

Indigenous Customs and Colonial Law: Contestations in Religion, Gender, and Family Among Matrilineal Mappila Muslims in Colonial Malabar, Kerala, c. 1910-1928

SAGE Open
January-March 2014: 1–12
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DOI: 10.1177/2158244014525416
sgo.sagepub.com


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Abstract

This article looks at the contesting articulations of gender, family, and religion in colonial South India. The article discusses the encounter between matrilineal customs and the Anglo-Muhammadan law in the site of Mappila Muslim matrilineal practices in colonial Malabar, of the Madras Presidency during c. 1910-1928. Young male members of the joint family used the language that matriliney is un-Islamic, and passed laws in the Legislative Assembly to demand that joint family property requires to be inherited in the patrilineal line. Three legislations were passed during the period of 1910-1940 to bring Muslim families in accordance with the ideal notions of familial organization existed in that period. The ideal notions were set up by the precepts of the Anglo-Muhammadan law, the orientalist knowledge of Islam, ideologies of colonial modernity, and dreams of caste and religious reform movements among the people of Malabar, and other neighboring states, Cochin and Travancore. In response to that, there was a re-articulation of customs and familial practices by using legal provisions available in the Islamic law, and an effort for justifying the practices to avoid the ruin of matriliney. Subsequently, the matrilineal Mappilas of Malabar retained matrilineal customs rather intact, though the gender relations and religious practices were re-articulated in the idioms of patriarchy and textuality.

Keywords

Mappila Muslim matriliney, indigenous customs, social change, religious reform movements, colonial law, gender studies, sociology of religion

Introduction

This article will discuss the encounter between matrilineal customs and the Anglo-Muhammadan law in the site of Mappila Muslim matrilineal practices in Colonial Malabar, of the Madras Presidency during c. 1910-1928. Law and customs had a social life in Malabar. There were debates in the realm of family and on the inheritance of property. These debates always informed religious beliefs and rituals. They also influenced the modes of gendering among Muslims. Three legislations were passed during the period of 1910-1940 to bring Muslim families in accordance with the ideal notions of familial organization existed in that period. The ideal notions were set up by the precepts of the Anglo-Muhammadan law, the orientalist knowledge of Islam, ideas of social progress, and dreams of caste and religious reforms movements in Malabar, and in other neighboring states of Cochin and Travancore (see Arunima, 2003; Devika, 2005; Velayudhan, 1998).

There were three legislations that covered regions of Malabar, a district of Madras presidency, and some areas of South Kanara (Balakrishnan 1981; Benaseer 2005). The matriliney was called as *marumakkathayam* and *aliyasanthanam* customs, respectively, in these regions. There were three acts enacted particularly on Muslim

matriliney: Mappila Succession Act of 1918, Mappila Wills Act of 1928, and Mappila Marumakkathayam Act of 1939. The Act of 1939 sanctioned the partition of the joint family property with the agreement of the majority of the members of the family. It also took away the customary right of the joint family head over the property and members. Prior to this Nayar *tharavadus*, and Nayar matriliney had undergone transformation. This is the backdrop of the article. Malabar Marriage Report was passed in the year 1886; The Malabar Act of 1898 and the Madras Marumakkathayam Act of 1933 were followed (see Arunima, 2003).

Having said this, in this article, we will concentrate on a particular legislation, the passage of Mappila Succession Act of 1918. While discussing the historical context of this Act, we will look at the ways in which gender relations in Malabar underwent radical transformations during 1910s. We will also see how the interests of male junior members

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of the Mappila matrilineal joint family on the joint family property were expressed through the idioms of religion and morality. In 1920s, matriliney was referred to as “un-Islamic” in the discourses of the courts, reform movements, and Mappila youngsters who received Western education.

These discourses on family practices emerged from multiple sites like the court, the state, and orientalist texts. It was also the time when ideas proliferated in Malabar through print media. Books in English and Arabic were translated into vernacular after the advent of the print technology in South India. Christian missionaries as well as local Islamic scholars invariably engaged with their content. Hence, in the context of Malabar, we will see that there was an advent of new forms of “religious truth.” With reference to Islam, there were new discussions on existing practices. They always referred back to the contents of certain religious texts (Razak, 2007). However, what one can see in Malabar is how in response to these debates matrilineal Mappila Muslims negotiated with any unilateral construction of “Islam.” At that particular time, matrilineal practices were very widespread among Muslims, especially among cosmopolitan Muslims of coastal areas of the Indian Ocean. In response to the emerging debates, they tried to “re-articulate” the matrilineal customs in the idioms of “correct” ways of practicing Islam. This was to retain the basic structure of matrilineal customs. For this purpose, they modified many aspects of gender relations and equally negotiated with religious practices that were in coming to be in vogue those days. They also attempted to read many of their customary practices in new ways to negotiate with idioms of patriarchy and textuality. Yet, the gender relations underwent a shift. This article looks how “re-articulation of matriliney” resulted in the loss of power, and authority for Mappila women in first decades of 20th century in the coastal regions of Malabar.

Matriliney Among Muslims in Malabar, Kerala

First, let us briefly discuss on the matrilineal practices among Muslims in Malabar. The nomenclature “Mappila” in general is used for Muslims of Malabar, Kerala (Koya 2004).¹ Initially, it was used to denote a community born through the encounter between Arab merchants in the Indian Ocean and the local people. These Arab traders dominated the merchantile activity in the Indian Ocean before they lost out with the Dutch colonial endeavors (Pearson, 2003). During the colonial time, the term became associated with the local people. Then onward, the term “Mappila” denotes a broader community consisting of various heterogeneous populations that practice Islam. The organization of family, kinship systems, and customs of inheritance are different among Mappilas to such an extent that Mappilas of interior southern Malabar follow patrilineal kinship, whereas their Mappilas in the coastal regions ranging from South Malabar to North Malabar, and

South Canara predominantly followed matrilineal descent and inheritance or *marumakkathayam* (D’souza, 1978; Logan, 1885/1951; 1885/1951a); Wigram, 1882; Abdurahiman 2004).² These differences in practices can be understood in context of different phases of conversion to Islam. Our focus is on the matrilineal Muslims of Malabar who converted to Islam with the influence of Arab trading merchants in the Indian Ocean. The similarities between of Muslim customs and the Nayar matrilineal practices are strikingly similar in term of kinship terms, and practices. Behind this, there is a history of conversion, political dynamics within small kingdoms, and trade in the Indian ocean.

