

# TRACING THE MATERIALIZATION OF THE KERALA JOINT HINDU FAMILY SYSTEM (ABOLITION) ACT, THROUGH ITS HISTORICAL CONTEXT

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## ABSTRACT

A description of the Hindu family in India would be incomplete without accounts of its vast jointness. In fact, this was such a characteristic feature, from time immemorial, that it induced the mutation of the adjective into a tangible concept – the Hindu Joint Family (hereafter the HJF). Interestingly, empirical evidence has shown that novel urban settings did not induce a complete breakdown of the joint family system, implying that change and continuity were not mutually exclusive for this Hindu institution.<sup>i</sup>

However, adapting to the changing moors of society was not de rigueur for joint families all across the nation. In 1975, a state tucked into the Southern corner of India abolished the HJF, decimating an entire kinship system in the process. This paper seeks to examine the events that led to the decline of the HJF in Kerala, culminating in the Kerala Joint Hindu Family System (Abolition) Act of 1975 (hereafter the Kerala Act or the 1975 Act).<sup>ii</sup> This analysis will be utilized to understand why this was an isolated incident in the state. The argument pursued is that this precocious legislation was inevitable for the HJF in Kerala, stemming from the uniqueness of the family systems and societal changes within the state; hence, it is comprehensible why a similar fate did not befall HJFs outside the state.

## INTRODUCTION: THE GENESIS OF THE KERALA ACT

The deterioration of the joint family system is often traced to trends of “industrialization, urbanization, increased mobility and Westernization”.<sup>iii</sup> However, there were distinctive anomalies to the Kerala society that, aside from these general trends, appear to have facilitated the decline. Previously splintered into the three princely states of Travancore, Cochin and Malabar, the state of Kerala took shape in 1956 following the post-independence linguistic reorganization of states.<sup>iv</sup> When compared to the rest of the country, there are several notable peculiarities that sets the state apart. Among these, three facets from the historical fabric of the state can be isolated to explain the deterioration of the HJF.

### *The Unique Makeup of the Society:*

Shrouded from the rest of India by the Western Ghats and open to the world through the Arabian Sea, the makeup of the Keralite society is unique in itself. It is remnant of distinct historical, cultural and geographical factors that characterized the princely states and regions which unified to form the state.<sup>v</sup> Different regions of the state were influenced by different regimes at different points in time – the southern state of Travancore and the central region of Cochin were ruled by Hindu monarchs, in the 17<sup>th</sup> century Kannur was ruled by a Muslim ruler, Cochin is rumored to be where St. Thomas the Apostle established the earliest Christian community in Asia and a Jewish synagogue founded by a 1567 congregation sits in the heart of the state.<sup>vi</sup> Intriguingly, with such a societal composition, Kerala is often exalted as an abode of communal harmony, free of large-scale communal violence.<sup>vii</sup>

But prior to the efflux of variegated religious beliefs, Kerala in the medieval times lacked centralized authority.<sup>viii</sup> Agricultural trade facilitated the development of joint families, and under the guidance of the Brahmins and Hindu rulers of the upper strata, a caste based society emerged.<sup>ix</sup> The southern states, and in particular Kerala, had perhaps the most rigid and degrading barriers of caste within the country.<sup>x</sup> Rather than the ideological varna system of North Indian society, its counterpart in Kerala was the *jati* system with Nambudiri and Nair (or Nayar) communities enjoying elevated statures.<sup>xi</sup> Apart from these two dominant castes, various intermediate lower castes and tribal communities also intermingled in the society.<sup>xii</sup> This caste-order seeped into shaping the family unit, determining the variance of patrilineal or matrilineal systems of succession among groups.<sup>xiii</sup> Perhaps the prominence of the Nairs is

what contributed to the widespread perception that Keralite society was matrilineal; however, several communities were also patrilineal, of which Brahmins were the dominant group. In fact, matriliney was not solely restricted to Nairs—it was practiced by a significant number of other castes and communities, encompassing more than half the population.<sup>xiv</sup>

