

SMARTHAVICHARAM: CASTE, STATE AND THE REGULATION OF FEMALE SEXUALITY

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Abstract: This article provides a historical-theoretical understanding regarding how the institution of chastity trials was intertwined with the larger social concern of women's perceived purity and the circumstances under which the exercise would be carried out.

The overall empirical experiences of social order in Kerala have been persistently, if not uniquely, structured and characterised by hierarchies of caste, class and gender. Though the state evolved over an unusually long period of time and in conflictingly different fashions, it was and continues to be crucial in producing and preserving such hierarchies. Ideally and theoretically, the function of the state/king was to maintain peace and eradicate anarchy when the occasion demanded. The process, however, was not so straight and simple. Almost right from its beginning, the creation of the patrilineal-patrilocal family as the basic building block of the society was an intrinsic function of the state and the king. In other words, the hierarchies of caste and gender germinated and developed hand in hand. Naturally women in their capacity as daughters, wives and mothers came to pivotal roles in reinforcing and perpetuating the system.

Centrality of women, specifically as chaste wives, in conserving the existing social order (be it ensuring caste purity or keeping ancestral property unshared) was recognised as early as Manu, the ancient/archetypal lawgiver¹. What forced men to desperately engage with the question of women's sexuality was precisely the belief that men could ensure racial and societal purity of their family, lineage and tribe through womenfolk. Predictably female sexuality was fundamental in keeping the caste structure intact. This belief entailed that women of a given caste could have sexual relations only with those men who fell within the ritualistic spaces and limits of the caste in question. Manu argued that by carefully

¹Manu IX, 16 quoted in Uma Chakravarti, "Conceptualising Brahmanical Patriarchy in India: Gender, Caste, Class and State", EPW. 3 April 1993, p. 582

guarding his wife a man preserved the purity of his offspring, his family, himself and his means of acquiring merit². After the emergence of the state in early India, punishments for violations of sexual codes were codified and institutionalised, and the king's authority was instrumentally invoked to enforce these codes³.

Brahmanical patriarchy in Kerala, as elsewhere, operated by deftly manoeuvring the culturally constructed but entrenched ideas of purity and pollution, and rigorously regulating female sexuality. As a result the Brahminical customs and practices pertaining to the control of women's sexuality grew into a surprisingly elaborate and meticulous corpus of prescriptive literature, often peremptory in tone. Absolute and impeccable surveillance of women's movements and the detailed prescriptions of social behaviour she had to observe in every sphere of her life could only be attributed to the obsession with caste purity. However, the Namboothiri Brahmins of Kerala could not obviously maintain this state of affairs on their own.

The dense network of ideologies that supported and legitimised such regulations was both internalised and subscribed to by a majority of women themselves. The internalisation of ideals which glorify and reiterate the chastity of the Namboothiri wife, who through her virtuous deeds was supposed to ensure the superiority, intelligence and greatness of her progeny, was largely responsible for causing her obedience and subservience to repressive structures. Having said this, it should be immediately added that all women of the caste were not always willing to comply with the gamut of moral regulations and were often unwilling to submit themselves to the prevailing normative discourse. In fact, attempts to break rules and violate codes were a common enough phenomenon. For instance, the thoroughgoing directions for chastity trials can be understood as symptomatic of the regular violation of the moral regime. On such occasions, the sanctimonious Brahmanical Law codes had to be called in for maintaining the social order. Given the general structure of the society and the Namboothiri community, the primary responsibility for employing mechanisms of coercion and punishment for eliciting information from women and ensuring their compliance rested on the male members of the community. They had to take upon themselves the onerous responsibility of conducting chastity trials and meting out appropriate punishments. In this process, which was apt to run into many hurdles, the last resort was to seek state intervention since the king had the authority to punish depraved women and to re-establish social order.

