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**Tesavalamai and its application**

**by**

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The idea that I make a presentation on *Tesavalamai* before this august assembly was that of our Honorary President, Dr. Roland Silva.

I told him, it will be a dry subject, as dry as the sandy tracts of the dry zone. It will not move the audience to mirth, or to rapturous attention, amazement and wonderment as the previous speeches in these series and performances have done. No visuals, no drama, no music. But, alas, he would hear none of it.

So here I am, Ladies and Gentlemen, to inflict upon you some information, hopefully without pain, about the brethren of the North.

I am indeed greatly honoured to have been invited to present this lecture, on a day we are honouring the memory of Sri Lanka's Pioneer Historian Dr. G.C.Mendis. His contribution to the advancement of education, his active interest in the nationalist movement, the teaching of history and his several publications, bear testimony to his scholastic stature. One of his publication which is dear to my heart is the two volume edition by him of the "Colebrooke-Cameron Papers: Documents on British Colonial Policy in Ceylon, 1796-1833". I am a proud owner of those two volumes.

Having remembered the significance of this evening I come to my burden today, which is, to share with you some insights concerning the *Tesavalamai*. I must, however, caution that it is more in the nature of a broad sweep, the panoramic view of the sky glider, rather than the focused dig of the archaeologist.

*'Tesavalamai'* in the Tamil language has the meaning 'ancient established customs of the country'.

*'Tesavalamai'*, the ancient established customs and institutions of the tamils of the northern province are based on Dravidian usages and not on Hindu Law.<sup>1</sup>

It has been said,

*"No people can be more attached to their ancestral institutions than the inhabitants of Jaffna ... [and to] those customs, which ... have ... obtained, among them [with] all the force and authority of the laws."*<sup>2</sup>

Among the customary laws of the Tamils of Sri Lanka, namely the Tamils of Jaffna, Trincomalee, Batticaloa, Puttalam, Calpenty, the Vanniars and the Mukkuvas, the *Tesavalamai* takes the pride of place, as being the most comprehensive, and as having survived to date as a living system of customary law.<sup>3</sup>

The people who were governed by these ancient institutions and customs have been called the *'Malabar Inhabitants of the Province of Jaffnapatam.'*

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<sup>1</sup> Henry Maine - Ancient Law.

<sup>2</sup> Sir Alexander Johnstone, Judge of the Supreme Court of Ceylon (1806) and later Chief Justice (1811) quoted in Van Leeuwen Commentaries (1820).

<sup>3</sup> H.W.Tambiah - The Laws and Customs of the Tamils of Ceylon (1954).

## Why 'Malabar'?

The term *Malabar* is first believed to have been used by the Arab or Arabo-Persian mariners of the Gulf, to the seaboard country, corresponding roughly to the Kerala of ancient times, sailing with the monsoon winds of the Indian ocean.

'*Mallai*' is the Dravidian word for mountain. The termination '*bar*' it is suggested<sup>4</sup> may be connected either with the Arab '*barr*' (a continent) or with the Sanskrit '*vara*' (a region). Sir Ponnambalam Ramanathan appears to be of the view that it springs from '*Malaiivaram*' in Tamil, meaning mountainside.<sup>5</sup>

The term '*barr*' has also been applied by the navigators of the Gulf to other regions which the Arabs visited besides Western India, for example, '*Zangibar*' (modern Zanzibar) meaning country of the blacks. According to some, the term '*Ma'bar*' (Arabic for passage) was applied to the South East coast and confused by the Europeans in later years with '*Malabar*'. Marco Polo, who visited India and Ceylon about the end of the 13<sup>th</sup> Century refers to the Gulf of Mannar as '*the bay that lies between Ma'bar and the Island of Zeilan*'.<sup>6</sup>

The term '*Malabar*' has also been used by the European invaders and writers of times past to denote both the Tamil speaking peoples and their language as well. Thus the Portuguese, the Dutch and the British, and historical chroniclers such as Robert Knox,<sup>7</sup> Phillipus Baldeus,<sup>8</sup> Captain Robert Percival,<sup>9</sup> Rev. James Cordiner,<sup>10</sup> John Davy,<sup>11</sup> Sir James Emerson Tennant,<sup>12</sup> use the term *Malabar* in referring to the Tamils of the North.