In the face of such dominant caste divide and succession patterns, the colonial state consecrated caste, rather than religion, as the tool to understand South India.<sup>xv</sup> But a surprisingly paradoxical role of the Keralite caste system was that although it was the lynchpin for oppression, it was also a driver for reform. Formed by mainly the lower-caste and working class, the Communist Party of India found fertile ground in the post-colonial state of Kerala; in 1957 it became the one of the first Communist bodies to become the ruling party in a parliamentary democracy.<sup>xvi</sup> Since the mid-1900s, the state has been recognized as a progressive region despite poor economic conditions, with significant levels of social development compared to the rest of the country.<sup>xvii</sup> As early as 1931, Kerala's inhabitants were officially India's most literate, and the literacy gap between the sexes is least pronounced in Kerala.<sup>xviii</sup> The sex ratio of the state is also unique—each census since 1881 has shown that its population is composed of more females than males.<sup>xix</sup> In fact, in 1997, the United Nations Development Programme catalogued Kerala as the Indian state with the highest Human Development Index and Gender-related Development Index.<sup>xx</sup> Yet, the state's evolution to such stature was not without controversy, grounded in the *jati* system and its influence on the kinship practices within the state.

### ***The Prevalent Kinship Practices:***

The centrality of caste and caste identity in controlling property and sexuality formed an important facet of the society in Kerala.<sup>xxi</sup> Two kinship systems were prevalent in Hindu communities – patriliney and matriliney. Situated above the matrilineal Nairs in the caste hierarchy were patrilineal Brahmins (the only exception being the matrilineal Thirumumbu Brahmins of Payyanur) whose younger sons would often seek Nair women as sexual partners.<sup>xxii</sup> Lower castes like Tiyyas and Ezhavas made up around 30% of the population, and practiced either “imitations of Nair matriliney” or patriliney.<sup>xxiii</sup> Situated at the bottom rung of the caste ladder and accounting for less than 10% of the population, slave castes who were freed in the 1850s were patrilineal in descent.<sup>xxiv</sup> The Travancore census of 1891 reported 56% of

families that practiced matriliney;<sup>xxv</sup> a similar ratio can be expected for the regions of Malabar and Cochin as well.

In direct opposition to patrilineal families, in matriliney, women are the flagbearers of the land, claiming a birthright in the property and maintenance that is not diminished by the factum of marriage. This was the system of inheritance followed by the ruling class (Nairs) in the princely states of Kerala. Friar Jordanus, a Dominican missionary, explained his understanding of the peculiar system:

“In this India never do even the legitimate sons of great kings or princes or barons, inherit the goods of their parents, but only the sons of their sisters, for they say that they have no surety that those are their own...it’s not so with the sister for... they are certain that the offspring is from the womb of their sister and truly of their blood.”<sup>xxvi</sup>

Apart from the system of inheritance, visitors to Kerala were also shocked by the ubiquity of polyandry, expressing astonishment over Nair women having multiple partners.<sup>xxvii</sup> The practice of Sambandham, defined by the Malabar Marriage Act as “an alliance between a man and a woman, by reason of which they, in accordance with the custom of the community...cohabit or intend to cohabit as husband and wife”<sup>xxviii</sup> was also deemed unconventional. This system of ‘marriage’ allowed Nambudiri men to cohabit with Nair women, without legally recognizing them as wives, nor giving their children right to property; the Sambandham, unlike a legal marriage, was dissoluble without formalities.<sup>xxix</sup>

The system of Marumakkathayam (etymologically meaning inheritance to *marumakkal* or nieces and nephews) was initially unique to Nairs, but later adopted by other castes ostensibly through long contact and residence.<sup>xxx</sup> The Tharavad (or Tarawad) as defined by the Malabar Marriage Act of 1896, was a joint family governed by Marumakkathayam law, with community of property; from an inheritance standpoint, it consisted of the descendants in the female line of a common ancestress.<sup>xxxi</sup> Traditionally, partition of the Tharavad was not allowed, and the Karanavan (the eldest male) shared authority with the central ancestress (his sister) and the ancestress’s husband who legally held the position of an honoured guest.<sup>xxxii</sup> The Karanavan undertook the role of a legal adviser and representative of the HJF, and by sharing power with the other focal points, the monolithic concentration of power in patriarchal families was avoided.<sup>xxxiii</sup> However, the patriarchal colonial institutions, confused with a central ancestress

as a power bearer, interpreted Marumakkathayam law so as to vest in the Karanavan the exclusive right and duty to manage the Tharavad.<sup>xxxiv</sup>