² Idem

³ Idem

Caste and State in Kerala

The relationship between the state and castes was long and intertwined. In Kerala after the disintegration of the authority of Cheras in the twelfth century C.E., the minor principalities that arose over the region were consolidated upon the recognition of the authority of the Namboothiri Brahmins. With their extensive network of landed aristocracy, Namboothiris were the real political power behind the throne. That the kings at their coronation took the oath to protect the Namboothiris and the cows in their domain⁴ is ample testimony to regal subordination. As the ownership of land was closely related to administration and Brahmins owned most of the land, the kings were able to stop the Brahmins from restricting royal powers⁵. Land revenue was the principal source of income to the royal exchequer. Since the Brahmin settlements controlled most of the land, they became the most important vassals who paid revenue in return for protection⁶. By the twelfth century, the semi-autonomous Brahmin settlements became almost completely sovereign. They were only nominally subjected to the kings who were not powerful enough to control them. The Brahmanical ritual status, combined with claims of superior knowledge and the fact that the ruling chiefs were inferior to them in the caste hierarchy, must have ensured this state of affairs. Another well-known feature was that the women of the ruling classes accepted suitors in *Sambandham* only from the distinguished Namboothiri families. This often acted as the pivot on which the power relations between the Kshatriya Rajas and the Namboothiri Brahmins were negotiated. There were two forms of marriage prevalent among them. One was the formal or ceremonial form called *Talikettu Kalyanam*. It was more a ritual, something akin to an initiation rite than marriage proper. The other, the real form of conjugal relationship, was known as *Sambandham*. After the *Talikettu Kalyanam*, which a girl would undergo at the age of ten or thirteen, the Namboothiri bridegroom would receive a fee for his 'services' and was allowed to depart after four days, during which period various ceremonies were performed and formalities gone through. The same Namboothiri could act as a pseudo-bridegroom for other girls in the same family or in other families, but could tie the *tali* for only one girl at a time⁷.

⁴ K. V. Krishna Iyer, *The Zamorins of Calicut*, p.24 Kozhikode: University of Calicut, 1984 (1938)

⁵ Department of Public Relations, *Keralam, Kerala Through the Ages*, p. 23

⁶ Idem

⁷ T. K. Anantha Krishna Iyer, *The Tribes and Castes of Cochin*, Delhi :Cosmo, 1981 (1912), p.152

The Cochin royal family residing at Tripunithurahad *Sambandham* alliances only from the Namboothiris of the Thrissur Yogam⁸. All the expenses of the Namboothiri 'husbands' would be defrayed by the royal household. They were provided with sumptuous food and splendid clothing. It should be remembered that during this period the younger sons in a Namboothiri family drew little or no resources from their own homes as the community followed primogeniture and most often had to be content with the assurance of the basic provision of two square meals a day and garments twice a year. As Namboothiri suitors to the royal household, these men received money even to return to their homes. The husband maintained himself virtually at the expense of the wife. Earlier there was provision for a salary of Rupees ten per month⁹.

The relationship between the Kshatriya rulers and the Namboothiri Brahmins, unlike the situation in the Gangetic belt, was organically determined by this marital relations between the two castes too. Symbiotic in nature, the two castes employed these relations to maintain their respective political and spiritual powers. That the Namboothiris depended upon kings for the grant of *dakshinas* is well known. Kanippayyur Sankaran Namboothirippad in his memoirs reproduces the memories of his father, a close aide of the ailing Kerala Varma Raja, on how Namboothiris flocked to the palace to receive the *dakshina* granted in the prayer for the king's speedy recovery¹⁰. In fact, innumerable were the occasions when Namboothiris received monetary gifts from the royal household.