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<sup>4</sup> K. Balasingham – Laws of Ceylon, Vol 1 (1929).

<sup>5</sup> Sir Ponnampalam Ramanathan in a footnote, in *Tillainathan et al v Ramasamy Chetty et al* 4 NLR 328 at p 333.

<sup>6</sup>H.W.Tambiah - Laws and Customs of the Tamils of Jaffna (1958).

<sup>7</sup>An Historical Relation of the Island of Ceylon (1681).

Thompson, in his Institutes of the Laws of Ceylon (1806) calls *Tesavalamai*, 'Tamil Country Law'. Van Leeuwen's Commentaries (1860) speaks of Malabar or Tamil inhabitants.

There is however, a more romantic version in the traditional accounts of the history of the Tamils as embodied in literary works such as *Kailayamalai*, (Muththurasu Kavi c.1591), *Vaiya Padal*, (Vaiyapuri Iyer c. Mid 16<sup>th</sup> century), *Pararajasekeram Ula*, (c. late 15<sup>th</sup> century), *Raja Murai* and the *Yalpana Vaipavamalai*<sup>13</sup>

They speak of two colonisations of Jaffna. The first one led by a lutist by name *Yalpadi*, from whom the Peninsula itself derived its name '*Yalpanam*'. The Tamil word '*Paanar*' means, lute players.

According to *Vaiya Padal*, the Lutist came from the West coast of India and made his debut in the Court of Vibishanan. The King pleased with his performance on the lute gave him the sandy tract – '*Manal Thidal*'- in the north as a gift. *Yalpadi*, then brought his followers from the West coast of India and settled them in *Yalpanam*.

The first colonisation was on an extensive scale from the Malabar Coast. These earlier colonists it was, who had done the arduous pioneer work of converting a dreary waste land into smiling gardens and had settled down in the villages and hamlets throughout the peninsula many centuries before the second colonisation. They brought with them the matrilinear system of succession.

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<sup>8</sup> A True and Exact Description of The Most Celebrated East -India Coasts of Malabar and Coromandel, as also of the Isle of Ceylon (1671). English translation 1703.

<sup>9</sup> An Account of the Island of Ceylon (1805).

<sup>10</sup> A Description of Ceylon (1807). See an interesting account of the administration of oath in litigation, witnessed by him at page 329.

<sup>11</sup> An Account of the Interior of Ceylon and its Inhabitants (1825).

<sup>12</sup> Ceylon. An Account of the Island (1860) Vol.1.

<sup>13</sup> Compiled by Mailvagana Pulavar, at the request of Jan Maccara, Dutch Governor of Jaffna in 1736 CE.

Baldeus, writing in 1671 says:

*“Their Habitations are both convenient and neat, with pleasant gardens, well planted with Betel, and furnished with excellent springs....”*

The sentimental attachment of the natives to their respective holdings of small parcels of well manicured land in the Northern Province, is best expressed in the words of Mudaliyar Rasanayagam, in *Ancient Jaffna* (1926), wherein he states:

*“His attachment to his birthplace is indeed proverbial. Go where he may in search of wealth and live where he may for the time being, even in the fairest and the most favoured of lands he feels himself but a sojourner; and sooner or later he follows his heart back to home, to spend his days in those well-remembered spots and among the friends of his earliest love.”*

One might call this attachment, a soil identity.

This attachment to their lands was later exploited by the Portuguese to raise revenue when they introduced the terrible register, the *Thombo* in 1634. It was a detailed register of each plot of land, the name of the owner, his caste and its product. When it was completed it had about 2000 folios in about seven books.