The spread of modernist attitudes with colonialism fostered disapproval and disintegration of the Marumakkathayam joint family.<sup>xxxv</sup> Interestingly, a significant amount of disapproval was directed against the outmoded tendrils of the HJF, which had roots in the Marumakkathayam system – so to eliminate the former, the latter must go. One of the major points of conflict in the Marumakkathayam family was the autocratic behavior of the Karanavan.<sup>xxxvi</sup> Often accused of being disloyal to his *marumakkal*, his loyalty was suspected to lie with his wife and children (who belonged to a different Tharavad).<sup>xxxvii</sup> This was further aggravated when the trifocal authority of the family was dismantled by British interpretations. Unlike a Karta, the Karanavan is openly exposed to any criticism on the ground of partiality, which further accentuated the vulnerability of the matrilineal system.<sup>xxxviii</sup> This puzzle of authority and control was often resolved in the past through duolocal residence or cross-cousin marriages to bring a child back into the matrilineage.<sup>xxxix</sup> However, the pernicious and exploitative force of colonialism irreparably altered the terrain of Marumakkathayam law and the HJF in Kerala. In such a backdrop, with the growth of capitalism, incidence of private property, spread of education among young men and women, and the growth of Kerala's communist movement, substantial pressure was inflicted on the matrilineal system and rigid caste barriers.<sup>xl</sup>

### ***Societal and Legislative Movements:***

Prior to the formal abolition of the HJF, there were numerous legislative attempts to curb and control the institution, alongside general discontent about succession laws within the Hindu society.

With the onslaught of colonial power came legislations, created by freezing previously fluid social and political practices.<sup>xli</sup> British courts around the 1850s were often flooded with disputes related to impartible joint families of the matrilineal line, and the devolution of self-acquired property outside of the Tharavad.<sup>xlii</sup> In the absence of codified customs or precedent, the courts overlooked the exceptional nature of matriliney, often referring cases to Madras or taking recourse to Hindu scriptures or Roman law.<sup>xliii</sup> By positioning the eldest male as the family head, judges and jurists sought to bring Marumakkathayam law in consonance with “natural rights and legality” of the Western legal system.<sup>xliv</sup> Hence, a dominant dispute at the



time was the right of the eldest female, the karnavatti, as a power sharer in the Tharavad. Denying this right to the her, a landmark 1855 judgement, emphatically stated that allowing a “precedent for women to head households” over a male would be a “violent interference”.<sup>xlv</sup> Thus, the narrative emerging from the courts by the 19<sup>th</sup> century, was that the Karanavan possessed the exclusive natural right to manage and represent the Tharavad.

In such a backdrop, the first regulatory legislation, passed in 1896, was the Malabar Marriage Act, which allowed the registration of a Sambandham as a legal marriage, and part inheritance of a man’s self-acquired property to his wife and offspring.<sup>xlvi</sup> Although it proved to be a dead letter of law, with very few marriages being registered under it, the Act itself was a result of reformist agitation by elite Nairs, petitioning the colonial legislation for recognition of Sambandham as a marriage rather than concubinage.<sup>xlvii</sup> Thus, the discourse surrounding the legislation normalized social movements seeking reform and legislation. While the Malabar Marriage Act had no significant impact on the practices of Marumakkathayam law, the emboldening of the Karanavan did. This perhaps was the axe that slowly chipped away at matriliney, sparking discontent and discussions around the matrilineal HJF and nurturing Nair reform movements. Primarily led by educated young Nair men, they called for the partition of Tharavads and individual property rights, while condemning matriliney as “promiscuous polyandry”.<sup>xlviii</sup> At the heart of this 19<sup>th</sup> century reform movement was the cultural and ideological transformations of an increasingly urbanized and western-educated population.<sup>xlix</sup> This social awakening prompted the Nairs to evaluate the Marumakkathayam law on rational grounds and clamor for the eradication of practices deemed morally unsound.

The Nair Regulation of 1912 was a significant catalytic agent in the Nair reform movement. The Regulation of 1912 made Sambandhams valid civil contracts, and illegalized polyandry.<sup>1</sup> In consonance of what was considered a civilized practice, husbands were made responsible for maintaining their wives and children. Notably, the Regulation did not address the question of partition, so the Nair movement persisted in its agitation.<sup>li</sup> Accordingly, this paved the way for the Nair Regulation of 1925, along with regulations for other matrilineal communities like the Vellalas and the Ezhavas. The Regulation of 1925 was a landmark legislation, granting the right of inheritance to children of inter-caste marriages from Non- Nair fathers.<sup>lii</sup> Conditions were set out for partition during the lifetime of the female ascendant, and after her death, partition of the Tharavad was allowed. The Regulation was also instrumental in the transition

from the collective inheritance of the Marumakkathayam system to the individualistic inheritance of the Makkathayam system (*makkal* meaning children in Malayalam).<sup>liii</sup> Rather than the anticipated shift from matriliney to patriliney, Makkathayam was a system of bilateral inheritance and kinship wherein property was inherited equally between a daughter and son.<sup>liv</sup> In 1933, the colonial state then passed the Matriliney Act, which sought to completely abolish the matrilineal Tharavad.<sup>lv</sup> With this transformation, per capita partition among branches was also legalized.