Matriliney among Mappilas (henceforth, Mappila matriliney) is specific in their practice of matriliney and matrilocality. Matriliney implied that relationships were traced through the mother, and inheritance is traced through women; while men of the household had rights to a share of the family property only while living in it (cf. Arunima, 2003). Matrilocality implies that *puthiyapla* (husband) would visit a Mappila woman at night, in similar way to the practice in Lakshadweeps (Dube, 1969), or he would visit her at day time or night in her *ara* (bridal chamber) without permanently staying there (Gough, 1961, p. 415).

The fourth decade of the 20th century witnessed a great churning in the history of matriliney in general, which is the focus of our discussion. There were simultaneous changes in the normative concept of family in the ambit of the court, and in the minds of educated elites who were at the helm of socio-religious reform efforts. A shared norm was established as the “correct” and the “true” practice. The norm solidified to become normative. The norm influenced the empirical practices and led to structural changes. They set up what can be called in Durkheim’s (1964) terms as “dogmas.”

To understand matrilineal customs, let us begin with the discussion of the institution of *tharavadu* or matrilineal joint family. A *tharavadu* consists of individuals who claim descent from a common female ancestor. This entity in 20th century consisted of a female, her children, and her daughter’s children. Mappila *tharavadus* functioned as an exogamous community held together by the relations of real or fictive kinship. Members are related to each other through two ties called *mudhalsambandham* and *pulasambandham* ties. *Pulasambandham* implied the observance of common rituals at the event of birth and death. The kin bound through *pulasambandham* are called *attaladakkam* heirs or the heirs who inherit the property at last in the absence of immediate female heirs. *Mudhalsambandham* implied common rights over property; and that consists of the kindred community. First, women were central to the inheritance in matrilineal families; and they did not sever their affective and economic ties with their natal homes. Second, children irrespective of sex belonged to the mother’s joint family. Third, women inherited the matrilineal joint property (Ali, 1933).

As told in the beginning, there was a re-definition of *tharavadu* authority in terms of gender and generation by the early 20th century (Arunima, 2003, p. 56). As noted by Arunima (2003) in the case of Nayars, *tharavadu* became a corporate and impartible structure among Muslims as well. Women's importance and active role in the various ways of social reproduction, like in rituals, customary exchange of cooked food between families, and the management of the *tharavadu* was reduced to their role of sexual reproduction (Arunima, 2003, p. 53). The responses regarding property became the preserve of the *karanavan*—the male head of the family (Arunima, 2003, p. 72). When *tharavadu* became what Arunima (2003) called “a corporate unit” with impartible property by early 20th century, it discredited the individual properties of women. In the case of the Nayars, individual properties of the women were mainly the land set aside by lovers or husband for their maintenance and normally passed in the female line (Arunima, 2003, p. 73).

Disputes Over Land and Judicial Interventions in the Late 19th Century

We will discuss the Mappila Succession Act of 1918 and look at the ways in which intervention of the judiciary had a strong impact on *marumakkathayam* practices, especially to those properties owned separately or exclusively by women. Before going into some of the court decisions of property, I will give a description of the ways in which court dealt with a late 20th century invention for the transfer of property among matrilineal communities. It is called transfer by “will.” The majority of the property among matrilineal Muslims was joint family property. Both men and women had right over the property and also for maintenance out of that in their lifetime; while women only inherited the property. However, individuals could acquire private property of their own. Initial years women received landed property as gifts to be owned individually at the time of marriage. Later, men increasingly started to acquire landed individual property. Resultantly, the dissolution of the individual property became a matter of dispute. According to the logic of matrilineal customs, the self-acquired property also reverted to the matrilineal joint property in the case of men being the owner, and to the branch of the joint family in the case of women after their death; and nobody could alienate the property by sale, gift, or will (Ali, 1933; Kumari, 2003). Many individuals wanted to transfer the ownership of property to their children and wife after their death. One of the mechanisms for this was carried out by employing the will.

The will implied the gifting of the property during the owner's lifetime. Malabar Wills Act of 1898 enabled individuals following matriliney to gift their property by way of the will according to their wish (Kumari, 2003). The legal back-up for the execution of the will was provided by the Malabar Wills Act of 1898. It was general law for Hindus as well as for Muslims. The history of “will” shows

the coming into being of the concept of self-acquired property.

This in itself could have carried the seeds for the demand for a law which enabled the dissolution of the property to spouse and children (both male and female) of the owner leading to a threat to the integration of the joint family. However, the law per se did not cause a total ruin of the joint family, because the gifted property was mainly used for the formation of a new branch of matrilineal family consisting of mother and her children. Yet, the increase in private property gradually set up the male authority, especially of the father. Colonial court failed to resolve the disputes between male and female children. Over time, one could see that the precepts of Anglo-Muhammadan law gaining momentum against the customary practices of matriliney. While the lower courts recognized the custom in the judgments, the higher court had an easy resort in the codified Anglo-Muhammadan law. The court had an abstract idea of the “correct” Islamic familial practice. The normative ideal of Anglo-Muhammadan law led to the legislation of the Mappila Succession Act in 1918 (Kumari, 2003).³

Let us discuss some examples that demonstrate the ambiguity that surfaced in the courts, and reveals the interface of Anglo-Muhammadan law with matrilineal customary norms in the late 19th century. In *Pathumma versus Abdulla Haji* case, a patrilineal Mappila made a gift to his wife. The wording of the will ensured that wife held the property in the same way as he held it. Court ruled that the property gifted would take the incidents of *tharavadu* property and not as the private property of those who received it (Kumari, 2003, p. 337). This decision was repeated in *Kunchacha versus Kutti Maami Hajee* case in 1892 as well (Lakshmi 2012, p.50).²³ In another case, the second husband of a matrilineal woman gave some property to her and his children by her. Husband wanted his children and wife to form a *tavazhi* (branch of *tharavadu*), so as to exclude children from the first husband. In the first instance, the court agreed to this deed.⁴ However, in a subsequent period, court held on *Pathumma versus Abdulla Haji* case that a gift of the property to mother and children does not enable mother and her children to form a separate *thavazhi*.⁵ Moreover, the court held that she could not establish a *tavazhi* by excluding some of her children, to the inclusion of some; also that in the case of such a gift, the receivers would become only as tenants in common and each have absolute rights equal to private property. Court stated that *tavazhi* or *tharavadu* as “corporate unit” could not constitute out of one's own will (Kumari, 2003, p. 339). In another case, court held that gift by complete transfer of property would become *puthravakasam* property or the property gifted by the husband to the wife.

