prostitution" and the Community in the Madras Presidency', in Bina Agarwal (ed.), *Structures of Patriarchy: State, Community and Household in Modernising Asia* (New Delhi: Kali for Women, 1988), p. 187.

²⁹ Of the 370 principal janmis from among the Nambudiris identified by William Logan in 1881, 356 were in the five southern taluks, 11 in Wynad and seven each in Chirakkal and Kurumbranad. Kottayam drew nil. RMSC I, p. 55. Alongside this were the differences in the tenures of the south and north, which we have argued elsewhere was linked to the virtual absence of the intermediate kanakkar in north Malabar. See Praveena Kodoth, 'Women and Property Rights: A Study of Land-Tenure Structure and Personal Law in Malabar, 1890–1940', Unpublished Ph.D. Dissertation, Department of Economics, University of Hyderabad, (1998), pp. 127–35. For a discussion of the differences in cultivation regimes and tenures of the north and south see Ravindran Gopinath, 'Garden and Paddy Fields: Historical Implications of Agricultural Production Regimes in Colonial Malabar', in Murshirul Hasan and Narayani Gupta (ed.), *India's Colonial Encounter: Essays in Memory of Eric Stokes* (Delhi: Manohar, 1993).

³⁰ A sunni Muslim group with considerable interest in land and trade.

Of the 140 principal janmis identified by Logan in the taluks of north Malabar, only 14 were Nambudiris as against 79 Nairs, 25 Mappillas and three Tiyas. RMSC I, p. 55. Gough points out that all Nair taravads in north Malabar were janmis over at least some land. Gough, 'Nayar: North Kerala', p. 390.

³¹ In a later paper, however, Panikkar reads *Indulekha*, the late nineteenth-century Malayalam novel, quite differently. Quite untrammelled by the feudal context of matriliney, Panikkar contends that *Indulekha's* defence of marumakkatayam in *Indu-*

reforms carried serious import for women emerging from the form of marriage, family and property relations that were imagined by Nair male reformers.

Fuller disputes Gough's assertion that economic change, crucially the entry of land into the market, was the 'root cause' of disintegration of the taravad.³² He asks, pertinently, if the entry of land into the market was the determinant, why did taravads in Malabar persist as joint-property holders for so much longer than those in Travancore, when land entered the market in Malabar seventy years before it did in Travancore?³³ Arguing that economic development was not identical in all regions and that anyway by itself it did not invariably alter family and kinship practices, he dismisses a single determinant theory.³⁴ However, Fuller cites ideology as one of the principal factors of change, referring to the influence of the relative prosperity of the Syrian Christians in Travancore which was linked by a wide spectrum of opinion, particularly that of Nair reformers', to the former's patrilineal form of family.³⁵ He argues that the crisis of the taravad in the late nineteenth century was overstated, emerging from the pre-occupation of a highly visible but small minority of the English-educated and professionally employed Nairs.³⁶ On a different angle, I will contend that the reformers sought to mobilize what was a very real and acute material crisis within taravads to bolster the reformist agenda for a marriage law. In doing so, however, they avoided addressing this crisis frontally.³⁷

lekha echoed the gender equality that Nair women had enjoyed for centuries. Panikkar, *Culture, Ideology*, p. 138.

³² Fuller, *The Nayars Today*, p. 145.

³³ The reference here is to the conferment of ownership rights on the janmis in Malabar by the British in 1793. In Travancore where much of the land was the janmam (superior interest interpreted by the British as freehold right) property of the state, ownership rights were conferred upon the kanakkar only in 1865. *Ibid.* T. C. Varghese, *Agrarian change and Economic Consequences: Land Tenures in Kerala, 1850-1960* (Bombay: Allied Publishers, 1970), p. 64.

³⁴ Fuller, *The Nayars Today*, p. 147.

³⁵ *Ibid.*, p. 146. Fuller contends that the ideology derived from a theory, that both matriliney and joint families were a bar to economic progress, which though invalid, served as self-fulfilling prophecies. For documentation of the influence of patrilineal ideology on Nair reformers see also Robin Jeffery, *The Decline of Nair Dominance: Society and Politics in Travancore 1847-1908* (New Delhi: Manohar, 1994) (reprint of 1976 edition).

³⁶ Fuller, *The Nayars Today*, p. 130.

³⁷ This crisis of survival is depicted starkly in evidences collected by the Malabar Marriage Commission and in accounts dealing with the late nineteenth and early twentieth centuries. RMMC II. See particularly Moyarath Sankaran, *Ente Jeevitha Katha* (The Story of My Life) (Calicut: P. K. Brothers, 1965); C. H. Kunhappa, *Smaranakal Matram* (Memoirs) (Calicut: Mathrubhumi Printing and Publishing Co.,

We may contest Fuller's claim, which was based on the experience with marumakkatayam in south Malabar and Travancore, that the strength of the taravad was contingent upon the weakness of sambandham as a marital tie.³⁸ This is important because even while he cautions against reading too much into the demobilization of the Nair militia by the British which left the Nairs to return home, leading to a strengthening of the sambandham union, he nonetheless suggests that it was an important initial factor that led to changes in kinship and family. This, however, does little to account for matriliney in north Malabar and South Canara, where customary marital relations differed from the better known south Malabar pattern and strong matrilineal descent groups coexisted with women residing post-maritally in the taravad of their sambandhakaran (sambandham partner). In north Malabar, Nair taravads were known to have been matrilineal with virilocal post-marital residence for at least 300 years preceding British rule.³⁹

Arunima seeks to show that the colonial interpretation of marumakkatayam often militated against the rights that were historically available, particularly to women and junior members, within the taravad.⁴⁰ She argues that a highly commercialized land market (free purchase and sale) and separate rights to property (individual rights denied in the colonial interpretation of the taravad) already existed in pre-colonial Malabar and hence the colonial interpretation was a redefinition.⁴¹ Arunima's contention ties in with Dharma Kumar's position that land was freely alienated much before the colonial period.⁴² However, as Kozlowski points out, Dharma Kumar's attempt to refute the contention of Marxist scholars that private

1981); K. Kannan Nair, *Atmakatha* (Autobiography) (Calicut: Mathrubhumi Printing and Publishing House, 1989); A. K. Gopalan, *Ente Jeevitha Katha* (The story of my life) (Trivandrum: Chinta Publishers, 1995).

³⁸ Fuller, *The Nayars Today*, p. 123.

³⁹ Dilip Menon, *Caste, Nationalism and Communism in South India, Malabar, 1900–1940* (Cambridge: Cambridge University Press, 1994), p. 11 citing E. J. Miller, 'An Analysis of the Hindu Caste System in its Interactions with the Total Social Structure in North Kerala', Unpublished Ph.D. Dissertation, University of Cambridge, 1950.

⁴⁰ Arunima, 'Multiple Meanings', pp. 291–3.

⁴¹ *Ibid.*, p. 292. It was maintained in earlier research that land was not freely bought and sold in pre-colonial Malabar and became a commodity with the aid of British land policy. Gough, 'Nayar: Central Kerala', pp. 308, 640; Fuller, *The Nayars Today*, p. 145.