Thus, this fragmentation of the matrilineal joint family resulted in the disembodiment and partition of Tharavads. While colonial intervention in private affairs was not uncommon, for the matrilineal HJFs in Kerala, its dismantling was not just a result of state action, but also cultural desire to evolve from a state of “primitive barbarism”.<sup>lvi</sup> With the escalating disappearance of Tharavads and matrilineal joint families, the makeup of Keralite society was rapidly changing. The elevated status of females (the 1875 Travancore Census Report stated that “a female child is prized more highly than a male one”<sup>lvii</sup>) propelled them into education and the workforce, providing them individual income to pursue nuclear family lives. A rhetoric of independence and modernity spread among the young population in the post-colonial state like a wildfire, languidly emptying Tharavads, and rendering the HJF redundant.

## **DISSECTING THE KERALA ACT**

Beginning with a resounding finality, stating that it is “expedient” to abolish the Hindu joint family system, the 1975 Act leaves no room for doubt as regards its stance on the superfluity of the institution.<sup>lviii</sup> Through the passage of the Kerala Act, the state legislature effectively ensured that new members could no longer join an HJF in the state, and invalidated the concept of joint family property.

The defining feature for an HJF under this act was deemed to be community of property, and effectively, both the Marumakkathayam and Aliyasanthana (succession via sister’s son’s lineage) systems of matrilineal succession were abolished.<sup>lix</sup> Since the concept of joint family is often equated with joint tenancy, this was replaced by tenancy in common. As per Mitakshara law, this implied that the members of the former HJF would be deemed to have received their

shares after partition; for non-Mitakshara HJFs, the partition would be deemed to have taken place per capita.<sup>lx</sup> With the abolition of the HJF, the concept of pious obligation of the lineage of a Hindu son was also abrogated.<sup>lxi</sup>

The Kerala Act abolished in its wake *twelve* other laws, dating back to 1925, proving how disoriented the legislative position on succession in the state was. However, although matriliney was abolished by the Act, the Hindu Succession Act of 1956 (hereafter the HSA) gave a striking concession to matrilineal families, which caused legal confusion.<sup>lxiii</sup> Section 15 of the HSA dictates that the primary heirs of a Hindu woman dying intestate are to be her children and husband.<sup>lxiii</sup> However, as per Section 17, for a woman governed by matrilineal law, her heirs would be her children and mother.<sup>lxiv</sup> The legal question here then was, whether after the abolition of matriliney in 1975, the provisions related to matriliney in the HSA continued to be valid in Kerala. In 1992, the Kerala High Court upheld the applicability of Section 17 during the lifetime of people who would have been governed by matrilineal law, thus allowing the mother to substitute the husband for inheritance.<sup>lxv</sup> Therefore, with this judgement, the life of Section 17 of the HSA in Kerala was effectively extended *until* the death of the last female heir of a previously matrilineal household.

## CONCLUSION

Although family is typically an institution resilient to flux, law proved transformative in reshaping its dimensions within Kerala. Theoretically, the Hindu Joint Family in this southern state has been legally dead since 1975, but societal attitudes led it to its funeral pyre long before the legislature did. Unique societal norms, an extremely oppressive caste system, colonial interference, and caste associationalism all had their roles to play in the process.<sup>lxvi</sup>

Notably, Kerala was not the only state to initiate legal reforms for the HJF. Recognizing the regressive state of the HSA (1956), the Andhra Pradesh legislation in 1985 amended it to provide daughters coparcenary rights. However, rather than changing the laws governing the HJF directly to institute reform, it restricted itself to merely amending part of the HSA.<sup>lxvii</sup> Perhaps its goals of enhancing and upholding female rights would have been better served by *abolishing* the Mitakshara coparcenary in a move mirroring to its counterpart in Kerala.



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The Matriliny Act 1933

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- <sup>v</sup> *Ibid.*
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- <sup>ix</sup> *Ibid.*
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- <sup>xix</sup> *Supra* note 16 at 53.
- <sup>xx</sup> *Id.* at 52.
- <sup>xxi</sup> *Supra* note 14 at 1520.
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- <sup>xxviii</sup> Malabar Marriage Act 1896.
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- lv The Matriliny Act 1933.
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