The second colonisation came in early 13<sup>th</sup> Century, when the Aryachakravarty established a kingdom in Jaffna.<sup>14</sup> It consisted of a small band of chieftains, their relations and retainers who settled in some villages among the larger community of the earlier settlers for purposes of civil and military administration of Jaffna and for the collection of revenue in the newly established kingdom of Aryachakra.<sup>15</sup> With them came something of the patriarchal.

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<sup>14</sup> Singai Aryan – 1210 – 1246 CE.

<sup>15</sup> V. Coomaraswamy – *Hindu Organ* 19<sup>th</sup> June 1933, quoted in H.W. Tambiah – *Laws and Customs of the Tamils of Ceylon* (1954).

The rule of the Arya Chakravarthi, the Kings of Jaffna, begins around 1210 CE and ends around 1620 CE<sup>16</sup>, with the execution of Sangili, and the Portuguese conquest of the Kingdom of Jaffnapatam.

Today, the question whether the term '*Malabar*' means (not includes) Tamil inhabitants of the Province of Jaffna, in the context of Tesavalamai, has been settled by a long line of judicial decisions of the Supreme Court,<sup>17</sup> in the affirmative.

### The Province of *Jaffnapatam*

The territorial area of *Jaffnapatam* was not very easy to determine. Certainly it did not include Trincomalee and Batticaloa, though they were populated by Tamils. However, we have some guidance on the subject from the Memoir of Thomas Van Rhee, Governor and Director of Ceylon, for his successor, Gerritt De Heere written in 1697.<sup>18</sup>

According to the Memoir, *Jaffnapatam* comprehended the Island of Mannar, the Peninsula of Jaffna, the Vanny and the Islands around Jaffna.

In 1799, Sir Hugh Cleghorn, in his Minutes on the administration of justice and of revenue under the Dutch Government, gives it as extending along the northern parts of Island from the limits between Puttalam and Mannar to the river '*Kokoly*', the limit of Trincomalee. Thus *Jaffnapatam* during the Dutch times included the Districts of Mannar and Mullaitivu.

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<sup>16</sup> Rev. S. Gnanaprakasam, Tambiah – supra; Mudaliyar Rasanayagam.

<sup>17</sup> *Chetty v Chetty* (1935) 37 NLR 253- Tesavalamai governs Vanniyas; *Tharmalingam Chetty v Arunasalam Chetty* (1944) 45 NLR 414; *Tillainathan v Ramaswamy Chettiar* 4 NLR 328 at 333; *Marshall v Savari* (1878) 1 S.C.C. 9 – Tesavalamai governs Tamils of Mannar; *Savundaranayagam v Savundaranayagam* (1917) 20 NLR 278 – re Chetty community in appeal from the judgment of Dr. Paul Pieries, District Judge.

<sup>18</sup> Translated by Sophia Anthonisz, Dutch Translator.

In British times, the map of Ceylon of the Surveyor General, of December 1822, establishes that the Province of Jaffna, included the Districts of Mannar and Mullaitivu and that the extreme Southern limit was the line separating Chettikulam from Nuwarakalawiya.<sup>19</sup> In the year 1835 when Ceylon was divided into nine provinces, and the present limits of the Northern Province was determined.

*Tesavalamai*, therefore, applies to the Malabar Inhabitants of the Province of Jaffna.

### Who is a “Malabar”?

The Preamble to Regulation No. 18 of 1806, which gave *Tesavalami* the full force of the law under the British, has this to say:

*“The system anciently pursued ... in the Province of Jaffna, was the result of much local experience and of a very attentive consideration of those Customs and Religious Institutions which had prevailed in that Province not only from the time of the Portuguese conquest, but also from the earliest period of the Malabar Government. It assimilated itself to the ancient habits of the Country, to the feelings and prejudices of the people, and it was for these reasons on the whole; Wise in principle, and Salutary in its effects.”*

The Proclamation further provided that in:

*“All questions between Malabar inhabitants of the said Province or wherein a Malabar inhabitant is a defendant shall be decided according to the said customs.”*

In the Proclamation issued on the 11<sup>th</sup> of February 1815, on the occupation of Kandy by the British, the term Malabar is used to signify the Tamils, in the expression, *“The Malabars from the Coast of Coromandel”*.