The *tharavadu* as a “corporate unit” meant that it was treated as a corporate, impartible, co-residential and property owning structure that rendered the *tharavadu* into a manageable and cohesive unit. *Puthravakasam* is a kind

of property that a man gives a *tavazhi* (branch) consisting of wife and children held jointly according to *Marumakkathayam* law (Ali, 1933, p. 91). In other words, husband's grant of property leads to the establishment of a sub-branch. It is beyond doubt that there was a rule against compulsory partition of the property and hence formation of sub-branches was common. These judgments show shift in the attitude of colonial courts toward joint family and how various branches were formed leading to the disintegration of joint family. The disintegration into branches constituting a unit with wife and children followed the logic matrilineal kinship, but it established the role of the husband and his private property. They also illustrate the disturbance in the early custom by which *tharavadu* appropriated the private properties of men and women as common property. The changes in the customs thus established the authority of the father; he then had a great influence in the determination of the structure of matrilineal family. The court, due to its lack of knowledge of customary rules, failed to understand and resolve the disputes.

To elaborate on the ways in which the court dealt with the category of "gifted property" in legal disputes, and it led to the ruin of female rights more specifically, I will discuss the case of *Sthrisothu tharavadus* or families of exclusive female collective ownership and management of the property. Some Mappila *tharavadus* were *strisothu tharavadus*. The *strisothu tharavadu* have the eldest female member as the *karanavathi* (head) of the *tharavadu*. The female members exclusively own and manage the property. Male members, however, had only the right to avail expenses for maintenance. In other words, though both male and female members have equal rights over property, the later have exclusive rights of management over the *tharavadu* property (Ali, 1933, p. 92).

In a dispute over what is called as the *strisothu* nature of property, court held that a deed granted to the female descendants alone could not find acceptance. In this instance, a matrilineal man executed a deed of gift in favor of his wife and three daughters under which they and their female descendants could enjoy the properties hereditarily, to the exclusion of males. Subsequently, the last surviving daughter made a gift of the properties to her own female descendants; and the gift was objected by the other female members of the line through a suit as she excluded male members. The court held that the exclusion of males was invalid. The observation was that the property does not vest with wife and daughters as joint tenants. The court added that the property have the incidents of *tharavadu* property, because males have the right of survivorship over *tharavadu* property, and they cannot be excluded from enjoying it (Kumari, 2003, pp. 335-336). In 1910, the court validated the above-mentioned practices of customs and held that the descendants of the property to the female line, excluding males and prohibiting partition, belongs to the class of gifts known as *strisothu* or *henumule* and the

intention of such a gift is to pass the property to a class of females jointly belongs to a *tavazhi* (Ali, 1933, p. 93). However, in a later dispute of the same nature, court held that the institution of *strisothu tharavadu* is "unknown" to *marumakkathayam* custom (Ali, 1933, p. 93). By and large, *strisothu* became a non-existent institution by the third decade of the 20th century. Even in the above-mentioned variety of the matrilineal families, the male and female members got equal rights in erstwhile *strisothu tharavadus*. There was, however, an exception that only the eldest female member had the right to manage the *tharavadu*, as *karanavathi* (Ali, 1933, p. 92). In many of the *strisothu* Mappila *tharavadus* in Malabar, such a right is reserved to females by a family *karar* signed by all the adult members of the *tharavadu*.⁶ Ali (1933) argues that the shifts in *strisothu* explain the harmful intervention of judiciary to the customary practices of Mappilas. *Strisothu* did not contradict customary law of Malabar. Yet, court intervened in the practices and invented new customs. According to this institution, the eldest female had greatest authority and rights whereas male had only right to maintenance (Ali, 1933).

In this way, the court was one of sites from which discourse on a correct familial practice could proliferate. The court, a secular institution, shared the similar notion of ideal family and inheritance along with religious interlocutors in that era. The court could not accept the fact that Mappila women could exclusively hold property. For the court as well as for educated modern Mappilas, the customs posed a threat. Matriliney existed in the zone in which everything "dangerous" of the "impure" past existed. As shown in the case of *strisothu tharavadus*, the judiciary adhered to an abstract idea of what constituted natural sex roles in the legal framework of Islam. The colonial state constructed Hindus and Muslims as distinct and attempted to employ different legal procedures. The underlying assumptions were provided by the orientalist scholarship.⁷

By early 20th century, there could be no individual property and the entire earnings belong to *tharavadu* by custom in matrilineal law. Yet, self-acquired properties other than *tharavadu* property were increasingly acquired by the individuals. In customary *marumakkathayam* practice, especially in North Malabar, the self-acquired property devolved on to the *tharavadu* in the case of male. In the case of female die without making a will, it goes to the *tavazhi*. It would contribute and additional income to the *tharavadu* or *tavazhi* (Ali 1933, p. 93). This was the practice in a large majority of cases in the two northern *taluks* of Chirakkal and Kottayam. And it was similar in places like Badagara and Quilandy, also in North Malabar. There was no uniformity in the norms of succession in the interiors of North Malabar where Mappilas were minority: while some families followed *marumakkathayam* custom the other followed Muhammadan law (van der Veer, 1996, p. 94). However, in South Malabar and Lakshadweep islands, there was dual system of inheritance. The private

property of member of the *tharavadu* devolved according to the *Sharia* line of inheritance. In Lakshadweep, private property is *tingazhcha* swoth or Monday property that differentiated from *tharavadu* property with the term Friday property or *velliazhcha* property (Ali, 1933, p. 94; Vijayakumar, 2006, p. 129). Monday property or *thinklazhcha* property is divided according to the customary *Sharia* law, while Friday property is impartible (Vijayakumar, 2006, p. 129).