⁴² Dharma Kumar, 'Private Property in Asia? The Case of Medieval South India', *Comparative Studies in Society and History*, Vol. 27, no. 2 (1985).

property in land did not exist in south Asia, did not in any way demonstrate that persons involved in land transactions were not primarily concerned with the produce rather than land itself.⁴³

There is considerable evidence of land transfers, involving interlinked material and ritual considerations, in the pre-colonial period.⁴⁴ However, the crucial point seems to be what land represented (social status, caste/feudal privilege) and under what conditions and on what terms it was transacted? In other words, was land freely alienable or were sales mediated by the taravad and/or other social factors? It has been suggested that the janmi was not merely a landlord; his/her only privilege was not receiving rent, as he/she was involved in a network of interlinked socio-economic, political and cultural transactions.⁴⁵

Arunima's effort to show that a notion of separate rights (as in women's separate rights to property) was not 'lacking' in the taravad,⁴⁶ ignores the crucial ways in which the same notion of rights (individual/separate) was indeed affirmed in the colonial conception

⁴³ Kozłowski points out that under the Mughals, not land itself but its produce, which enabled command over surplus, was the measure of wealth. G. C. Kozłowski, 'Muslim Women and Control of Property in North India', in J. Krishnamurthy (ed.), *Women in Colonial India: Essays in Survival, Women and the State* (Madras: Oxford University Press, 1989), p. 116. Habib shows that land had a more broad-based socio-economic rather than merely an economic meaning. Irfan Habib, 'The Social Distribution of Landed Property in Pre-British India: A Historical Survey', in *Essays in Indian History: Towards a Marxist Perspective* (New Delhi: Tulika, 1995). For the debate on rupture and continuity in the context of colonialism, see also Irfan Habib, 'Studying a Colonial Economy—Without Perceiving Colonialism', *Modern Asian Studies*, Vol. 19, no. 3 (1985).

⁴⁴ For attiper or sale of janmam right documents see, for instance, Deeds no. 5, 9, 12, 13, 35, 38 in William Logan, *Malabar*, Vol. 2 (Madras: Asian Educational Services, 1989), pp. cxix–clxiv; K. K. N. Kurup, *Koodali Granthavari* (Calicut: Calicut University, 1995), pp. xi, 35–107.

⁴⁵ E. M. S. Namboodiripad, *Selected Writings* (Calcutta: National Book Agency, 1985), p. 227. Bernard Cohn, *An Anthropologist among Historians and Other Essays* (Delhi: Oxford University Press, 1987), p. 570. Derrett makes a useful distinction in the conceptualization of property while pointing out that in Hindu texts land, houses, jewelry and so on were markers of relationships between people and things, whereas in western legal theory property signified a right over things. Duncan Derrett cited in C. V. Kala, 'Trends of Change in Matrilineal Kinship: The Nayar Case', Unpublished Ph.D. Dissertation, Department of Sociology, University of Delhi (1982), p. 113.

⁴⁶ Particularly significant here is a deed in Logan's collection wherein two women, Kurikkalote Palakkal Mittalevittil Ummanga and Uchchira, in 1739 transfer 'as far as their share of the Tara, kandam (fields) and swamps below their house'. Deed no. 35 in Logan, *Malabar*, Vol. 2, p. cxlvii. While this tells us that it was possible to separate and alienate shares of family property, it does not indicate on what basis such separation and the ability to sell were achieved/available.

of the taravad, reducing considerably the complexity of the transformation. Such interpretation remains trapped within the polarization of rights between individual and collective, so evident in the legal discourse on marumakkatayam, which served to obscure altogether different conceptions of claims and obligations.⁴⁷

What was effectively remade and frozen in the official discourse was the conception of custom, though customs based on this notion were continuously challenged and revised. Such revisions, however, were marked as aberrations from the theory upon which the law was based.⁴⁸ Apart from what the dissension against proposed changes implied, the 'requiem' for matriliney (Madras Marumakkatayam Act, 1933 and in a more limited sense the Malabar Marriage Act, 1896) straddled simultaneously i) the dismantling of the taravad as constructed in the official discourse, which could be read as liberating matriliney from the tyrannical hold of karanavan (oldest maternal uncle designated in the legal discourse as head of the taravad), and court-made custom, and ii) facilitating the possibility of the conjugal family.

The Official Discourse on Sambandham: Delegitimizing Custom?

Marriage elsewhere is or has been the taking possession of the woman by the man . . . the nuptials here [in Malabar] are interposed only to emancipate women and introduce her into the world . . . Provided she wears a tali round her neck, she is free of conjugal bonds.

M. Elie Reclus⁴⁹

In order to locate the ideological influences on the understanding

⁴⁷ A revealing instance was the denial of the right to partition except by common consent of all members of a taravad. This drew upon an expression of individual right in every member's right to dissent. Collective right, then, and holding property in the collective capacity were founded in the official legal discourse upon a form of individual right. Praveena Kodoth, 'Women and Property Rights', p. 47.

⁴⁸ The 'principles of marumakkatayam law' though never laid out systematically, were called upon constantly in judicial interpretations to validate certain practices as customs over others. The latter were recognized, if at all, as exceptions. For discussion of the nuances of a specifically colonial conception of custom as it was elaborated in colonial Punjab, see Neeladri Bhattacharya, 'Remaking Custom: The Discourse and Practice of Colonial Codification', in R. Champakalakshmi and S. Gopal (ed.), *Tradition, Dissent and Ideology: Essays in Honour of Romila Thapar* (Delhi: Oxford University Press, 1996).

⁴⁹ Appendix I, RMMC II.

of sambandham in the official discourse it is necessary to outline the conception of ‘marriage as contract’. The influence of this conception is evident in the rulings by the civil courts on the nature of marriage under aliyasantana law and in the debate on marriage in Malabar.⁵⁰ There are two issues of interest to us here: i) the conception of ‘marriage as contract’, and ii) the criticism in nineteenth-century Britain of the marriage contract as falling short woefully of a truly contractual relation and conforming more to the notion of status. A discussion of these two issues in the light of the colonial understanding of sambandham draws attention to a third issue—the resemblance interestingly between a truly contractual relationship and sambandham, as understood in the official discourse.

Carole Pateman takes us back to the classic contract theorists in seventeenth- and eighteenth-century Europe who argued that in civil society, women not only can but must enter into the marriage contract.⁵¹ Through a critical reading of the social contract (the ‘original’ contract that founded civil society in the conjectural history of civil society and a new form of political right), she argues that the contract theorists (in understanding the transformation from natural state to civil society/patriarchal society to post-patriarchal civil society) merely incorporated conjugal right into their theories ‘transforming the law of male sex right into its modern contractual form.’⁵² Following from the ‘original’ contract which constructs ‘a patriarchal account of masculinity and femininity, of what it is to be men and women’, she points out that only masculine beings were endowed with the capacity to enter into contracts, ‘the most important of which is ownership of property in the person; only men, that is to say are individuals’.⁵³

Pateman argues that women are required to enter into the marriage contract for they have to be incorporated into civil society. However, they are incorporated on a different basis from men, that

⁵⁰ If inscribed onto the moral-legal framework of the colonial state, sambandham took on the shape of concubinage, it fell into a pattern of similar interpretations. For instance, Srinivasan has pointed out that echoing a common set of political-moral imperatives, if sacrificial infanticide and sati had been banned earlier as ‘murder’, then by the late nineteenth century temple dancers were being presented as prostitutes. Srinivasan, ‘Reform or Conformity’, p. 178.

⁵¹ Carole Pateman, *The Sexual Contract* (Cambridge: Polity Press, 1989), p. 11.

⁵² *Ibid.*, p. 3.

⁵³ *Ibid.*, p. 11. Pateman’s purpose lies precisely in looking at the problems with the idea of contract itself, in that the modern form of patriarchy was embedded in it, and hence marriage as ‘real’ contract has little appeal for her.

is, not as 'individuals' but as women which according to the original contract means as natural subordinates. The marriage contract simultaneously rejected and presupposed the subjection of wives. Rejected in order to enable women to enter into the contract and presupposed in their natural inability to enter into contracts which was revisited in the construction of the figure of the wife.⁵⁴

The conception of 'marriage as contract' often posited the idea of 'real' contract as liberating or as the solution of unequal relations. William Thompson, perhaps the most ruthless critic of the notion of 'marriage as contract', in a work published in 1825 refers to the idea as an 'audacious falsehood'. He goes on to ask:

Can even both the parties, man and woman, by agreement alter the terms, as to indissolubility and inequality, of this pretended contract? No. Can any individual man divest himself, were he even so inclined, of his power of despotic control? He cannot. Have women been consulted as to the terms of this pretended contract?⁵⁵

The contractual character of marriage was expressed in that '[i]t was of contract that the relation should be established, but, being established the power of the parties as to its extent or duration is at an end'.⁵⁶ A distinction was made between the behaviour of individual husbands and the structure of the institution of marriage or the power embodied in the structure of the relation between 'husband' and 'wife'.⁵⁷ It could be argued then that marriage was not sufficiently a contract or was at best a limited contract, more a matter of a status.⁵⁸

The Legal Status of Sambandham

That the matrilineal systems on the west coast did not have a form of marriage was decided in the High Court in several cases concerning

⁵⁴ *Ibid.*, p. 181.