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<sup>19</sup> Tesavalamai Commission 1919. See also, *Wellapulle v Sitambalam* Ram. Rep 1872 – 1876 at 114.

Naturally, lawyers were quick to exploit the situation. Does the term *Malabar* refer exclusively to those who could prove their descent from people of the Malabar coast or did it apply to all Tamil inhabitants of the Northern Province?

The question of who is a *Malabar*, arose for determination and was specifically considered by the Supreme Court, in a case where the applicant's father had come from Ramnad, in South India, long after 1806 and had settled down in Jaffna. It was contended that the *Tesavalamai* did not apply to him because he was not from the Malabar coast. The Court, however, rejected the argument that *Tesavalamai* applied to only those who came from the Malabar coast and not to other Tamils and held that it applied to all Tamils so long as they had an inhabitancy in the Northern Province.<sup>20</sup>

One has to be a Tamil for *Tesavalamai* to apply. Recall here that Thompson, in his Institutes, (1806) called it '*Tamil Country Law*'.

However, non-Tamils can come under its tutelage. A non-Tamil woman marrying a Tamil inhabitant of the Province of Jaffna, will be governed by *Tesavalamai*, during the period of coverture, and will be entitled to all the benefits of a *Tesavalamai* wife. And liabilities of course.

*Tesavalamai*, therefore, as we have seen, is a personal law applicable to all persons who answer the description of "Malabar inhabitants of the Province of Jaffna". Even an Indian Tamil, though not a citizen of Sri Lanka, can acquire the status and be governed by *Tesavalamai*.

*Tesavalamai* has also a local application as opposed to its personal application. *Tesavalamai* as a local law, applies to all lands situated in the Northern Province of Sri Lanka, whether owned by the Malabar

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<sup>20</sup> *Tharmalingam Chetty v Arunasalam Chetty* (1944) 45 NLR 414.



inhabitants of the Province, or Sinhalese or Burghers or Chinese or Indians. The incidents of ownership will be looked at when I deal with the contents of *Tesavalamai*.

### The meaning of 'Inhabitant'

Naturally, the question arises, how do you determine who is an "Inhabitant of the Northern Province? This is of considerable importance because, for *Tesavalamai* to apply the subject must not only be a Tamil from the Northern Province, but must also be an 'inhabitant' of that Province.

The word 'inhabitant', in its ordinary signification, means one who dwells or resides in any place; or in other words, one who has settled in a town or district. This is the ordinary etymological meaning of the word, but in relation to *Tesavalamai*, it has a more restricted meaning.

What is it then?

There has been much discussion on the topic and a whole line of judicial decisions have sought to interpret the term 'inhabitant' – pondering whether, it meant a permanent inhabitancy, in the sense of domicile in the Province, whether it meant a physical fact and/or mental fact – *animus manendi* (intention of residence), whether there is a crucial point of time at which it should be determined, whether it can apply to a Jaffna Tamil living outside the Province or abroad, and the like.