As seen above, in the case of *strisothu* family property, the courts had considerable ambiguity regarding the resolution of Mappila disputes. Lewis Moore (1905), who dealt with the laws governing inheritance by the Mappilas observed that those who follow *marumakkathayam* treated the “self-acquisition” of a man as transferred to his wife and children under the Muhammadan law in patrilineal line (pp. 323-351). He also held that it was not unusual for a father and sons to have community of property and the property to be managed by the father, and after his death, the eldest son. It can be argued that, this perception of allowing the Muhammadan law for inheritance was a product of longstanding debate. In 1851, the custom of “double inheritance” went before the consideration of the Privy Council. The council judged that it was not sufficiently established.⁸ In 1855, a sudder court questioned the prevalence of two laws of inheritance prevailing in the same family and in 1861, Tellicherry judge showed dissatisfaction over this law; he described it as a “piebald system of descent” (Moore, 1905, p. 324). Still two decisions in 1880 sanctioned the existence of both forms of laws of inheritance in one family. In a case in 1880, the issue was that a women belonging to a family governed by a *marumakkathayam* law had married to a man belonging to family governed by Muhammadan law; and after his wife’s death, the husband declined to return the property given to his wife on the occasion of her marriage by her *tharavadu* (Wigram, 1882, p. 153). The lower court decided that the property to revert to *tharavadu* and it therefore become unnecessary to divide it; it would have come under Muhammadan law if the property had been the self-acquisition of the wife (Wigram, 1882). These developments are exemplary of the transformations and continuities happened in matriliney.

Transformations in the Structure of the Matrilineal Joint Family

Gough (1961) in her ethnography on Mappilas observed that there happened what was called “modern disintegration of matrilineal descent groups.” She observed that long-term structural changes in the economy induced by the British government led to the changes in the pattern of matrilineal kinship. There were changes in technology and communication; and introduction of cash cropping. Arunima (2003) in her study of the Nayar matriliney in

Malabar observes the varying reasons ranging from the legal re-definition of the family by the colonial court and the state, to economic and ideological pressure in Malabar during that period. She also underlines the interplay between colonial land revenue policies and legal measures, and cultural adaptation in response to colonial modernity in the context of structural changes in the production relations. Vijayakumar (2006) in the context of the transformation of Muslims matrilineal customs in Lakshadweep islands, India, argues that the interplay between the implanting of mainland law in the island, establishment of legal institutions, land reforms, and the emergence of the new ideas of religious practices in the post-independent period, along with the economic transformations lead to the changes in customary law. In the case of Muslim matriliney in Minangkabau, Indonesia, Abdullah (1985) looks at the ways which in the legalistic textual interpretations of Islam contradicted *adat* (customary practices) from 19th century onward. He describes the ways in which the society attempted to re-examine the inherent greatness of *adat* law and to strengthen the validity of *adat* as a system of conduct. He calls this process “Islamization” to refer to the situation in which the customs were defended by the practitioners, but the meaning of the practices underwent a shift. Holy (1996) observes that disintegration in matrilineal groups starts with the tendency for matrilineal groups to breakdown to small groups composed of uterine siblings and their immediate descents in the female line. He further postulates that the changes in matriliney account for the change in the descent, changes in the conceptualization of the descent, and changes in the ways of the transmission of the property.

With reference to the transformation of Muslim matriliney in Colonial Malabar, we will look at the interplay between the economic factors, ideological factors, legal measures, and the state policies in the realm of the Muslim family. As mentioned above, there were transformations in the ownership of land among matrilineal Muslims. Advent of individual ownership of land, along with the transformation in the hitherto existing modes of landholding by the *tharavadu* was visible.⁹ The interests over the collective land of the matrilineal joint family were expressed through an attack on the matrilineal practices with religious undertone saying that it was “un-Islamic” in nature. Young junior members were at the forefront of the campaign against matriliney. The reference point for the demand for legislations for the transformation of the ownership of land was the Anglo-Muhammadan law and the ideological attack on Nayar matrilineal customs by the caste-reform movements in Kerala. Anglo-Muhammadan law was the Islamic legal system formed in British India in the 19th century. The law adapted the *Sharia* law into the frame of modern English jurisprudence. Sayed Rashid argues that the British courts relied upon the legal texts of the distant past for the purpose of authentication, and also that they ignored contemporary interpretations. Thus, the

law was codified as a conservative law and rigid set of rules (Rashid, 1998).

In fact, various discursive practices happened during the period of c. 1910-1940 that could explain the context of the debates that contributed to the transformations in matrilineal family. There were rise of nationalist sentiments, dissemination of colonial governance and power and the rise of the abstract idea of the "individual." These historical happenings presented Malabar with a new spatial, and political imagination. Yet, the most outstanding and overt discourse on Mappila matriliney happened with reference to religion: From the beginning of 20th century, there was a sensibility that matriliney was "un-Islamic" by nature. This peculiar form of religious imagination, at least by the first half of the 20th century gained similarities of Islamic imagination in North India in terms of its quest for a political identity based on a notion of the *ummah*, a religious notion that has acquired a political denotation (Kandiyil, 1992; Razak, 2007). Prior to this period, matrilineal *tharavadu* was a site of power, and a realm of negotiations between men and women.

The relationship between matriliney and Islam lingered in the limbo of ambiguity in the worldview of young Mappilas from 1910 onward. They wanted to locate the system with reference to what they understood as "correct" practices of Islam. Hence, one of the central ideological motivation behind the legislation was to abolish matrilineal customs and bring in the "correct Islamic practices." The demand also enhanced effort toward community formation based on religious and political identity among Muslims in Malabar (cf. Menon 2002). Now, we will look at the transformations in the meaning of religion among Muslims.

Advent of New Debates on Islam in Malabar

An idea of "true Islam" emerged in Malabar by the 20th century. The debates on Islamic practices and traditions invariably informed the texts during the period. The abstract ideas of religious truth became pertinent in the realm of the family; and the discussions on family were simultaneous with the spread of Anglo-Muhammadan law as legal code. One of the early instances of the expression of the idea of "true" Islamic practice can be found in the Colonial reports and narratives. C. A. Innes (1908), the author of *Madras District Gazetteers* observed that Mappilas engage in heretic and corrupt practices, though he felt that they were "strong" observers of the religion. He observes that they engaged in witchcraft despite "Quranic condemnation"; "canonize" Tangals (spiritual leaders or Sufis mainly consist of Arab genealogy) and make shrines on their tombs (called as *Meukham*, *Jaram*). He also observes that the Mappila notion of *jins* and *shaitans* (evil powers) correspond to the Hindu demons and were propitiated in the same way; Mappilas use wooden figures in magic; and also believe in the evil eye and its bad effects (Innes, 1908, p.

196); and the principal social ceremonies have similarities with Hindu rituals. He draws shared cultural practices of Mappilas as borrowings from Hindus, mainly those of lower castes' ritual tying of *tali* (symbol of marriage), use of music, tom-toms, and exchange of *betals* (tobacco) in ceremonies. However, he also adds that there were certain "orthodox sections" who refrain from all these things (Innes, 1908). Barring the reference to Catholic beliefs like "canonization," the author attributes the causality of adulteration to the acceptance of Hindu customs in the cultural fabric of Islam, and he is also harping on an abstract idea of "the correct Islam."