The royal authority was already bound to the maintenance of the social order and it was the king's duty to enforce caste rules, conserve social conventions, maintain law and ensure order. This meant that he had a direct and decisive role to play in the regulation of female sexuality, an important tool in maintaining caste purity. The chastity trials of Namboothiri women would and could be conducted with the sanction, support and involvement of royal authority. The king was, through this active intervention and enjoiners, supposed to eliminate all the men of evil (who would destroy the chastity of the caste woman) from all

⁸ The Namboothiris were divided into different Yogams like Thrissur, Thirunavaya, etc. according to location. These Yogams owed allegiance to different ruling houses. For eg. Thrissur to Kochi and Thirunavaya to Kozhikode

⁹ Kanippayyur Sankaran Namboothirippad, *Ente Smaranakal* (My Memories) (Malayalam), pp. 273-4

¹⁰ Kanippayyur Sankaran Namboothirippad, *Ente Smaranakal* (My Memories) (Malayalam), pp. 273-4

the households and maintain and protect the *varna* system by ensuring obedience to *varna dharma*¹¹. However the extent to which the state would uphold the caste *dharma* depended on the nature of the relationship that the state had with the superior castes. During the colonial age the state's aforesaid role and its links with the higher castes tended to undergo remarkable transformations, so much so that at particular junctures the state did not see it mandatory to sanction controls on female sexuality.

Chastity trials and the Cochin State

As it is evident from extant records and documents, a chastity trial could be started only with the prior sanction of the king. In addition to the official permission, the king would also provide the services of his envoy called *Purakoyma* in the final stage, whose permission was mandatory in pronouncing the verdict of excommunication (or rarely exoneration of the accused men). If and when an *illam* was indigent to meet the expenses of a trial, the king would go to the extent of sanctioning funds from the state treasury¹². In this way we can see chastity trials not as a closed community affair but as a public spectacle designed to send signals into the greater society upholding and reiterating the superiority of Namboothiris both as a caste and as the most important cog in the administrative machinery.

Economic, political and societal changes, along with the assimilation of modern legal systems into the administrative structures made stakeholders of the trial feel that the practice of passing a judgment solely on the basis of the accused woman's statements was highly inappropriate. The popular sentiment went along with the men accused and sought to save them from the excessive miseries they were being subjected to. By the time of the 1905 trial the reigning king of Kochi took an active interest in the case not only because of the large number of eminent personalities involved but also out of the promptings of the age that demanded reform of the traditional judicial procedures. There was also public pressure on the king and he decided to convene a meeting of the Namboothiri elders at Trichur and contemplate the institution of a *Purushavicharam* (trial of men). Accordingly, notices were sent to twenty-two eminent Namboothiris and a meeting was convened in May 1905 during which the scholars did not oppose the move on the ground that it did not

¹¹ P. Bhaskaranunny, *Smarthavicharam*, Kottayam: SPSS, 2000 p. 122

¹² Kerala State Archives Newsletter, Vol II, Jan- 1976, No. 1

contradict tradition. The agreement eventually was signed by twenty-six eminent Namboothiris¹³.

Once the decision to hold the trial of men was taken, the modalities thereof had to be figured out. Accordingly, the king sent the revised draft regulation¹⁴ to Sir Bhashyam Iyyengar, a lawyer and legal expert, for recommendations. In his letter the king stated: the enquiry has, as is well known to you, hitherto been conducted in the old fashion and in certain important points it is said to be against the fundamental principles of law. I am anxious that the enquiry must be made as simple as possible and the legal technicalities be avoided as much as possible. The Pundits are very anxious, when they agreed to the changes that particular care must be taken to give no chance to the accused persons to thwart the object of the enquiry or to postpone the conclusion unnecessarily¹⁵.

As per this direction the revised rules for the conduct of the male trial were framed. The new move departed from earlier practices in that it offered an opportunity for the accused men to defend themselves. In the new scheme of things notices would be sent to the men involved requiring them to appear in person on the day and at the place and hour therein specified and answer to the charges raised against them. The notices to this effect would contain a statement of the time or occasion and the place at which, according to the allegations made by the woman, he had had “carnal intercourse” with her¹⁶. The men were also asked to produce any evidence they might have to adduce in disproof of the allegations raised against them. The copies of the notices were to be served by a special messenger and in their absence, the agents of the men or an adult family member was to receive it. The serving messenger was to make sure that the signature of the person receiving the original notices was affixed on the same.