⁵⁵ *Ibid.*, p. 157.

⁵⁶ A judge in the United States in 1888, *ibid.*, p. 155.

⁵⁷ John Stuart Mill in *The Subjection of Women* concurs with Thompson on this point though Mill goes on to push the case for contract as embodying freedom, *ibid.*

⁵⁸ However, this raises other problems, specially when contract as the enemy of status was posited as the solution to the subjection of women. Here, as Pateman points out, the contemporary criticism of the ascriptive construction of 'wife' and 'husband' based on sexual difference, unlike earlier attacks on the indissoluble marriage and its non-negotiable terms, directed at the husband's conjugal right, faces an insuperable problem. For the 'individual' was a unilinear masculine 'individual',

aliyasantana law and this was extended to marumakkatayam law.⁵⁹ In the most widely cited judgment of the High Court given in 1869, sambandham was held to be

in truth not marriage, but a state of concubinage into which a woman enters of her own choice and is at liberty to change when and as often as she pleases. *From its very nature*, then it might be inferred as probable that the woman remained with her family and was visited by the man of her choice; . . . Such has undoubtedly been the invariable habit under the Marumakkatayam law, and, although women in Canara under the Aliyasantana system do, it seems in some instances, live with their husbands, still there is no doubt that *they do so of their free will*, and that they may at any time rejoin their own families.⁶⁰ (emphasis ours)

Entering into a ‘marriage contract’ involved entering into an already familiar terrain of correlative rights and duties. The right to dissolve a relationship at will, would have interfered with the structure of marriage even as the rights of women in a sambandham, in its colonial interpretation, interfered with the ‘power embodied in the structure of the relations between “husband” and “wife”’.⁶¹ The specific relationship/exchange of obedience and protection arising from marriage was absent in the colonial reading of sambandham. In a sambandham, being a wife did not entail observing what Lenore Weitzman terms the ‘essentials’ of marriage, i.e., ‘the husband’s duty to protect the wife and the wife’s duty to serve her husband’.⁶² As Weitzman noted about marriage in contemporary western society despite major reforms, a married couple cannot contract to change the ‘essentials’ of marriage. In Britain, it was not until 1969, when irrevocable breakdown of marriage became a ground for divorce, that divorces were obtained with relative ease by both wives and husbands and members of all social classes. To anticipate the termination of the marriage contract in the very act of contracting has become possible only recently.⁶³

a patriarchal category. Contract may be the enemy of status but it is also the mainstay of patriarchy; the consolidation of its modern form, *ibid.*, p. 187.

⁵⁹ There seems to have been no instance of adjudication in the High Court on the question of marriage under marumakkatayam law. Lewis Moore, *Malabar Law and Custom* (Madras: Higginbothams, 1905), p. 80. The Malabar Marriage Commission assumes identity between the two sets of practices. ‘It is as certain as anything can be that any ruling which holds that there is no marriage known to the Aliyasantana law must *a fortiori* apply to Marumakkatayam also.’ RMMC I, p. 25.

⁶⁰ Subba Hegadi v Tongu, Madras High Court Reports, Vol. 4, 1868, p. 196, in Moore, *Malabar Law* (1905), p. 80.

⁶¹ Thompson cited in Pateman, *The Sexual Contract*, p. 158.

⁶² L. Weitzman, cited in *ibid.*, p. 165.

⁶³ *Ibid.*, p. 183.

Uncannily enough, sambandham here conforms closely to the idea of a 'real' contract, in that it did not have a pre-established terrain. Judicial dismissal of its claim to constitute marriage, suggests that what was wrong with sambandham was precisely its identity with 'real' contract. A submission to the marriage commission by a lawyer from north Malabar, that 'the modern idea of marriage is to make it simply a matter of contract, which is more consistent with Malabar marriages', in this context does not come as surprise.⁶⁴ Significantly this was at a time when efforts in Britain to open up the 'marriage contract' were being resisted.

Crucially, the judgment brings to the fore the role of the putative 'agency' of women and central to it of the construction of sexuality in determining the legal status of sambandham. Recognition of post-marital residence by women in the taravad of the sambandakaran as custom (in keeping with the practice in South Canara and also in north Malabar), it was implied, would go against the nature of marumakkatayam law.⁶⁵ In the context of the recognition of polygamy as a legal form of marriage under Hindu law as administered by the British-Indian courts, we could suggest that the complications relating to marriage in Malabar arose on account of the lack of the 'usual' restraints upon women.⁶⁶ Being questioned in the legal discourse was the absence of enforceable restraint specifically upon women not only from terminating, at her own will, an earlier 'sexual connexion', but her 'right' to form another (which polygamy under

⁶⁴ Kottieth Ramunni, RMMC II, p. 242. A similar point was made by A. C. Kannan Nambiar, a staunch votary of change to patriliney, who nevertheless objected to the import of the English law of divorce, when the marumakkatayam Hindus had a law 'which it is the tendency of modern civilizations to attain', *ibid.*, p. 207.

⁶⁵ Varikara Vadake Vittil Valiya Parvati v Varikara Vadake Vittil Kamaran Nayar (Turner, C. J. and Kindersley, J.) Indian Law Reports (all references are to the Madras series), Vol. 6 (1883), p. 341.

⁶⁶ T. Kunhiraman Nair pointed out that Islamic law sanctioned divorce 'by the husband at his will and pleasure' and yet no one was 'bold enough' to urge on that there was no legal marriage under that system. RMMC II, p. 158.

Illustrating a similar process but with different results, Poonacha argues that customary marriage among the Coorgs/Kodava, a patrilineal society in south-west India, was reworked through a colonial discourse that restricted women's options. Marriage was recognized as legal but premised upon the fidelity of women, curtailing women's rights to divorce while permitting polygamy. Poonacha argues that this was a colonial reinterpretation of customary law. Veena Poonacha, 'Redefining Gender Relationships: The Imprint of the Colonial State on the Coorg/Kodava Norms of Marriage and Sexuality', in Patricia Uberoi (ed.), *Social Reform, Sexuality and the State* (New Delhi: Sage Publications, 1996).

Hindu law sanctioned for men).⁶⁷ We then have a clear instance of a problem of sexuality, in that sambandham was interpreted as permitting a mode of sexuality that was clearly unacceptable within the moral-ideological framework of the colonial state.

The objections to sambandham in the colonial discourse were linked to the putative principles of marumakkatayam law enjoined in 'custom' rather than practice itself. Witness a prominent colonial administrator who maintained that though there was no legal form of marriage, '[i]n spite of this custom, marriage is practically as common and as binding among the Nairs as in many other races'.⁶⁸

J. Sturrock, an administrator with long experience of South Canara, struck a different note. He contended that vesting landed property in women and the greater equality of the sexes in conjugal relations, a consequence, probably, of the women's propertied status, 'has been commonly supposed to be an immoral system'.⁶⁹ However, he added, unfaithfulness, clandestine or otherwise, while the marriage tie exists, is said to be much less common than among castes whose pretensions to morality are much higher.⁷⁰ Citing the prevalence of polygamy among other castes, he argued that the 'propriety of the common idea of the comparative immorality of Tulu marriage customs' was linked to the conventional code which 'strives to preserve the chastity of one sex by the severest penalties while allowing the other the utmost latitude in the formation of either legalised or illicit connexions'.⁷¹

A decision by the High Court in 1883 spelt out more clearly the grounds upon which marriage was deemed not to exist. 'That the Aliyasantana law did not recognize such cohabitation as marriage appears to be shown by the circumstance that it founds upon it no

⁶⁷ It was pointed out that sambandham was regulated by custom, requiring the grant of notice before termination and the consent of taravad elders for such termination. C. Ramunni Menon, RMMC II, p. 153. Institutions cited as prevalent among the Tiyas were *Nyayam Kodukuka* (to do justice) and *Kaiyum Kanakkum Nokuka* (to settle accounts), indicating negotiation of termination of marriage. E. K. Krishnan, *ibid.*, p. 171 and A. C. Kannan Nambiar, *ibid.*, p. 205.