This perspective or view has to be seen as a product of orientalist scholarship on Islam (van der Veer, 1996, p. 51). There was a protestantization and therefore a greater significance given to the text after the emergence of translation and religious writings in the print and a subsequent assimilation of these dialogues for the articulation of the daily life practices (van der Veer, 1996, p. 220). "The truth" lied in the text; believers have to study religious texts to lead a proper moral and spiritual life (van der Veer, 1996, p. 215). Anthropological and historical understanding of Islam is useful for the analysis of the interface between Islam, matriliney, and gender relations among the Mappilas in Malabar. Talal Asad propounds the idea of Islam as "a discursive tradition." The discursive nature of Islam means that every where Islam is concerned with defining what is allowable (*halal*) and what is not (*haram*) (Asad, 1986; Lukens-Bull, 2007). Discursive practice of religion according to him incorporates the qualities of the specific events of speaking, commenting, and reflecting on the texts (Asad, 1986, p. 7). In a historical context, there can be divergent ways of talking about religion. In the context of Malabar, one has to look at the interplay between law, oriental texts, vernacular print, public debates, socio-religious and caste reforms, public speeches, songs, and transformation in the economy and the development of state apparatus to look at the articulations of Islam.

The new reading of the Islamic texts in the light of colonial modernity set up new norms for the authentication of religious belief and familial norms among Mappilas in Malabar. Thus, power becomes central in the understanding of the construction of religious piety and moral practices. In the coming sections, we will discuss the re-articulation of the Mappila matrilineal customs with reference to the Anglo-Muhammadan law and the abstract idea of "the correct Islam."

Encounter Between Muslim Matrilineal Customs and Anglo-Muhammadan Law and the Passage of the Act of 1918

Now, we will look at the social life of the encounter between Muslim matrilineal customs and the Anglo-Muhammadan law. We will focus on the event of the

legislation of Mappila Succession Act and the social dynamics around the passage of the Act. One of the central concerns of junior members of the matrilineal joint family, who were in the forefront demanding legislation, was the rights over property. They wanted to pass their self-acquired property, which was a separate from the joint family property to their spouse and children. As mentioned above, in the beginning of the 20th century, even the self-acquired property of individuals reverted to their matrilineal property after their death; and thus became the part of the collective property. Young men had interest in acquiring the joint family property being a junior member and his wife's property as the husband.

The first eruption of the demand for the abolition of Mappila matrilineal customs of inheritance was with respect to the conceptualization of the succession of the collectively owned property by matrilineal joint family or *tharavadu*. According to Anglo-Muhammadan law, there is no joint family; thus, it was held that there was no provision for the existence of matrilineal joint family property.¹⁰ As a result, there was a worry about the mismatch between the "Islamic" notion of the inheritance of property and the existence of *tharavadu* property. Young, educated Mappilas wanted bringing matrilineal inheritance in "accordance with the spirit and teaching of Islam" to resolve this mismatch.

The second demand for abolition was explicitly in response to the newly emerged demand for the changes in the customary rules regarding the inheritance of privately owned land according to the provisions of the Anglo-Muhammadan law. Anglo-Muhammadan law recognized individual property, while in matrilineal customs, the individually owned property reverted to the *tharavadu* after the death of the individual. In response to this, there was growing demand for a legislation of an Act that legally set up the Anglo-Muhammadan law of inheritance over customary matrilineal customs. The Mappila Succession Act was passed in the year of 1918. The Act marked a shift in the conceptualization of inheritance of the property of matrilineal Mappilas. The inheritance was conceptualized in accordance with Anglo-Muhammadan law.

Mappilas Succession Act was enacted in the year of 1918. The central focus of the Act was a provision for the inheritance of self-acquired property by the provisions of Anglo-Muhammadan law. Muhammadan law enabled a Muslim to succeed, to gift, and to own individual property. The Succession Act of 1918 brought those properties of which a Mappila who follow *marumakkathayam* or *aliyasanthanam* law, and has not made any testamentary disposition to devolve upon his heirs in the order and according to the rules of Muhammadan law even if he dies without making a clear will.

Now, we will look at the social life of the debates on matriliney vis-a-vis Islam starting from the inception of the idea that matriliney as system of familial organization need to be abolished owing to its "un-Islamic" character. Second, we will discuss the implication of the passage of the

Mappila Succession Act with reference to inheritance of property. Third, we will see how 1920s become a liminal period in which the gender relations among Mappilas were re-defined in the idiom of male domination.

The Demand for the Succession Act c. 1914-1918

Male, educated members lead the demand for the passage of the Succession law. They stressed that matriliney was "un-Islamic." However, it can be seen that the junior members expressed their vested interest to acquire the property of matrilineal joint family in the idioms of religion. In one of the first incidents among the demand for the bill, "Mappila residents of Cannanore and its suburbs" submitted a memorial to the collector. The letter explicitly marked their quarrel on matrilineal inheritance in juxtaposition to the legal perspective. The litigators had a problem with the fact that Mappilas transferred their property to the children of their sisters and not to their own children as enjoined by the holy Quran¹¹ and expounded by the Sharia.¹² They also cited the example of Mappilas of South Malabar to argue that customs in North Malabar was an aberration from the normal:

The Mappilas of South Malabar did not follow Marumakkathayam customary law. Mappilas of South Malabar were the brethren who "strictly follow Muhammadan law of inheritance."¹³

The demand for the changes in the rules of inheritance of the matrilineal property surfaced in front of the authorities soon. In a letter dated December 18, 1914, the collector of Malabar sought opinions from the Mappilas in the district of Malabar.¹³ The responses to the various provisions of the Mappila Succession Bill, according to official record found a "general" acceptance, especially in North Malabar and South Canara. The report of the Tahsildar of Chirakkal states that in meetings that held at 13 places had local Kazi as president. In Cannanore, the number of people present in the meeting was as high as 3,000.¹⁴ One of the statements that conclude the outcome of the meetings can be quoted here:

At some meetings, the Kazis and the learned maulavis¹⁴ who addressed the meetings went so far as declaring that if any one were to say that he does not want that his self-acquired property should devolve according to the Muhammadan Law, he would turn a *kafir* (infidel).¹⁵

This statement, however, exaggerates the acceptance of the bill and under-represents the reaction against the bill. For instance, Tahsildar of Kurumbranad, North Malabar, reported that in many places in the *taluk*, the idea of legislation found opposition from the common people. They had the view that the provisions in the Succession Act were

“in the least interest of the Mappila *tharavadu* and that it could cut the very root of existing system of *marumakkathayam*.”¹⁶ More interestingly, even those who agreed with the legislation did not want the abolition matrilineal customs. While many of the Mappilas were apprehensive about the repercussions of the bill, they were ambivalent about the “un-Islamic character” of the customs.