On the day scheduled for the hearing, the person, if he appears, would be examined and the substance of his statement recorded and authenticated by the *Smarthan* after the accused woman’s statements have been read out to him. The man would be given an opportunity to cross-examine the woman with reference to her statement concerning him by putting questions to her through the *Smarthan*. He could bring witnesses to be examined and tender

¹³ Ibid

¹⁴ *Smarthavicharam* Records, Ernakulam Regional Archives

¹⁵ Correspondence dated 3 June 1905, 141 A, *Smarthavicharam* Records (henceforth SR), Ernakulam Regional Archives

¹⁶ SR, Ernakulam Regional Archives

such documentary evidence as he may produce. The *Smarthan* was to disallow questions proposed to be put to the accused woman or witnesses which he may consider to be irrelevant or vexatious.

If any of the persons failed to attend the trial on the appointed day and date, the *Smarthavichara Sabha* (committee) would dispose of the matter ex-parte. The person to whom the notices were issued would on the report of the *Smarthavichara Sabha* be excommunicated. One redeeming clause was that the king retained the authority to revoke any order of excommunication if the person establishes his innocence to royal satisfaction¹⁷.

The procedure of the legal courts was followed in the manner in which notices were drafted, dispatched and served. A notable feature of the revised regulation was that it became legally binding to record and document the whole procedure, including all the verbal exchanges. This was most unlikely in the traditional ways of conducting trials. In so far as the arrangements made, the whole process was being made part of the administrative procedure. However, since this defence was not through a qualified lawyer the reform was not seen to be of full advantage to the men¹⁸. The public also had reservations on the issue. A newspaper reported:

The king in consultation with learned Namboothiris in a NamboothiriYogam decided on certain amendments which is not clear. There are two ideas communicated:

- 1) that the king will provide for the men accused to be called for a hearing and,
- 2) that the king would inspect all records and sent for a judge learned in this respect and consent to the men appearing before the judge to give oral testimony.

Both are insufficient. In the first case, if a man fights his case through a qualified legal practitioner how much can a *Smarthan* do in such a situation? In the second case if only oral testimony can be given no man can produce an alibi that could conclusively prove that he was not present at the time and place mentioned by *Sadhanam*¹⁹.

In Thathri's trial, requests were made for grant of the king's permission to appoint a lawyer but this was turned down on the logic that it was not a court case but a move to only check that the accused woman was not deliberately and maliciously implicating anyone²⁰.

¹⁷ SR, Ernakulam Regional Archives

¹⁸ K. P. Padmanabha Menon, *Kochi Rajya Charitram* (215-17)

¹⁹ Malayala Manorama daily, 7 July 1905

²⁰ Malayala Manorama daily, 5 July 1905

Despite popular reservations on the issue the king went ahead with the decision to conduct the male trial. The *Purakoyma* prepared the notices to be sent and the responsibility for the whole trial was placed on the office of the *Sarvadhikaryakkaran*. Gopaladesika Achariar was the then *Sarvadhikaryakkaran* in charge of the trial till the end. He corresponded to the Tahsildar of Talappilly (Kuriyedathillam to which Thathri belonged to fell under the Talappilly Taluk) directing him to take necessary steps to bring the woman to Irinjalakkuda²¹ and issue necessary instructions to the police inspector in person on this matter²². He also wrote to the Diwan of Cochin to provide for her to be brought to Tripunithura and be accommodated in a place “where there is the convenience of a well and a tank.”²³

The king made all possible arrangements for the smooth conduct of the trial. The office of the Kanayannoor Pravathy Cutcherry functioning on the western side of the Hill Bungalow²⁴ at Tripunithura was to be vacated and the office shifted to another building. The Cutcherry building had to be retrofitted for the woman’s stay since “the tank and the compound require(d) some slight improvement”²⁵. Besides making her place of stay comfortable the Superintendent of police was directed by the *Sarvadhikaryakkaran* to make arrangements for bringing down to the place (Tripunithura) the woman concerned and providing “proper guards at the place where she will be lodged”²⁶. Meticulous attention was paid to ensure her safety and the Tahsildar of Mukundapuram (under which Irinjalakkuda Taluk fell) was instructed to make the following arrangements: the woman, the maid servants and the guards who are to escort her should be made to have very early breakfast so as to enable them to catch the morning mixed train (sic) coming from Shoranur at the Irinjalakkuda station. The woman must be taken under proper escort to the station and you will kindly accompany the party up to the station. There is no need for engaging any special compartment for the woman. It will do if she is booked in the female compartment of the third class carriage. What requires special attention is the