⁶⁸ Sir Fitzjames Stephen in a debate in the Viceroy's Legislative Council in 1872, cited in Panikkar, *Culture, Ideology*, p. 194. For a similar view see Logan, *Malabar*, Vol. 1, p. 136. Despite the general practice to the contrary, the marriage commission views polyandry as sanctioned by marumakkatayam law, and hence as constituting custom. RMMC I, p. 11.

⁶⁹ J. Sturrock, *South Canara*, Vol. I, Madras District Manuals (Madras: Madras Government Press, 1894), p. 141.

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

rights of property or inheritance.⁷² The definition of ‘marriage as contract’ ruled out the possibility of separation of marriage and property laws.⁷³ In the assertion that aliyasantana law did not recognize the relationship as marriage, we have the curious situation whereby a custom (sambandham was recognized as/by custom) was refused legal sanction on the authority of customary law itself. Even as post-marital residence of women in the taravad of the sambandakaran was seen as anomalous, any form of patrilineal inheritance was seen as incommensurable with matriliney.⁷⁴

And yet, there are indications from north Malabar in particular that a deceased male member’s taravad was under a ‘moral obligation’ to provide for his wife and children. The form and extent of provision depended upon the affluence of his taravad and the material circumstances of the wife and children. Some respondents to the marriage commission referred to kattu stanam as the wife’s ‘portion’, to be received by her on the death of her husband; an ‘inheritance’ possibly comprising movable and even immovable property such as a paramba (garden land).⁷⁵ Material obligations towards the wife and children of deceased members of taravad were generally recognized, but were underlined when the wife and children were in need.⁷⁶ It could be argued also that the obligation of anandiravans (junior members of taravads) of deceased males to supply the latter’s wife and children with clothes and oil was a reference in customary parlance to a maintenance obligation.⁷⁷

⁷² Koraga v. the Queen, Indian Law Reports, Vol. 4, 1882, p. 374, in Moore, *Malabar Law*, p. 82.

⁷³ For instance, the marriage commission in its report does not even consider this possibility suggested by several observers. Chandu Menon, RMMC I, p. 103; C. Gopalan Nair, RMMC II, p. 186; Govinda Menon, *ibid.*, p. 294; Sturrock, *ibid.*, p. 156.

⁷⁴ Indicating the contradictions inherent in the colonial interpretation, Kottieth Ramunni, a witness before the marriage commission, points out that in-as-much as property rights emerging from marriage were absent, this was so among the marumakkatayam mappillas as well, but their marriages were recognized as legal. *Ibid.*, p. 242.

⁷⁵ T. Kunhambu, *ibid.*, p. 340; K. Rammunni, *ibid.*, p. 242; E. Ambu Nair, *ibid.*, p. 275.

⁷⁶ Kannambra Rammunni Nair, janmi and District Board member, *ibid.*, p. 121; T. V. Anantan Nair, District Munsif, Shernad, *ibid.*, p. 122; T. Kunhiraman Nair, Judge, High Court, Trivandrum, *ibid.*, p. 158; A. C. Kannan Nambiar, District Munsif, Badagara, *ibid.*, p. 197; E. Ambu Nair, Sub Registrar, Ponnani, *ibid.*, p. 275; Othena Menon, Sub Registrar, Payyoli, *ibid.*, p. 307. See also depositions before the commission by Vengayil Kannan Nair, janmi; A. K. Anandan Nambiar, adhigari and janmi; Kalliat Chathu Nambiar, janmi; Appendix IV, *ibid.*

⁷⁷ Kannambra Ramunni Menon, janmi and District Board member, pointed out that a woman was entitled to such maintenance until she married again, *ibid.*, p. 121.

The Nileswaram and Kadathunad royal houses in north Malabar were formed through gifts by the Kolathiri (ruler of Chirakkal) to his sons.⁷⁸ Putravakasam (literally rights of the children) seems to have been a part of this obligation. Its categorization as moral rather than a legal right does not make clear how the former could fail to inform the latter.⁷⁹ Significantly putravakasam was also defined as a posthumous right and as an older version of the then current gift of self-acquired property to children by fathers.⁸⁰

Reform of Matrilineal Customs: The Problem, the Inquiry and the Debate

Concern was expressed over the state of families and management of property among people following the marumakkatayam system upon two not unrelated grounds. One reason for concern was, perhaps, best expressed in the growing prominence of the notion of self-acquired or separate property and the sharpening of the dichotomy between taravad/separate property.⁸¹ Separate property was seen as driving a wedge into the taravad. '[It] causes splits, litigation and quarrels in the taravad, which is thereby ruined. It is doubtful whether there is a taravad in Malabar where there is no enmity between and ananadiravans.'⁸² A father making provision for his chil-

⁷⁸ Gough, 'Nayar, North Kerala', p. 392; Logan, *Malabar*, Vol. I, p. 343; Sreedhara Menon, *Survey of Kerala History* (Kottayam: National Book Stall, 1967), pp. 181, 202; C. R. Karunagara Menon, Vakil, Appendix IV, RMMC II.

⁷⁹ K. P. Raman Menon, High Court Vakil, while stating that *putravakasam* did not constitute a right, points out that the civil courts did not recognize it as such, *ibid.*, p. 271. Suggestive of the influence of the conception of custom, Gough mentions that gifts of land to wife and children were known long before the British period, 'although they were against the law'. Gough, 'Nayar: North Kerala', p. 392.

⁸⁰ A. Chathu Nambiar, District Munsif, Nadapuram, *ibid.*, p. 137. Deposition by John Leonard Rozario, Vakil, *ibid.*, Appendix IV. A. C. Kannan Nambiar, District Munsif, Badagara, pointed out that the custom received its coup-de-grace in the last ten years with rising conflict between karanavan and anadiravan, though 'gifts of self-acquired property by father to children are still designated by the old name of putravakasam', *ibid.*, p. 20. This was in contrast to responses, mostly terse, that putravakasam was only a gift to children by fathers and did not indicate a right.

⁸¹ The right of a taravad member to dispose of separate property was recognized by the High Court in a case in 1863, stipulating, however, that after his death it would pass to the taravad. Moore, *Malabar Law*, p. 175.

⁸² Madras Native Newspaper Reports, Kerala Patrika, (20 April 1893), p. 193.

dren was described as merely observing 'a dictate of natural law'.⁸³ It was asserted that anandiravans, subject as they were to

natural sympathies and antipathies . . . perceive the folly of expecting the karanavan to extinguish their feelings of love for their wife and children . . . eagerly awaiting a time when it will be their turn to enrich their wives and children at the expense of the tarawad.⁸⁴

Indicating as these do the displacement of the tensions of the taravad on to the lack of primacy of 'natural' ties or the 'natural' family, the writers, nevertheless, do not adopt the language of legitimacy in advocating change. Yet, in seeing the tensions as arising from the 'not-natural' condition of the family, they deflected attention from the possibility at all of working through these tensions.