Time does not permit me to examine some of the sophistic arguments and the decisions individually or in detail, but I will refer to a recent

decision of the Supreme Court in *Sivagnanalingam v Suntheralingam*,<sup>21</sup> which, having examined the previous decisions on the topic, held, that the *Tesavalamai* in its operation as the personal law of the Tamil inhabitants of the Northern Province, applies to them wherever they are and to their moveable and immoveable property, wherever situated in Sri Lanka.<sup>22</sup>

‘Inhabitant’ means a permanent inhabitant who has his home in Jaffna, in the nature of a domicile<sup>23</sup> in the Northern Province, even if he lives outside the Province, so long as he has the *animus revertendi* – intention to return – and retains such a connection with his native province as to entitle him to the benefit of its customary law. However, each case must be decided on its facts and no general rule can be enunciated. The decision would appear to recognise what Mudaliyar Rasanayagam described as the proverbial attachment of the Jaffna Tamil to his birthplace.

#### Codification of *Tesavalamai*

It appears that the Portuguese made no attempt to collect the customary laws of the Tamils of the Northern Province but applied it as they found it. The only reference to *Tesavalamai* is contained in De Queyroz’s – ‘Conquest of Ceylon’,<sup>24</sup> where he refers to certain aspects of succession.

But the Dutch did.

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<sup>21</sup> (1988) 1 Sri. L. R. 86

<sup>22</sup> See also *Seelachchy v Visuvanathan Chetty* (1922) 23 NLR 97 (FB). See also, Jaffna Matrimonial Rights and Inheritance Ordinance No.58 of 1947.

<sup>23</sup> meaning rules applicable to domicile can be applied, *mutatis mutandis*, in determining inhabitancy. In questions relating to domicile there is a presumption of law, that the domicile of origin is retained until the contrary is proved. The burden of proof is on the person who asserts the change of domicile. H.W. Tambiah says “*Tamil with a Ceylon domicile and a Jaffna inhabitancy.*” - *Laws and Customs of the Tamils of Jaffna* (1958).

<sup>24</sup> Translated by Fr. S.G.Perea (1930).

Hendrie Zwaardearoon, Commander of Jaffnapatam in his 'Memories' lamented that there was no record of native customs according to which civil matters have to be settled, and that it would be well if a concise digest be compiled.<sup>25</sup> The Dutch Government appears to have acted on this and, on the orders of Governor Simmons, *Tesavalamai* was codified by Claasz Isaacsz, Dissawe of *Jaffnapatam*, and the task was completed in January 1707.

It was translated into Tamil, and copies were circulated among twelve Mudaliyars in order to make any corrections and they gave their approval of it. From the year 1707 to 1799, when the maritime provinces were ceded to the British, the *Tesavalamai* Code was administered by the Dutch Courts.

Upon cession, the British promptly issued the Proclamation of 23<sup>rd</sup> September 1799 which declared that justice would be administered in the Island according to the laws and customs that prevailed under the Dutch Government of Ceylon.

There were no less than five systems of laws extant at that time. The Roman Dutch Law, the *Tesavalamai*, the laws and usages of the Mussulmans, the Mukkuva Law or the customs regulating intestate succession to property among the Mukkuvas of Batticaloa and the Kandyan Law.

By Regulation dated 9<sup>th</sup> December 1806, it was declared that *Tesavalamai* should be considered to be in full force and that all questions between Malabar inhabitants should be decided according to the said Customs.

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<sup>25</sup> H.W.Tambiah – The Laws and Customs of the Tamils of Jaffna.

When Sir Alexander Johnstone became Chief Justice in 1811 he ordered a fresh translation of the *Tesavalamai*, as he termed, to correct the “*rude English of the Ceylonese (Dutch) translator.*”

The Interpretation Ordinance states that the Legislative Enactments will be interpreted to include the *Tesavalamai* Code.

To complete the picture, in the course of time, legislative changes were made to the *Tesavalamai* Code, before and subsequent to the recommendations of the *Tesavalamai* Commission (1919). The Jaffna Matrimonial Rights and Inheritance Ordinance No. 1 of 1911, the amending Ordinance No. 58 of 1947 and the *Tesavalamai* Pre-emption Ordinance No. 59 of 1947, brought some changes to *Tesavalamai*.