²¹ Thathri was first brought from Chemmanthitta (her in laws' place) to Irinjalakkuda for the first trial. Later under the revised Regulation for a *Purushavicharam* she was brought to Tripunithura and finally after the trial sent to Chalakkudy.

²² Correspondence dated, 11 March 1905, 141 A, SR

²³ Correspondence dated 2 June 1905, 141 A, SR

²⁴ The residence of the Raja

²⁵ Correspondence dated 2 June 1905, 141 A, SR

²⁶ Correspondence dated 6 June 1905, 141 A, SR

placing of a suitable guard in the train by which the woman travels to see that no chance is given to let anybody to get into her compartment to influence her or give her any bad counsel or otherwise molest her²⁷.

The Superintendent of police issued orders to the police headquarters at Trichur for deploying three Head Constables and twenty-two Constables to proceed to Ernakulam, where the party would alight from the train and leave for Tripunithura. The fourth Instant Reserve Inspector was to escort them, post the policemen and give them necessary instructions to the effect that:

the men must be distinctly warned that any misbehaviour or neglect of duty on their part will entail nothing short of dismissal....The Head constable will see that strict discipline is maintained, that the Pravarthi Cutcherry is properly guarded both day and night, and that the men under him conduct themselves in a manner that will do credit to the Police Force.... During nights necessary additional precautions should be taken²⁸

Apart from the sentries posted there were instructions to put up a few good lights around the Pravarthi Cutcherry²⁹. Irrespective of the nature of the offence and the wave of public indignation that the case triggered, the state was concerned in following the proper procedure of the trial and in ensuring the woman's welfare. The language of the official discourse is often impersonal, characterised by a lack of value judgement. Simultaneous with the arrangements being made for the proper conduct of the trial, the state was already involved in locating a place of residence for the woman's stay after the trial. The king was keenly following the developments and insisted that the place of residence chosen be suitable enough for her stay. A correspondence from the *Sarvadhikaryakkaran* to the *Peshkar* informs that:

His Highness is feeling anxious to know whether the residence arranged is anywhere in the midst of Christian houses and bazaar or in a somewhat secluded place. What is wanted is the latter³⁰.

The Raja's concern is matched by the *Peshkar*'s assurance that the house has been arranged midway between the police station and the magistrate's house and that the necessary instructions to the sub-magistrate, police officers and the local officer-in-charge had been

²⁷ Correspondence dated 12 June 05, 141 A, SR

²⁸ Memo of Superintendent of Police, dated 15 June 05, 141 A SR

²⁹ Correspondence from Diwan to *Sarvadhikaryakkaran* dated 24 June 1905, 141 A, SR

³⁰ Correspondence dated 14 July 1905, 141 A, SR

given to see to “the proper housing and protection of the woman and her property... (in the) hope that her person and property will be safe so long as she chooses to remain at Chalakkudi”³¹.

There is a strong anxiety expressed that the woman’s safety be assured and even though excommunicated she be not left to live among castes not acceptable to the Namboothiris. This was stated by the *Sarvadhikaryakkaran* thus:

though she will be an excommunicated woman, she should not be made to live among the low caste Hindus or crowded bazaars of Christians, etc. She must be given a somewhat secluded residence which should be as close as possible to the riverside³².

The assumption was that despite the symbolic/ritualistic loss of caste, the daily routine and ways of living of this woman would be little altered and the ritual cleanliness that she had been used to was not to be disturbed. Hence the insistence that she be made available abundant water supply near her residence for bathing and ablutions and also that she be saved from the circumstances that would force her to mingle with the low castes. Though the community would cease to include her as a member, the state’s concern for her welfare does not end. Her morality and chastity or their loss did not become issues crucial to the maintenance or upkeep of the social order once she was excommunicated.