In another kind of response, the crisis of legitimacy, emerging from the lack of legal status of sambandham, constituted the very ground for concern. Adapted to push this point were stories, often exaggerated, which sought to convey the fragility, to the point of being capricious, of Nair marriages. If these included, on a more serious note, accounts of how Nambudiris used their position as janmis to coerce their tenants into arranging sambandhams between them and women of the tenant taravads,⁸⁵ in a different genre were jokes and anecdotes narrated to bring home the point that all Nairs were illegitimate.⁸⁶

A respondent to the commission bemoaned that '[l]ately there have been many instances of well-to-do men carrying off the wives of poor husbands and consequently a law to give permanence to marriage has become necessary'.⁸⁷ If sambandham generally lasted for life, was marked by a great degree of mutual fidelity and 'aberrations' were highlighted precisely because they were exceptional,⁸⁸

⁸³ A. Govinda Pillai, *Dewan Peishcar, Trivandrum, RMMC II*, p. 171. In a written statement to the Commission, the Dewan of Cochin, Tiruvenkatachiar, questioned the use of the term natural to certain arrangements. Against the notion that marumakkatayam proceeded against nature in compelling 'a man to give his property to one for whom he can have little or no natural affection', he argued that 'nature' and 'natural' were relative terms. He asked what was natural and/or just about makkatayam law when it denied inheritance rights to daughters. *Ibid.*, p. 208.

⁸⁴ A. C. Kannan Nambiar, *ibid.*, p. 207.

⁸⁵ For instances see *ibid.*, p. 205, and Appendix IV, *ibid.* Joan Mencher and Helen Goldberg, 'Kinship and Marriage Regulations among the Namboodiri Brahmans of Kerala', *Journal of the Royal Anthropological Institute*, Vol. 2, no 1 (1967), p. 100.

⁸⁶ For instances see Panikkar, *Culture, Ideology*, p. 193.

⁸⁷ K. R. Krishna Menon *RMMC II*, p. 214. Added to such tendencies, he continued, was the belief of a Nambudiri that 'he has a right to have sexual intercourse with a Nair lady, *what ever might be the position of her husband*'. emphasis ours.

⁸⁸ Panikkar, *Culture, Ideology*, p. 194.

why was a legislation, particularly on the lines suggested, required at all? The report of the commission suggests that the legislation targeted not so much exceptional behaviour as social mores. It was expected to lead the way in introducing a more 'enlightened' social practice, particularly by provoking opinion in favour of a marriage law.⁸⁹

Reports of 'errant' behaviour as the basis for change suggest acutely the dilemma of a section of the Nairs trapped between the legality of custom and a new circumstance, a collective agony that was expressed by Sankaran Nair while introducing the Malabar Marriage Bill in the Madras Legislative Council. '[O]ur wives are concubines, our children are bastards in a court of law and the necessity therefore for a bill to legalize marriage and provide for the issue of such marriages seems apparent.'⁹⁰ While it would be tautological to suggest that the Malabar Marriage Commission and the ensuing debate foregrounded the question of marriage, it is significant that other changes were expected to follow, inevitably, in the wake of a 'form of marriage'.

The crisis of legitimacy had a determining influence on the formulation of the problem of reform in the late nineteenth century. In fact, as the problem was posed in the late nineteenth century, reform hinged upon the issue of marriage and issues such as the powers of the karanavan, and relations of property within the taravad were not raised independent of marriage reform. The question of legitimacy was to continue to exert a determining influence on the formulation and coding of the problem of reform well into the twentieth century, though in a significantly different way. Notable was the anxiety in the early twentieth century to avoid posing the problem in terms of the crisis of legitimacy owing to the considerable resentment against the allusion that sambandham did not constitute a legal relationship.

The Inquiry: Premises and Recommendations

The Commission appointed in May 1891 submitted its report in December that year.⁹¹ Its universe of inquiry was the educated and

⁸⁹ RMMC I, p. 34.

⁹⁰ Panikkar, *Culture, Ideology*, p. 195.

⁹¹ Diary of the Commission, Appendix VI, RMMC II. In order to collect information the Commission framed and despatched questionnaires to 474 persons described as belonging to 'the official and educated classes, from representatives of

government and associated employed who comprised the emerging elite, the only exceptions being the landed aristocracy, the customary elite. The report of the Commission was signed by four only of the six members. Two of these four had reservations on certain points and submitted separate memoranda. Two members, the President, Sir Muthuswami Aiyar, and Chandu Menon submitted dissenting notes expressing near total disapproval of the Bill.

From the questionnaire issued by the Commission it is evident that in seeking to ascertain the preferable form of legislation, the options were tied to possible forms of marriage.⁹² Questions were organized around five concerns: i) mapping out sambandham as a practice,⁹³ ii) whether the rituals that comprised tali-kettu kalyanam (pre-puberty ritual that was interpreted as akin to the initiation rite of the devadasi⁹⁴) and sambandham had religious sanction,⁹⁵ iii) the state of relations between the karanavan and junior members, iv) whether specific civil rights were attendant upon a sambandham which in turn would determine whether it was established upon a proper contract,⁹⁶ v) opinion regarding the proposal to enact a law of marriage. The Commission's efforts to reopen the question of marriage by examining rituals and civil rights were undermined by the premise that the legal status of sambandham could be determined in relation to a 'universal' definition of marriage rather than by customary law.⁹⁷

It [marriage] is certainly not regarded in this country, in all cases, as a contract between the persons married, as it is in Europe, but it certainly is

influential families or tarawads in the interior and from members of the Bar in the district'. Of them 322 sent in replies. Local public opinion was sought to be ascertained through a few leading men from each taluka who were invited to appear before the Commission which led to the examination of 121 witnesses. In response to an announcement in the district gazette inviting representations from persons/societies not specially invited, the Commission received 38 petitions and representations from 12 meetings held in various parts of the district. RMMC I, p. 4.

⁹² In the questionnaire itself attention was directed predominantly at the question of marriage, seeking to generate information on the rituals connected with tali-kettu kalyanam and sambandham, significance of these rituals, and civil and ritual rights arising from these customs. Appendix III, RMMC II.

⁹³ Questionnaire circulated by the Commission, Questions 1–10, *ibid.*

⁹⁴ F. Fawcett, *Nayars of Malabar* (New Delhi: Asian Educational Services, 1990), (reprint of 1901 edition), p. 231; RMMC I, p. 14.

⁹⁵ Questions 11–22, *ibid.*

⁹⁶ Questions 22–28, *ibid.*

⁹⁷ Imbichunni Nair, First grade pleader, Tellicherry, indicated to the marriage commission that the nature of the questionnaire despatched indicated that legal recognition of sambandham was not possible, *ibid.*, p. 134.

regarded as a contract between some persons, the parents of the parties, or the parents of the girl and the husband . . . There must be an agreement, there must be a consideration for that agreement, and there must be, as a consequence, a set of correlative rights and duties.⁹⁸

Being held out here was the notion of marriage ‘not as a contract in the ordinary acceptation of the term; but as a contract *sui generis*, if indeed it be a contract at all; as an agreement to enter into a solemn relation which imposes its own terms’⁹⁹ i.e., the set of correlative rights and duties.

The commission set complete faith in the religious status of the denial by the Nambudiris as a caste that the formalities could constitute marriage. In a revelation of the interlocking understanding of marriage as contract and sacrament, they state that ‘a marriage can scarcely be religious, when the marriage relation can be at any time arbitrarily repudiated’.¹⁰⁰

Importantly, evidence of strife within the taravad and strained relations emerging from the polarization of relations of power and dependence, fed directly into the argument in the report that the matrilineal system was unworkable. Thus the need to curb, through legislation, the absolute powers of the karanavan reflected in the evidence of mismanagement collected by it does not seem to merit mention. On the other hand, that there were not 50 taravads in Malabar that were not in debt is cited as merely an indication of its non viability.¹⁰¹ A witness who is opposed to a marriage law who nevertheless highlighted strife within the taravad is seen as ‘unlikely to exaggerate the evils of the existing system’, ironically then, such evidence is perceived as working into the need for a marriage law.¹⁰²

Debating the Marriage Bill

It is important to note that there were a number of positions that emerged in response to the marriage bill. For instance, orthodox defendants of the status quo, particularly the Nambudiris and mem-

⁹⁸ Sir Fitzjames Stephen in the Viceroy’s Legislative Council in 1872 cited in RMMC I, p. 13.