Social Impacts of the Debates on Mappila Succession Act

The debates on the bill on succession had a huge impact on the customary practices of inheritance, and it did create a lot of reactions from the society. The bill instilled fear among Mappila because one of the provisions in the bill took away the right to succeed the indisposed properties of a deceased *karanavan* (the eldest male member of the joint family) by the joint family, as the right would “invariably be contested by his sons.” They anticipated that it would become a perennial source of litigation.²⁵ Many even argued that the Act was unnecessary because a Mappila already had adequate time to gift their individual properties during their lifetime by way of executing a will. In fact, the reality till that period was such that Mappilas did not take much advantage of provisions of Malabar Bill to pass ownership of the property as gift to those heirs prescribed by the Anglo-Muhammadan law by writing a will.¹⁷

In the official compilation of various “opinions collected” from the selected people, some of them apprehended that the Act posed a threat to the very foundations of the matrilineal system. Thus, they opposed the legislation of the Act. Some sections of the educated males could only officially express it. In fact, nobody could even imagine practically abolishing matrilineality though many *anadiravans* or the junior members of the *tharavadu* wished so. It is worth to mention that, the Act left out those properties that were jointly held; the acquisition by the *karanavan*; and the property gifted by matrilineal father. These properties devolved to the matrilineal joint property. Furthermore, the option of “the gift” by will was used by Mappilas to transfer the ownership of their private property also to the matrilineal kin even after the passage of the Mappila Succession Act in 1918. For doing this, Mappilas used the provision in the Malabar Wills Act, which enabled them to give away their property during their “lifetime.”

Eventually, Malabar Succession Bill was passed in the Madras Legislative Assembly. The Succession Act led to the destruction of *tharavadu*-based economy because *tharavadu* did not receive any additional property by way of availing the private property of the male members; while *tharavadu* had to give maintenance for more number of members.¹⁸ The decline in trust or embeddedness granted by the ties of affective relations further ruined the economic stability of the *tharavadu* (see Granovetter, 1985).

Third, the Succession Act in essence asserted that the father–son bond and the wife–husband bond were “natural.”

This sensibility was new for Mappilas. This idea established that the spouse and children become the normative heirs to the self-acquired property of Mappilas. The era, thus, witnessed the emergence of the “individual” who give or receive property over and above the control of the matrilineal joint family. However, the construction of the individuality was highly gendered. Male individual Mappilas as junior members of the family were more “individual” than female members as sisters. Male Mappilas acquired private property; attempted to pass them by using Muhammadan law; and looked forward for claiming entry into the public sphere as an “individual.” The individual invariably claimed to transgress the sphere of the private. However, the claim could have been rootless without the structural support of matrilineal joint family, which still survived much longer. Family gave economic, social, and cultural resources to imagine the “being” of a modern Muslim individual. Now, we will look at the survival of matrilineality among Muslims of Malabar. One of the central aspects of the negotiation of Muslims with dominant discourse of family in 20th century was the re-definition of the familial customs in the idioms of newly emerged notions of the “correct Islam.”

Religion, Law, and Family: Alteration of the Mappila Matrilineality in Malabar, c. 1910-1928

The alteration of the Mappila matrilineal customs meant that there was a re-conceptualization of the customs for the purpose of defending them against the threat posed by the new abstract idea of the “correct Islamic” practice of inheritance (cf. Abdullah, 1985). The first process in the alteration Mappila matrilineal customs of inheritance was with respect to the conceptualization of the succession of the collectively owned property by *tharavadu*.

According to Muhammadan law, there is no joint family; thus, it was held that there was no provision for the existence of a joint family property.¹⁹ As a result, there was a worry about the mismatch between the “Islamic” notion of the inheritance of property and the existence of joint family property. As a solution to resolve the incompatibility of matrilineality with the Muhammadan law and to rescue the division of joint family property, it was suggested that one can bring in the customary practice of inheritance of collective property in the female line in agreement with the Muhammadan law. For that purpose, one had to find out some provisions in the Islamic jurisprudence, which allowed succession in the female line. As result of this pursuit, it was agreed that the *tharavadu* property could partake “the nature of properties known as ‘*wakf*.’”

The provision of the “*wakf*” or charity in practice there was that of “*wakf-alal-aulad*” or charity in succession either in male or female line. This provision was in accordance with Islamic law, especially Shafi school of law that allowed a person to endow one’s properties to children or

relatives to enjoy in perpetuity in a particular line of descent.²⁰ This provision was known as private charity. The provision also had the condition that the property could potentially devolve to an institution of charity like mosque in the absence of a female member in a family to inherit the same. Thus, we can see that the Succession Act on inheritance of collective joint family property did not receive support from the society. Mappilas, especially orthodox landowning sections of the Mappilas, could not afford re-distribution of *tharavadu* property to individuals. And by altering the meaning of the customs local people defended the customs and it happened that “the *tharavadu* property will become impartible and inalienable and the whole system could be brought in accordance with . . . religion.”²¹ The alteration rescued the *tharavadu* house from the vested interest of the male members who demanded partition of the collective property (Shankaran, 1932).

The second process of alteration happened by the passage of Mappila Succession Act of 1918. It was explicitly in response to the newly emerged demand for the changes in the customary rules regarding the inheritance of privately owned land according to the provisions of the Anglo-Muhammadan law. Anglo-Muhammadan law recognized individual property; the Mappila Succession Bill stood for allowing the same for the self-acquired property of matrilineal Mappilas. The Act marked a shift in the conceptualization of inheritance of the property of Mappilas.