#### The Contents of *Tesavalamai*

A full treatment of the subject is outside the scope of the presentation. What is attempted here is a manageable conspectus, an epitome of some of the fundamental concepts of *Tesavalamai*.

*Tesavalamai*, as we have seen, is a personal law, as well as the local law applicable to all lands situated in the Northern Province of Sri Lanka, whether owned by the Tamil inhabitants of the Province, or any other. It is matrilineal, albeit male-centric, being a fusion of the two systems – matrilineal and patriarchal.

*Tesavalamai*, principally deals with topics such as succession, property, marriage, adoption, servitude and contracts peculiar to an agricultural community, caste and slavery. The Code consists of 76 Orders which deal with these subjects.

A summary of the contents of some of these Orders as might be of general interest are as follows.

### Property

Different systems of law divide property in various ways, such as moveables, immoveables, corporeal, incorporeal, fungibles, infungibles and the like.

Hindu Law divided property into hereditary and acquired property. *Tesavalamai* divided property into hereditary property (*Mudusam*), dowry (*Chidanam*) and acquired property (*Theathiattam*).

Hereditary property, *Mudusam*, is brought by the husband. Dowry property, *Chidanam*, is brought by the wife, and acquired property, *Theathiattam*, is property acquired during coverture.

On the death of the father, his hereditary property, *Mudusam*, descended only to his sons. Property devolving by descent at death of a relative, other than a parent or an ancestor in the ascending line, namely collaterals and other relations is called *Urumai* (non-patrimonial inheritance).

*Theathiattam*, or acquired property, under the old *Tesavalamai* consists of profits during the marriage. Today, since the Ordinance of 1947, *Theathiattam* is property acquired by the spouse for consideration, which consideration does not form part of or represent the separate estate of the spouse, ( either *Mudusum* or *Chidanam*) and profits arising during coverture from the separate estate of that spouse.

The institution of Dowry is deeply rooted in Jaffna society and the law governing *Chidanam* is based on the matriarchal system of succession of Malabars of the Chera Kingdom. It was meant to tie down property to the females of a family and pass it on to females from generation to generation. Derived from the *Marumakattayam* law of Malabar.

*Chidanam* of *Tesavalamai* has very few characteristics in common with the 'Stridana' of Hindu Law, which latter started with the proposition that a woman is not entitled to hold property.

*Chidanam* may be given before marriage, or when no marriage is contemplated or even after marriage.

#### Limited interests in property

*Tesavalamai*, knew limited interests in property called *jura in re aliena*, where such interests could be asserted not only against a particular person, but against the whole world. Such interests were servitudes, leases, *otti* mortgage and pre-emption rights.

The principles of *Tesavalamai* applicable to the above topics are local in character and applies to all lands situated within the Northern Province, whoever the owner may be.<sup>26</sup>

#### Servitudes

Some of the servitudes recognised in *Tesavalamai* are, enjoyment of fruits over an overhanging branch of a cultivated tree, given to the owner of the tree and not to the neighbour, nor has the neighbour the right to lop the branches. It is otherwise in Roman Dutch law.<sup>27</sup>

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<sup>26</sup> *Suppiah v Tambiah* (1904) 7 NLR 151

<sup>27</sup> *Muttiah v Dias* (1887) 2 NLR 83.

In Jaffna, a land of fences, a right is also given to cross his neighbour's land to erect a fence.<sup>28</sup>

Leases are similar to those in Malabar and the rights and obligations of landlord and tenant is regulated. Lands were leased for sowing purposes for a fixed amount or share of it.

### Otti Mortgage

*Tesavalamai* recognised usufructuary mortgage – it was known as 'otti' mortgage, where the mortgagee takes the produce of the land instead of interest and it is redeemable at fixed periods of the year after notice. The incidents are the same as that of *Marumakattayam* law of Malabar.

### Pre-emption

This is a much misunderstood part of the *Tesavalamai*, which lead to the belief that non-Tamils cannot purchase land in Jaffna!