Unlike the experience in other regions, this may perhaps be due to the fact that Kerala did not have a history of morality similar to these regions not even in issues regarding female sexuality. The *Manipravalam* works, the mainstay of the literary production of the fourteenth, fifteenth and sixteenth centuries had explicitly erotic themes and women’s open expression of their sexuality in them was widely admired. The Namboothiris often referred to their sexual exploits as *Nerampokku* (entertainment/idle talk). The women of all castes except Namboothiris were available for sexual relations with men outside the caste, the Namboothiri men being the prominent benefactor in this regard. Such relations were attempted to be legitimised by references to *slokas* of Parasurama to this effect³³.

The Namboothiri woman’s sexuality was the concern of the state only so long as it decided the purity of that caste. Once excommunicated, the state’s need to punish the woman

³¹ Correspondence dated 12 July 1905, 141 A, SR

³² Correspondence dated 12 July 1905, 141 A, SR

³³ Chapter 49,50 in *Slokas of Kerala Mahatmyam* quoted in T.A. Kalyanakrishna Aiyar, “Marriage Among Malayalis”, *Malabar Quarterly Review*, vol-2, No.4, 1903, p. 329

further did not exist. Not only does the state not punish her but also makes sure that her place of stay is comfortable and that she is provided with proper meals free of cost. The *Sarvadhikaryakkaran* writes that:

if the residence already arranged does not suit the requirements, what you will have to do is to arrange some temporary residence until a suitable one satisfying the ... conditions is got and also to instruct meals to be given to her from the choultry until she finds proper accommodation and is able to cook her meals³⁴.

Once the banished woman settles down she was to be granted a free daily ration of rice and other groceries³⁵. Another fact that deserves to be mentioned here is that the woman did not have to live a solitary life at the place. She could have her two *dasis* to stay with her and the rations were meant to meet their needs as well. The relationship of the state with the excommunicated woman was articulated also within a 'citizenship discourse' that could conceive of the woman as an individual citizen with rights to livelihood and welfare. The *Sarvadhikaryakkaran* states:

All that we want to do is render her such help as everyone is justified in expecting from the government when the safety of one's person or property is apprehended³⁶.

There is an unwillingness on the part of the state to entirely disown and downright condemn the woman despite the fact that she was instrumental in the loss of pride, prestige and livelihood of many men and their entire households as well as the financial burden on the administrative machinery to conduct the trial.

Interestingly, a comparison with the situation in Maharashtra reveals the critical disjunction in the idea of state control over women's sexuality in Kerala. In the Peshwai of eighteenth century Maharashtra women were held responsible for acts of adultery and the severest condemnation was reserved for them. They had to face punishments which were both private (murder) and public (noses being cut off as a future deterrent to potential offenders)³⁷ in nature. There were also cases of imprisonment and after the release on

³⁴ Idem

³⁵ Correspondence from *Sarvadhikaryakkaran* to Diwan of Cochin dated 15 July 1905, 141 A, SR

³⁶ Idem.

³⁷ Uma Chakravarti, "Wifhood, Widowhood and Adultery: Female Sexuality, Surveillance and the State in 18th century Maharashtra", *Contributions to Indian Sociology* 29, 1 & 2 (1995), p. 12- 38 Ibid.

completing the term women were sold off as slaves³⁸. This happened because nobody came forward to vouch for their 'good behaviour'. Unless somebody was available to keep her under effective surveillance, she was seen as a permanent hazard and the state feared that she would repeat her offence³⁹ causing further moral deterioration in the society. In contrast, the princely state of Kochi clearly recognised the ostracised woman's rights as an individual and was prepared to overlook the issue of her sexuality to protect her. Writing to the Diwan, the *Sarvadhikaryakkaran* states:

you must clearly understand that the woman after the *SwaroopamChollalis* at full liberty to act as she likes to that the government has no authority or justification whatever to consider that she is one who is under any restraint. She is a woman who has got full liberty of her person and property and the only reason for the requisition that the necessary precautions should be taken to see that she is not molested by anybody is that in as much as she has confessed to her immoral intercourse with so many persons of various positions in life, there may perchance be persons who moved by violent passions may be tempted to do her harm⁴⁰.