The alteration in the meaning of the matriliney tended to “clarify” the ambiguity around religious nature of the practice. Let us elaborate on what it meant by the ambiguity by giving a specific example. One of the early documents to look at this factor is the letter in response to a suggestion for the legislation of the Malabar Partition Bill of 1910, written by Ahmed Ali Rajah of Cannanore to the district court of Tellicherry on September 30, 1910. The matrilineal joint family properties of the entire committees who practice matriliney in Malabar came under the discretion of the Partition Bill. Ali Rajah opposed the Bill due to its reference to Mappila matrilineal *tharavadu* and its suggestion for the partition of the *tharavadu* into branches. According to him, the conceptual pre-suppositions in the Bill violated the principles laid down in the Quran and the Muhammadan law in their original form. However, his letter also shows the difficulties of making any easy argument as well:

Of course, I am bound to admit that marumakkathayam law of inheritance observed by the Moplah Mahomedans of Malabar is opposed to the teachings of Islam, but at the same time I beg to point out that in the present days, no single Mapla Mussalman leaves his self-acquisition to his nephews and nieces to form a *tavazhi* or *tharavadu*.

He felt that a practical resolution to this confusion will be to regard these properties as *wakf* properties; and hence would not be “un-Islamic” in nature. Thus, the re-conceptualization of matrilineal customs in accordance with

the principles of *wakf* in 1920s was a pragmatic solution to take away the ambiguity regarding the Islamic sanction of the customs. However, these debates with reference to Islam and family were produced particularly in the discursive field of South India. This re-definition was central to formation of Muslims as political community.

The imagination of a modern political community called “Mappila” community was found in concrete forms by the third decade of the 20th century. Young Mappilas organized meetings and public talks at various towns in Malabar. They debated political, religious, and social issues in these gatherings (Kandiyil, 1992). The reverberation of Khilafat movement in 1920s coupled with the occurrence of the biggest riot in 1921 caused havoc in Malabar due to massive incidents of the state repression (Panikkar 1989). The atrocities of the suppression forced many Mappilas to flee and to live in exile; they had interface with the Muslims of North India and other parts of South Asia (Razak, 2007). Khilafat movement also engendered Mappilas to the fold of “universal brotherhood”—an underlying assumption of what is called “Pan-Islamism.” For instance, associations for socio-religious reform and the well-being of the community were formed among the Mappila diaspora located in the countries like Sri Lanka²² simultaneously with the formation of youth associations in various part of Malabar (see Kandiyil, 1992). Imagination of Mappila community underscored the reference to a “correct Islamic practice” and these sacred imaginations transgressed the limitations of space and time (cf. Eliade, 1987) to claim entry into *ummah*, the universal community of Muslims throughout the world. The community formation surfaces into the debates on matriliney, because, notion of family and debates around women central those imaginations. For social reformers, women were emblematic of the pride of the community and family was the microcosm of the community (cf. Chatterjee, 1999). It is, however, important to see that the imagination of Mappila “community” and the attack on matriliney calling them un-Islamic derived energy from same discursive field of late 19th century Kerala where matrilineal practices among Nayars (Arunima, 2003) and Ezhavas of Travancore (Velayudhan, 1998) were attacked as “non-Hindu” practices and were radically transformed or ruined.

Contextualizing the Mappila Succession Act in the Discourse on Gender and Islam From Late 19th Century Onward

Matrilineal family inherited even the self-acquired properties of individuals before the passage of the Succession Act of 1918. The Malabar Wills Act further restricted the possibility of the transfer of property to daughters by putting limits on the nature of the gift by way of making will. Finally, the Mappila Marumakkathayam Act of 1939 was passed in the Madras Legislative Assembly. This Act marked the decline of the institution of “*karanavan*” (the male head) or

“*karanavathi*” (the female head) in the matrilineal joint family. While in the early 20th century, the family by authority possessed all movable and immovable property. He had right to manage or mortgage them in the interest of the *tharavadu* and to lease *Ottis*—a contract to the tenants. Head of the family maintained the expenses of the joint family house, and distribute income for the maintenance of the junior male members of the family called *melchilav* (pocket money; Arunima, 2003, p. 52). One example is that of Beevi of Arakkal family of Cannanore, where the eldest member irrespective of sex became the family head. The Act restricted the powers of the head. By the early 20th century, male and female members of the family become co-owners to the *tharavadu* property. *karanavan* or *karanavathi* had to show the accounts of the expenses and income to the members. There was also a decline in the ritual, spiritual, and customary status of the family head. The alteration of the matrilineal customs and the loss of affective relations contributed to the subjugation women to their husband (Ali, 1933, pp. 57-61). However, structural re-location of women did not surface in the discourse on Muslim matriliney until 1930s, despite the churning happened during the period of 1910-1928. The women were the central concern of the debates only in 1930s, when Mappila men grew apprehensive about the “protection” of women who were already alienated from the system. By then, socio-religious reform movements imagined men and women in the idioms of modern individuality.

Conclusion

The collective ideas and norms lead to formation of law and customs in society. And in turn, law influences the constructions of collective ideals (Durkheim, 1964). The interplay between law and society can lead us to the exploration of the collective imaginations that set up worldviews. In the historical context of Malabar, one can observe that the imaginations in the realm of the religion permeate to what is commonly understood to be the realm of the secular, the court, and the state. In other words, the boundary between what is generally understood as the secular morality and the religious truth blur in the social milieu, the state and the judiciary shares the norms and “the truth” as if they also constitute a religion. The junior member of the Mappila joint family expressed their interest over the landed property of joint family using these idioms. It was an easy strategy, as that historical era was witnessing churning among all matrilineal communities in Kerala, and there were transformations in the economy that helped them to acquire private property. Yet, they were by and large depended on the existing institutions of matrilineal kinship. In that sense, only by using the idioms religion and morality, they could sever the affective relationship and challenge existing customary practices. However, the social history of this era also shows how Mappila elders and women retained matrilineal kinship structure and negotiated

with breakage of affective relations by using the provisions in the customary practices, and moral economy sanctioned by family and religion such as the institution of *wakf* and the creation of branches through female line. The history of the transformation of matriliney shows how Mappila Muslims of Malabar negotiated with colonial legal principles, and Islamic laws, and attempted to retain their matrilineal familial customs. First, the legislations, and directions of the courts, failed to impose transformation in the familial practices. Second, the textual and legal notion of Islam could not dictate the articulation of Mappila rituals, beliefs, and customs in their daily life. It does not, however, mean that the customary matrilineal practices and gender relations seldom underwent transformations. There were constant processes of re-articulations of the family, re-construction of the role of women, and re-conceptualization of religious concepts. The court, religious experts, and common Mappilas always encountered one another in the site of the family. Thus, the history of matriliney also tells us about the changes in Mappila daily life in the context of colonial modernity; as indeed, the ways in which Mappilas negotiated with threats on their customary practices by way of incorporation, alteration, and negation. Mappila matriliney escaped radical transformations unlike Nayar matriliney in Kerala. Mappilas re-created their customs by re-locating those practices within the fabric of “correct” Islamic practices.