Pre-emption is the right a person has, to buy the property of another in preference to other buyers. *Tesavalamai* gave the right of pre-emption to four classes of persons, namely, co-shares, co-heirs, adjacent landowners and *otti* mortgagees. The vendor has to give notice of the intended sale. The Code prescribed the period of notice as one month, if the pre-emptor lived in the same village; if outside the village but within the Province three months. If the pre-emptor lived outside the Province, six months, and for those who lived outside Ceylon, one year.

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<sup>28</sup> *Chinnappa v Kanaker* (1910) 13 NLR 157.

The law today, since the passage of the *Tesavalamai* Pre-emption Ordinance No. 59 of 1947, restricts the right of pre-emption to co-owners with the intending vendor and persons who will be heirs of the intending vendor if he died intestate, namely descendants, ascendants and collaterals. The right could be exercised only if the property is held in undivided ownership. The Ordinance provides a procedure by which the purchase can be completed by private treaty. Failing which steps can be taken in Court. The price is the prevailing market value, and the highest bidder, if there are a number bidding, will be declared the purchaser.

### Law of Obligations

*Tesavalamai* deals with a few contracts which are common in an agricultural community. It also deals with sale of both moveable and immovable property. For example the sale of a cow was complete, the moment the dry dung was given to the purchaser. There were provisions governing pawn, hire of beasts, exchange of various kinds of grain. Loans of money on interest was recognised, with the limitation that interest should never exceed the capital. Suretyship was recognized in *Tesavalamai*, which allowed the creditor to take satisfaction from the debtor whom he meets first. All these provisions are now obsolete.

### Succession

Testamentary dispositions were unknown. The Dutch introduced it and the English developed it. *Tesavalamai* mainly dealt with rules of intestate succession. There are three periods to consider. Death before the Jaffna Matrimonial Rights and Inheritance Ordinance of 1911 was governed solely by the rules contained in the *Tesavalamai* Code. Death



subsequent to the enactment of the Jaffna Matrimonial Rights and Inheritance Ordinance of 1911 and death after the amending Ordinance of 1947. The latter Ordinance is the law that is now extant.

The Ordinance of 1947 is divided into three main parts. One dealing with applicability of *Tesavalamai* to married women, the second dealing with the matrimonial rights of parties in relation to their properties, and with powers of Court to settle disputes arising out of property between husband and wife. The third deals with inheritance. The general order of succession is descendants, ascendants and collaterals. Deceased spouse gets half of the *Thediathettam*. Illegitimate children can inherit property of the intestate mother, but not of the father.

### Marriage

Under the *Tesavalamai*, for a valid marriage there should be, consent of the parents, or if they were dead, of their guardians. The attainment of the age of maturity (13 years), the requirement that the couple should be of the same caste, and the necessary ceremonies.

The ceremony was simple and devoid of religious rites, and in the main consisted of the tying of the *thali*, present of cloth to the bride (*kurai*) and performed in the presence of relations, the barber and the dhoby, followed by a feast. They were similar to those of the Malabars. Infant marriages were recognised, and so was polygamy. Customary marriages among Hindu Tamils are recognised in law.<sup>29</sup>

### Marital Rights

Under the old *Tesavalamai*, on marriage, the wife passed into the guardianship of her husband. He managed his wife's property and

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<sup>29</sup> Thiagarajah v Kurrukal (1923) 25 NLR 89.

*thediathettam*. She could not alienate her properties without the consent of the husband during coverture. The husband became the irremovable attorney of the wife! After separation she could, and to that extent a *femme sole*.

The law changed with the enactment of the Jaffna Matrimonial Rights and Inheritance Ordinance, under which the written consent of the husband is necessary only in the case of immoveable property. But she could dispose of property, acquired in her name as her property, by last will without the written consent of her husband. She is also recognised today as an heir to half the acquired property, *The diathettam*, of her husband. In Court she has to be assisted by her husband, as if she were a minor. She has no independent *persona locus in standi judico*.