⁹⁹ J. Shouler, cited in Pateman, *The Sexual Contract*, p. 155.

¹⁰⁰ RMMC I, p. 27.

¹⁰¹ V. Chappan Menon, Deputy Collector, Appendix IV, RMMC II, cited in RMMC I, p. 32.

¹⁰² RMMC I, p. 31.

bers of royal families, maintained that providing a form of marriage for marumakkatayam society would amount to flouting the tenets of religion. They held that marumakkatayam was instituted by the ancient sage Parasuraman so that Nambudiri men could have unrestricted sexual access to matrilineal women. As evidence they cited the Kerala Mahatmyam, a text of that was seen by the British as suspect.¹⁰³ Ironically, this opinion is treated in the report as possibly the only valid objection to the marriage law, it being on religious grounds, but is seen as undermined by Nair resentment against it.¹⁰⁴ Further, Muthuswami Aiyar, who submitted a note of dissent against the Commission's report, agreed with the colonial interpretation of sambandham but viewed the changes attempted through the Bill as much too radical. The Bill ignored caste restrictions and the customary rules of consanguinity and affinity and retained stringent provisions as to divorce and the rule of succession to self-acquired and separate property. Instead, Muthuswami Aiyar proposed a law with minimal changes such that marriages remained within existing caste rules, provided for divorce without resort to court and recognized matrilineal succession.¹⁰⁵

A critical reading of two contrasting views that emerged from among the English-educated section of the Nairs on the marriage law could help us understand the conception of sexuality that sustain these positions.

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

The changes fostered through the interpretations of marumakkatayam law by the civil courts were within the framework of the taravad, though they threatened, increasingly, that framework. However, during the process of reforms, envisaged through a marriage law,

¹⁰³ RMMC I, 1891, p.10.

¹⁰⁴ President's Supplementary Memorandum, RMMC I, pp. 79–80. He observed that the revised Bill presented by Sankaran Nair embodied provisions which were at once at variance with extant custom and opposed to the feeling of the majority of marumakkatayam society, including the educated classes.

Muthuswami Aiyar, is compelled to point out that the Nambudiri point of view that sambandham did not constitute a marriage binding on him, as it was not established upon vedic rites, was not sufficient reason to conclude that as between Nairs it was not regarded as binding either, *ibid.*, p. 87.

¹⁰⁵ *Ibid.*, p. 39.

there were attempts to do away, altogether, with taravad. Sankaran Nair, perhaps the strongest voice for thoroughgoing change, maintained that there was no place in the marumakkatayam system for a marriage law, co-terminus with the official discourse on sambandham.¹⁰⁶ Hence providing a form of marriage meant introducing into the system simultaneously other innovations such as patrilineal inheritance and guardianship and maintenance of the wife and children by the husband and father respectively.

Sankaran Nair's position on a marriage law needs to be seen alongside his association with the Social Reform Movement in Madras in the closing decades of the nineteenth century. Of importance were their efforts against caste discrimination and against the disparities imposed on women by Hindu law.¹⁰⁷ If his circumstance, having moved away literally from the taravad, made adherence to marumakkatayam law anomalous, the marriage Bill that he drafted and which was now being debated upon, was directed at orthodox opposition to it. The latter was on the grounds that people following the marumakkatayam law ought not be allowed to have a marriage law.¹⁰⁸ However, his response, shaped distinctly by the need to disavow orthodox opinion, is to move out of marumakkatayam. Significantly, it was the colonial interpretation of sambandham that had endorsed the orthodox reading. As Chandu Menon points out, even Sankaran Nair does not seem to be quite sure as to the binding character of sambandham before the High Court ruling in 1869.¹⁰⁹

Against the suggestion that legislation should be based on existing usage as much as possible, Sankaran Nair argues that it was 'scarcely sufficient to ignore the principles that underlay that scheme of legislation'.¹¹⁰ By giving legal status to sambandham through registration 'the law makes it a legal marriage *while custom did not recognize it as such* [emphasis ours] and *perpetuates all the restrictions by which such unions are*

¹⁰⁶ Witness, for instance, his objection to the Muthusami Aiyar's proposal of making minimum changes. 'We import into the system the notion of marriage which is every bit repugnant to, but ultimately destructive of, that system.' Home Judicial Proceedings, nos 162–82, (April 1895), NAL.

¹⁰⁷ From the third session of the Indian National Congress at Madras in 1887, he is known to have taken a leading part in the Social Reform Movement. K. P. S. Menon, *C. Sankaran Nair* (New Delhi: Publications Division, 1979) (reprint of 1967 edition), p. 26.

¹⁰⁸ Home Judicial Proceedings, nos 162–82, (April 1895), NAI. For discussion of his position that 'marriage did not form a part of the marumakkatayam system' see also Home Judicial Proceedings (May 1896), nos 254–5, Part B, NAI.

¹⁰⁹ RMMC I, p. 102.

¹¹⁰ Home Judicial Proceedings, nos 162–82 (April 1895), NAI.

now surrounded'.¹¹¹ (emphasis in the original). He suggests that his Bill could be modified so as to be at once acceptable to the educated Malayali and in harmony with the principles that an English government was bound to uphold.¹¹² This leads him to advocate a permissive law which would enable 'those so inclined to adopt the Paternal family law, based on marriage . . . and leaves alone those who prefer the Maternal family law'.¹¹³

Among Sankaran Nair's objections to a legislation based on existing usage was the lack of restraint on divorce (an interval of six months) and the non-recognition of the right of wife and children to succeed to the entire property of the husband, which he argued were basic shortcomings.¹¹⁴ 'I consider that the union can scarcely be considered marriage if it is dissoluble at the will and caprice of either of the parties.'¹¹⁵ Further,

I strongly believe that the stability of the marriage union will be best ensured by creating such unity of interest—by declaring that the wife and children will succeed to the property left by the deceased. It will strengthen and where necessary *create* the feeling that the home of the father is the home of the wife and children and there will therefore be a *natural reluctance* to break up the family circle.¹¹⁶ (emphasis ours)

The establishment of the 'natural family' (by ensuring stability of marriage through a difficult divorce provision), however, was contingent upon the 'naturalization' (the generation of natural reluctance to break up the family) of patrilineal kinship, inheritance and post-marital residence. The wife had to be under the guardianship of the husband, an 'essential' of marriage.

He advocated encumbered divorce, i) in the interests of the wife on the plea that it is not the wife who generally abuses the right to divorce; ii) as divorces were rare and socially regulated, 'it appears

¹¹¹ *Ibid.*

¹¹² RMMC I, p. 39.

¹¹³ Sankaran Nair is careful to add, however, that, '[t]o support such legislation we are not bound to maintain that the absence of a marriage law and the severance of the sexual union at will is a disgrace. We only assume that there is no rule of public policy which prevents those willing to do so from abandoning the Marumakkatayam system'. Home Judicial proceedings, nos 162–82, (April 1895), NAI.

¹¹⁴ He cites two other points on which the proposal militated against social reform, i) tacit sanction of polygamy and polyandry and ii) recognition of customary caste barriers to marriage by legislation, *ibid.*

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*

to me that the law ought to declare that except on certain specified grounds, the marriage tie ought not to be dissolved'.¹¹⁷ Such a provision would have constituted a *presumption* grounded already in the terrain of the notion of 'marriage as contract'. If the desire for patrilineal succession rested on perfectly 'natural' grounds i.e., '[n]atural justice is in favour of the wife and children'; it was also in the interests of public policy which required it 'partly to ensure the stability of marriage unions, partly as a stimulus to exertion and generally in the interests of the family home'.¹¹⁸ Hence he emphasizes the need to presume that a man intended to leave his property to his children, calling for an inversion of the presumption in favour of the taravad in the colonial interpretation. Paternity was incommensurable with the matrilineal system and could be achieved only at the cost of the taravad, with the endorsement of 'conjugal' as ethic, as the defining moment of family. Sexuality had to be redefined, restraining women's sexual freedom.