Acknowledgment

This article is based on the author’s MPhil dissertation titled “Gender and Family in Colonial South India: A Sociological Study of Mappila Matriliney in Malabar c. 1914-1940” submitted at Centre for the Study of Social Systems (CSSS)/School of Social Sciences (SSS)/Jawaharlal Nehru University (JNU) in the year 2011. The author is grateful to Dr. Harish Naraindas, Associate Professor, CSSS/SSS/JNU, and Dr. G. Arunima, Associate Professor, Women’s Studies Programme (WSP)/SSS/JNU, who supervised the dissertation. The author also acknowledges the financial support of the University Grants Commission, India.

Declaration of Conflicting Interests

The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding

The author(s) disclosed receipt of the following financial support for the research, authorship, and/or publication of this article: The author received a merit based scholarship of University Grants Commission of India.

Notes

1. The term is also spelt as Mappilla or Moplah in early records.
2. The Muslim community in contemporary Kerala does not exist with these strictly delineated differences. The movement of

- people became more feasible after the improvements in the inland public transport facilities. In the case of the coastal cosmopolitan town of Ponnani, a bridge constructed during 1950s made the interaction between the interior South Malabar and the coast possible. The construction of the bridge enabled marriage relations between matrilineal and patrilineal Mappilas. Prior to that, people of Ponnani commuted through the Arabian sea or Ponnani river and contracted relations with coastal matrilineal Mappilas in Calicut, or Chavakkad (Thrissur, Kerala).
3. Passed by the Governor of Fort St. George in Council in the year 1915-1916. Madras: Government Press.
 4. This deed contradicts the principles of *marumakkathayam*. It shows the importance that a father's role acquired in this context.
 5. Indian Law Reports 42, Madras. 869 Pathumma versus Abdulla Haji, quoted by Kumari (2003, p. 338).
 6. Thoppil Tharavadu at Calicut and Naha Tharavadu at Parappanangadi in South Malabar are examples. See Ali (1933).
 7. For a discussion of community formation and colonialism, see van der Veer (1996, p. 21). For a discussion of community formation in the colonial period see Peter van der Veer, *Religious Nationalism: Hindus and Muslims in India*, (Delhi: OUP, 1996), 21. For a discussion of community formation among Mappilas in Malabar in particular, see Menon (2002); and Razak, (2007).
 8. Wigram (1882, p. 153). Wigram disagrees with this and adds that custom does exist, and it was in full force in Laccadive Islands.
 9. See, the letter of Chirakkal Taluk Tahsildar to deputy collector of Calicut September 23, 1914, in *Opinions and letters that deal with the proposed legislation for altering modes of inheritance in Mappila families following marumakkathayam* (DR/Public, B. No. 152, File No. 497, SL No. 17, 1915), Kozhikode Regional Archives (KRA).
 10. Opinion by R. Sivaramakrishnan, Esq. MA, ICS, District Judge of North Malabar, Tellicherry, in "*Opinions Received*" by the select committee on the *Mappila Marumakkathayam Bill of Khan Bahadur Mahamad Schamnad Sahib* (Madras: Government Press, 1938), p. 35. Arakkal Records, KRA.
 11. See the memorial titled "Memorial of the Moplah (Muhammadan) Residents of Cannanore and Its suburbs" in DR/Public, B. No. 152, File No. 497, SL No. 17, 1915, KRA, p. 9.
 12. See letter by P. Kunhayan, deputy collector, Calicut, dated September 23, 1914 (Arakkal Records, p. 10).
 13. See the memorial titled 'Memorial of the Moplah (Muhammadan) Residents of Cannanore and Its suburbs' in DR/Public, B.No 152, File No.497, SL No.17, 1915, KRA, p. 9).
 14. Religious priests.
 15. Letter of Ammoo, the Tahsildar of Chirakkal to the sub-collector of Tellicherry, dated January 29, 1915 (DR/Public, B.No 152, File No.497, SL No.17, 1915, KRA). Ammoo himself was a Marumakkathayee Mappila official who argued for the legislation. Also see letter by C. A. Innes (DR/Public, B.No 152, File No.497, SL No.17, 1915, KRA, p. 18).
 16. Report by Tahsildar of Kurumbranad to the sub-collector of Tellicherry, dated February 13, 1915, DR/Public, B.No 152, File No.497, SL No.17, 1915, KRA, pp. 70-73.
 17. Report of C. A. Innes, the collector of Malabar (DR/Public, B.No 152, File No.497, SL No.17, 1915, KRA, pp. 15-18).
 18. Kottayam Tahsildar to the sub-collector of Tellicherry dated February 3, 1915 (in DR/Public, B.No 152, File No.497, SL No.17, 1915, KRA, pp. 69-70).
 19. Opinion by R. Sivaramakrishnan, Esq. MA, ICS, District Judge of North Malabar, Tellicherry, in "*Opinions Received*" by the select committee on the *Mappila Marumakkathayam Bill of Khan Bahadur Mahamad Schamnad Sahib*, (Madras: Government Press, 1938), 35. Arakkal Records, KRA.
 20. Opinion by K. Uppi Sahib Bahadur, Ex MLC and Ex MLA in "Opinions Receive" by the select committee on the Mappila Marumakkathayam Bill of Khan Bahadur Mahamad Schamnad Sahib (Madras: Government Press, 1938). Arakkal Records, KRA, p. 48.
 21. Opinion by R. Sivaramakrishnan, Esq. MA, ICS, District Judge of North Malabar, Tellicherry, in "*Opinions Received*" by the select committee on the *Mappila Marumakkathayam Bill of Khan Bahadur Mahamad Schamnad Sahib* (Madras: Government Press, 1938), p. 35. Arakkal Records, KRA.
 22. Mathrubhumi, 1924, March, 29.
 23. Indian Law Reports 16. Madras, India: 1892. p. 201 quoted in the footnote in Lakshmi (2012, p. 50).
 24. The memorial titled 'Memorial of the Moplah (Muhammadan) Residents of Cannanore and Its suburbs' in DR/Public, B.No 152, File No.497, SL No.17, 1915, KRA. p. 41.
 25. Report by Tahsildar of Kurumbranad to sub-collector of Tellicherry, dated 13th Feb 1915. in DR/Public, B.No 152, File No.497, SL No.17, 1915, KRA. pp. 70-73.

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