### Divorce

The Tesavalamai provides no ceremonies for divorce, but speaks of separation of property when the wife or husband live apart and contemplate remarrying. A divorced woman was not prohibited from remarrying and remarriage of widows was permitted. On remarriage, she had to give up her right to hereditary property and half of the *thediathettam* in favour of her children.

### Adoption

Adoption was recognised in Tesavalamai. This right was given not only to a childless man but also to one with children. Adoption can take place, even after a child attains puberty. The adoptive child acquires no rights of succession to the relations of the adopter. Kandyan law has similar provisions.<sup>30</sup>

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<sup>30</sup> Hayley F.A. – Kandyan Law (1923).

A simple but colourful ceremony was observed. This consisted of drinking saffron water by the person to be adopted and after that the relations of the adopting parent dip their fingers to signify consent.

*Tesavalamai* recognised two types of adoption. Adoption could be by both the adopting parents when both of them drank the saffron water, and the child became a new member of the adopting parents' family, severing his ties with his natural parents. Such a child inherited equally with the children of the adopting parents and ceased to have rights of inheritance in his natural parents' family.

If the adopting father alone drank the saffron water, there is a partial adoption. In such cases, the child had rights of inheritance to his natural mother's property. If the adopting mother alone drank the saffron water, the child retained the natural father's property. The consent of the close relations was also insisted upon to constitute a valid adoption. Such consent is signified by the relations dipping their fingers into the saffron water. If any relation did not consent, he did not lose his right as heir to the adopting parent, to inherit the particular share that would have gone to him on the death of that parent.

If the adopted child was a boy, he took the caste of the adopting father. If she was a girl, she took the caste of her adopting father, but her children belong to the caste of her own husband.

The *Tesavalamai* Law relating to adoption is now obsolete. Adoption, today is governed by the Adoption Ordinance of 1941.

### Guardianship

The *Tesavalamai* recognises the father, and on his death, the mother,

as the guardian of the child, so long as they did not contract a second marriage. When the father remarries, the custody of the children has to be handed over to the maternal grandparents of the child, who are entitled to give as dowry to the female children their mother's separate property and half of the acquired property. The Kandyan Law adopted a similar rule.<sup>31</sup>

### Parent and Child

In *Tesavalamai* the sons are under obligation to pay the father's debts. This rule is now obsolete. The father's obligation to support his legitimate and illegitimate children is now governed by the Maintenance Ordinance. A woman governed by *Tesavalamai* and in possession of her deceased husband's estate is bound to maintain her children by the Matrimonial Rights and Inheritance Ordinance No. 1 of 1911.

### Slavery

Slavery was recognised in *Tesavalamai*, and it distinguished between slaves – *adimakkal*, and servants of the family – *kudimakkal*. The Barber and the Dhoby belonged to the latter category.

*Tesavalamai* mentions only four kinds of slaves, namely, the *Kovias*, the *Chāndars*, the *Nallavas* and the *Pallas*.

*Tesavalamai* also records some of the rights of the master over the slaves, the duties owed towards the slave, methods of enslavement, birth into slavery, purchase, gift or inheritance, emancipation and succession. Slavery was abolished in Ceylon in 1844.

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<sup>31</sup> Hayley F.A. –Kandyan Law (1923).

## Caste

Closely linked with slavery is the institution of caste. There were many customs recorded in the *Tesavalamai* to regulate the relations between various castes. Caste system has no legal consequence today.

That happy note brings me to the end of my presentation, within the time allotted, and I hope it leaves you with some understanding and appreciation of the *Tesavalamai* and its incidents.

The *Malabar* inhabitants of the Province of Jaffna have zealously chosen to live by the light of their custom and tradition notwithstanding five centuries of western preponderance.

I believe this to be truly remarkable.

Thank You.