The state, in stark contrast to the experience in Maharashtra, was committed to the safety of the woman, who faced a possible backlash and collective social sanctions due to her 'illicit' relationships. More importantly, special attention was paid to see that there were no intrusions into her person because of her deeds. Instructions were given to see that: the police or anybody else do not consider her to be one who is under any restraint or who has lost her liberty of action. She may freely move about wherever she liked and go away altogether if she wants and there is no need for anybody to escort her or do any such thing⁴¹.

It was necessary to remain alert in order to find out "if there was any intention on the part of anybody to molest her so long as she chooses to reside there"⁴². The presence of the term 'molest' suggests the use of force that could be sexual or otherwise. The state's concern for protecting her from such molestation would be a tacit admission to the earlier relationships of the woman having been contracted out of her own volition and desire. That there were not just a few but sixty-four men named would indicate the scale of

³⁸ Ibid

³⁹ Ibid

⁴⁰ Correspondence from *Sarvadhikaryakkaran* to Diwan dated 15 July 1905, 141 A, SR

⁴¹ Idem

⁴² Idem

transgression in the case of Thathri. It was neither an isolated event nor the result of a juvenile aberration but a seismic episode that involved so many eminent men. The *illams* that faced ruin and shame as a consequence were all of great prestige and wealth. These factors, however, did not persuade the state to take an antagonistic position against her. The only stipulation on the part of the state was that she was to have no further relations with men as long as she occupied the residence provided to her⁴³. The reasons were purely technical in that the state would cease to hold responsibility over her once she decides to go with any man.

The consent for the male trial was given merely to balance the fact that the men accused had not been given a fair chance to represent themselves in the past. This representation was, however, not on the lines of a legal procedure and the requests by several men to let a qualified lawyer represent them was turned down. Some of the men had claimed their inability for the sexual act on medical grounds. Such persons were then subjected to a medical examination by the government apothecary who testified against the men⁴⁴. Hence, even when such procedure was allowed, it did not help the men to escape punishment.

Since the trial procedures (except for the one in the 1905) were not documented it is not known whether other women after trial were given such attention by the state and their welfare ensured in a similar manner. In most other cases reported, the women chose to go with some man⁴⁵. In personal interviews with people in and around Kuriyedath *illam*, many opined that the king paid special attention to this case because he himself might perhaps have been involved with Kuriyedath Thathri. The much circulated story goes that after the sixty-fourth man was named, Thathri asked if she should go on. The *Smarthan* asked her to stop on the presumption that she was hinting at either the *Smarthan* himself or the king by gesturing with her ring⁴⁶. This alleged connection of the Raja was the source for a sensational story,⁴⁷ though it is unsubstantiated by any documentary or inscriptional evidence. In his diary, the king records his inspection of the Cutcherry building to see whether the “Nambury woman now under *Smarthavicharam* inquiry could be

⁴³ Correspondence of *Smarthan* Jatavedan to Diwan of Cochin dated 15 July 1905

⁴⁴ No. 140, SR

⁴⁵ William Logan, *Malabar Manual*, p.126

⁴⁶ This was the most popular story retold in literature and circulated orally.