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

Chandu Menon¹¹⁹ submitted a separate memorandum expressing disagreement with the report of the commission. He attributed the vehement and widespread opposition to the marriage bill to provisions which interfered with caste rules, introduced registration of marriage, removed customary rules of consanguinity and affinity, and enabled descent of self-acquired property to the 'natural' family.¹²⁰ The joint estate of the taravad, he argued, was nothing if not the accumulation of individual acquisitions and sanctioning descent of

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.*

¹¹⁹ Chandu Menon is well known as the author of *Indulekha*, a Malayalam novel written more or less after the English fashion, as he put it. Written over a period of two months in 1889 it was among the first in the genre in Malayalam. Chandu Menon started his career in 1864 as a clerk in a small causes court and rose through the ranks to the position of a sub-judge. During his tenure as member of the marriage commission he was posted as a munsiff in Calicut. Barring brief tenures in Mangalore and Tirunelveli, he spent his entire career serving in the judicial apparatus in Malabar. Murkkoth Kumaran, *Oyyarath Chandumenon* (Thrissur: Kerala Sahita Akademi, 1996) (reprint of 1932 edition), p. 36.

¹²⁰ RMMC I, p. 91.

the latter to the 'natural' family, as the bill provided, would amount to abolishing the taravad.¹²¹

More important, however, were his objections to the Commission's endorsement of a marriage law on the basis that sambandham, i) was not of a religious character and hence was open to legislative intervention, and ii) did not constitute marriage, citing the civil rights that supposedly did not emerge from it and the lack of restraint upon divorce. Though at one point in his dissenting note he states that, irrespective of whether sambandham had religious sanction, as the people of Malabar were content with the present system, it would be against their sentiments to thrust upon them a law to regulate marriage, he is at pains to show that sambandham did partake of a religious character and is even indignant that 'the bill had leveled down the sacred institution of marriage, to a system of business relation or an ordinary contract enforceable at law'.¹²²

The law of succession, he argued, derived from religious usage and as the government 'would not interfere with our religious law, so they could not, according to their policy, interfere with our civil rights based upon such law'.¹²³ On the question of succession and property rights, however, he denies the very basis of the definition of marriage, contending that

the system of succession to property had nothing to do with the solemnity or the binding character of a marriage . . . and if it can be shown [as he attempts to show], that we have a perfectly good system of marriage founded upon our social and religious custom, why should not that system be recognised by our courts?¹²⁴

¹²¹ *Ibid.*, p. 95. C. Karunakara Menon too linked taravad prosperity with individual acquisitions. Yet, like Chandu Menon and contrary to arguments put forward by colonial administrators, he did not see this as incompatible with testamentary power. Legislative dept. G. O. no. 108 (21 Dec. 1911), Tamil Nadu Archives.

¹²² RMMC I, p. 97.

¹²³ *Ibid.*, p. 96. That customary common sense attached a religious basis to marumakkatayam is evident in the reference by 'liberal' and orthodox respondents to the Commission, to Queen Victoria's Proclamation of 1858 promising non-interference with religious observances. See responses of Manjeri Karanamulpad, janmi, RMMC II, p. 130; Karamvelli Kunhunni Kurup, janmi, *ibid.*, p. 142; Kottieth Ramunni, first-grade pleader, Tellicherry, *ibid.*, p. 242.

¹²⁴ RMMC I, p. 103. There were lengthy attempts by respondents to show the marumakkatayam shared the sacred aspects of a 'Hindu' system. For instance, Karunakara Menon, sub-editor of *The Hindu*, wrote that the marriage ceremony among 'all higher caste Hindus' was divided into two parts: '(1) that in which the religious ceremonials form the chief feature and which is known as betrothal and, (2) that which is popularly known as consummation.' The first part, titled among the Nairs as the tali kettu kalyanam, according to the marriage commission had

His defence of sambandham occupies precisely that normative terrain, used in the legal discourse to deny legal sanction to it. For instance, he contends that the principal features of sambandham were in the main the same throughout the territory. 'I would further say that they ought to be gone through at every sambandham if the parties wish to marry according to the customs of the country.'¹²⁵

Chandu Menon charged travel writing about Malabar by foreigners and the colonial interpretation of sambandham as concubinage with excessive reliance on the Nambudiris who, 'from interested motives have always wished to make out that our women do not and need not practice chastity'.¹²⁶ Given the construction in the colonial discourse of the Nair woman as sexually permissive and the Nambudiri version that they were created for gratification of the sexual desires of the Nambudiri male, Chandu Menon premises his argument that sambandham constituted marriage on the sexually conformative, chaste Nair woman-wife.

The tenor of his argument is distinctly moral. For instance, he contends that the denial of legal status to sambandham, 'because some Nambudiri landlords successfully use the influence their wealth and position in Malabar give them to seduce Nayar women', because there were professional prostitutes among Nair women who did not regard the significance of the marriage tie and because of matrilineal inheritance, was a denial of justice to the Nairs.¹²⁷ The tendency to define the good woman vis-à-vis the prostitute is instructive of his effort to assert sexual conformity as is his warning against the interpretation of the tali-kettu kalyanam as granting ritual sanction of prostitution, 'where facts clearly disprove prostitution and immoral life in Nayar women'.¹²⁸

Even while Chandu Menon, in his challenge to the courts to discern polyandry as a caste institution, asserts the 'normed' chastity

been described variously as a religious marriage or a marriage sacrament to a sham marriage, an empty form and a waste of money. He argued that the tali kettu kalyanam was imbued with religious significance, as 'in other Hindu customs (also) it will be found that while the letter of the law is strictly adhered to, the spirit is sometimes lost sight of'. RMMC II, p. 292.

¹²⁵ RMMC I, p. 99.

¹²⁶ *Ibid.*, p. 101.

¹²⁷ *Ibid.*, p. 103.

¹²⁸ *Ibid.*, p. 101. Raman Unni records a distinction between sambandham and concubinage, the latter being a secret relationship, not socially recognized. Mencher, 'The Nayars of South Malabar', p. 174. Kala points out that the term *swakaryam* (a private affair) was used to refer to sexual relationships that were not socially sanctioned. Kala, 'Trends of Change in Matrilineal Kinship', p. 208.

of Nair women, in his novel, *Indulekha*, he addresses differently at least one aspect of sexual ‘permissiveness’—free divorce.¹²⁹ When Indulekha is taunted by Madhavan, her suitor, that in Malabar women were proud and overbearing and did not practice the virtue of fidelity as did women of other countries, being free to cast off a husband if they so pleased, Indulekha retorts:

...[y]ou probably meant to inveigh against the ordinance of our race by which it is lawful for a woman to put away one husband and take another according to her own will and pleasure. There are some disreputable women who avail themselves incontinently of this prerogative, but the prerogative in itself is one of our most valuable institutions ... The maintenance of their liberty in this respect is beneficial ...¹³⁰

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

... to say that a woman makes light of the marriage tie, is tantamount to saying that she is immoral ... If you intended to signify that we Nairs encourage immorality, because, unlike the Brahmins, we do not force our womenkind to live lives worthy only of the brute creation by prohibiting all intercourse with others and by closing against them the gates of knowledge, there never was any opinion so false.¹³¹

In her defence of the system, Chandu Menon introduces a twist for Indulekha’s assertion that the general observance of fidelity in Malabar was not despite but precisely because of the marumakkatayam system.¹³² This is significant in so far as it disturbs the construction of ‘husband’ and ‘wife’ within marriage, in that the conjugal unit is not produced as the necessary basis of family.

Silence of Women: Consent or Strategic Erasure?

The marriage commission speaks of its inability to garner the opinion of women on the desirability of reform. The absence of women’s

¹²⁹ O. Chandu Menon, *Indulekha, A Novel from Malabar* (Kozhikode: Mathrubhumi Printing and Publishing Company, 1965) (first published in 1890).

¹³⁰ *Ibid.*, p. 42.

¹³¹ *Ibid.*

¹³² Chandu Menon anticipates criticism that it was not possible to find a woman like Indulekha and states that the only quality that hundreds of Nair ladies in respectable taravads lacked vis-à-vis Indulekha was knowledge of English, which he sees as a cultural attainment, *ibid.*, p. xx. Noting the speculation that Indulekha was modeled on a highly westernized Tiya woman, of Chandu Menon’s acquaintance, in Tellicherry, Ramachandran warns against reading ‘Indulekha’ as an archetype of

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

Even when the center stage of reform had shifted from legislative efforts centered in Madras to mobilization against baneful caste practices at the local level in the early twentieth century, women continued to be invisible in a process of reform that was to affect their lives dramatically. This was in contrast to the sense of urgency attached in the Nambudiri reform movement to efforts to mobilize women, importantly the appeals by male reformers that women must organize themselves if the reforms were to be effective. The sense of urgency attached to women assuming agency for reforms was entirely absent in the efforts among the Nairs and the Tiyas, the major matrilineal castes in Malabar. Their silence in the process of reform suited well the agenda of reform, in that the reforms were aimed at 'normalization' of marriage and family, which pre-supposed the erasure of the high 'visibility' of women in current perceptions of matrilineal practice, particularly the non-conformative sexual practice.

It has been pointed out in recent scholarship that women were clearly marginalized in the process of law that formed a part of the process of reform.¹³³ It is true that the Malabar Marriage Commission had only male members and all the people interrogated through questionnaires and interviews too were male. Yet, it is obvious even to the Commission that its efforts held limited validity. The President of the Commission notes in his remarks about how the Commission went about its work:

A majority of the representative men in the district have not come forward to lay their views before us in spite of every effort to direct their attention

matrilineal society. Far from representing 'feminine' spaces, he contends that matriliney in a feudal society was highly patriarchal. T. K. Ramachandran, 'Notes on the Making of Feminine Identity in Contemporary Kerala Society', *Social Scientist*, Vol. 23, nos 1-3 (1995), p. 122. However, dismissal of matriliney on such grounds could serve to underscore the patrilineal/patriarchal influences that dominated reform thought in the late nineteenth and early twentieth centuries.

¹³³ Janaki Nair, *Women and Law in Colonial India* (New Delhi: Kali for Women, 1995), p. 155.

to the object of our inquiry . . . I cannot attribute this to mere indifference, for the widest publicity was given to the nature of our inquiry, and there were traces of an impression on the public mind that the proposed legislation would break up the Marumakkatayam tarawads . . . The general reluctance to come forward to give evidence appears to me to be a silent protest against any change of the Marumakkatayam usage.¹³⁴

The inference made from the invisibility of women in the processes of the state, could only proceed from assuming for those processes a legitimacy that the state indeed seeks for itself. While this should not serve to tide over such questions, we need to engage simultaneously with the nature of the emergent public domain, influenced by the processes of the state and with a domain that remained outside the legal-political process of the state.¹³⁵ The Malabar Marriage Act, 1896 turned out to be a dead letter, disproving the Commission's 'optimism' that the 'uninstructed majority will rapidly follow the lead of the enlightened classes, and there need be no apprehension that if the law be framed it will remain a dead letter'.¹³⁶ And despite efforts to tone down provisions seen as offensive to custom. The Act was in keeping with caste restrictions that framed sambandham and provided for virtually free divorce.¹³⁷ On inquiry into the working of the Act it was pointed out that the main objection taken to the Act even by the small section of the educated elite was that it implied that sambandham was not a legal marriage and that the children born of sambandham were illegitimate. It was pointed out that the implication was combated as a disgrace to marumakkatayam society and that there was a general refusal to countenance it by making use of the Act.¹³⁸ Further the educated classes, instead

¹³⁴ RMMC I, p. 3.

¹³⁵ Chatterjee argues that the penetration of a newly established state authority into the social formation and the transformation of power relations into legal-political forms of state power is itself a historical process. Pointing out the need to think of state formation (codification being a part of the process) in terms of the inter-penetration of the two domains, he maintains that 'the point is not only to study how the "other" domain resists such incorporation, but also how, in the process of domination and resistance it affects the course of evolution of politics (and society) in the first domain and is transformed by it'. Partha Chatterjee, *Bengal: The Land Question, 1920-1940* (Calcutta: K. P. Bagchi and Co., 1984), p. xxxviii.

¹³⁶ RMMC I, p. 34.

¹³⁷ Home Judicial Proceedings (May 1896), nos 254-5, Part B, NAI.

¹³⁸ Revenue Department, D. Dis. 1524 (24 June, 1918), Kerala Regional Archives (henceforth KRA). Kannan Nair, a prominent social reformer and a leading member of the Nair Service Society in Travancore in the early twentieth century writes of the efforts by his wife's kin to nullify the registration of their marriage. Ka. Kannan Nair, *Atmakatha*, p. 105.

of influencing the people in the direction of the bill, were, it was maintained, finding it difficult to go against local opinion, which was against the Act.¹³⁹

Courting Legitimacy: Sexuality, Sambandham and the ‘Marriage Contract’

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

The high ‘visibility’ of women of the matrilineal castes did not translate, in the legal realm, into any but theoretical rights to property for women,¹⁴⁰ and ‘for little other practical purpose than regulating the course of succession’.¹⁴¹ But it did have significant implications in determining the legal status of sambandham. Sambandham was denied legal sanction on the grounds that it did ‘no more than create a casual relation, which the woman may terminate at her pleasure’.¹⁴² Following upon which it failed to establish the ‘marriage contract’. In creating no more than a casual relation, the ‘husband’ failed to acquire property in the ‘wife’, or acquire the right to exercise control over her. Sambandham, then, did not conform to the dominant conception of sexuality, held together by male dominance and female subjection.

If in relation to sambandham women were seen as ‘individuals’ as embodied with the right to exercise free will or choice, the taravad was understood in analogy with the ‘Patriarchal family’, where the father was the sole ‘individual’.¹⁴³ Here women were defined as

¹³⁹ Revenue Department, D. Dis. 1524 (24 June, 1918), KRA.

¹⁴⁰ Varankot Naryanan Nambudiri v Varanakot Narayanan Nambudiri, Indian Law Reports, Vol. 2 (1878–81), p. 328.

¹⁴¹ Moore, *Malabar Law*, p. 124.

¹⁴² *Ibid.*, p. 82.

¹⁴³ Thathu Baputty v Chayakath Chathu, Civil Miscellaneous Regular Appeal no. 406 of 1872, Madras High Court Reports, Vol. 7 (1871–74), p. 179.

Women and junior members were denied explicitly the right to manage property

dependents of the karanavan, the oldest male member and head of the taravad. The above interpretation held together a conflicting understanding of women's rights with regard to, on the one hand, transmission of property and kinship structure and, on the other, control over sexuality.

Implicit in the colonial discourse is an uneasiness arising from the agency attributed to women in the matrilineal societies in Canara and Malabar. This interpretation of agency grew out of the putative rights of women to enter into and terminate a sambandham, an undercurrent of a non-conformative sexuality. This freedom, in destabilizing the relation of protection and obedience/ domination and submission, was seen as necessarily destructive of certain rights that arose from marriage, such as the rights of wife and children to the property of husband/father. The Malabar Marriage Act, 1896 in validating a form of patrilineal inheritance, entitled the wife and children of men following marumakkatayam and aliyasantana law to claim a share in his self-acquired property on his death. But as we have noted earlier, these new rights also served to define women and children in a dependent relationship within a patrilineal framework.

unless it was with the consent of the karanavan. Special Appeal 434 of 1878 in Moore, *Malabar Law*, p. 121.