⁴⁷ Matampu Kunjukkuttan, whose novel *Bhrashtu* on this theme had made headlines, opined that the Raja would have been involved.

accommodated there during her stay ... (and) found the place fit for the purpose”⁴⁸. On another day he notes how a lawyer of the Madras High Court is allowed “to attend the inquiry as a sight seen (sic) and tell what he thought of it.”⁴⁹ On subsequent days there are routine jottings of the *Smarthavicharam* depositions that are read out. On the concluding day of the *Smarthavicharam* he notes down: “[I] was engaged in the formal and ceremonial disposal of the *Smarthavicharam* case from seven to nine p. m.”⁵⁰. The recordings are of a routine nature and references to the case are followed by items like “taught daughter from eleven thirty to one etc.”⁵¹

In the absence of evidence it is easy and logical to rule out the possibility of regal machinations or the king’s direct involvement in the trial of 1905. Still some Namboothiris believe that the king of Cochin used this opportunity to cut the powerful Namboothiris⁵² to size. That it was not the king who took the initiative in this matter and that he had no particular reason for a personal grudge against the Namboothiris can perhaps be used as a counterargument. However Rama Varma deserves mention as the king who was hailed as a great ruler who possessed unprecedented brilliance and efficiency. Kanippayyur Sankaran Namboothirippad devotes a chapter in his memoirs on Rama Varma⁵³. His rule was claimed to be free of corruption and the ruler was quick in disposing administrative work. He also introduced several departments in administration like the statistical department and got a steam tramway installed, plying from the hills to transport timber⁵⁴. However, this ‘modern’ king forbade women who covered their breasts from entering temples⁵⁵. Rama Varma combined in his personality the ingredients of a modern ruler and elements of a tradition that imposed feudal dress codes. Rama Varma’s engagement with the two had also the aspect of resisting colonial authority in subtle ways, the tensions of an overlap of both authorities showing themselves up as an undercurrent. He is noted in history for his abdication of the throne on account of differences with colonial rulers.

⁴⁸ Abdicated Rajah's Diary dated 8 June 1905, Ernakulam Regional Archives

⁴⁹ Op. cit. dated 22 June 05

⁵⁰ Op. cit. dated 14 July 1905

⁵¹ Idem

⁵² Matampu Kunjukuttan, Personal Interview, 26 September 2001

⁵³ Kanippayyoor Sankaran Namboothirippad, op. cit., vol I, p. 264

⁵⁴ K. P. Padmanabha Menon, *Kochi Rajya Charitram* (History of Kochi), pp. 750-51, Kozhikode Mathrubhumi, 1996 (1994)

⁵⁵ P. Bhaskaranunny, op. cit., p. 177

Though state intervention was crucial in the conduct of the trials in the pre-colonial administrative structure, a woman's morality or chastity thereafter did not pose a threat to the state. Hence the maintenance of the social order did not necessarily require the continued surveillance of the Namboothiri women's sexuality, once she was ousted from the community. Here female sexuality posed a threat only in so much as it endangered the ensuring of caste purity by maintaining the caste lineage.

In the Maharashtra Peshwai, on the other hand, adultery remained the most scandalous and reprehensible offence. Uma Chakravarti writes:

It was the non-observance or the defiance of sexual codes that brought women into the public gaze and led to the most stringent action by the community and the State. Permanent excommunication was used in the case of the sexual misconduct of Brahmana women. In the case of Brahmana men it seems to have occurred - only when a Brahmana man broke his connection with Brahmana by conversion. Men lost their Brahmana by renouncing it, women lost their Brahmana through sexual lapses; their Brahmana lay in their chastity, in their *pativrata* dharma within marriage⁵⁶

Punishments for adulterous women were more numerous than for men, suggesting that adulterous men enjoyed a high degree of impunity. In contrast in Kerala, both men and women among the Namboothiris were punished equally and in the same degree for breaking in the chastity of the caste woman.

Colonial State and the Traditional Trials

In Kerala there seemed also to have arisen a need to re-organise traditional penal methods especially under pressure from colonial rulers. The English administrators had several times lodged written complaints with the kings of both Travancore and Cochin about the irrationality and inhumanity inherent in the practices of *Smarthavicharam* and *Kaimukku* (trial by dipping hands in scalding oil). As the British power and influence expanded they began disregarding the king's interest/loyalty in upholding the traditional practices. The tensions surfaced in such tussles cannot be ignored. Colonel Munroe during his residency/Diwanship of Cochin (1812- 1818) tried to abolish the *Kaimukku* to which the Regent Rani Lakshmi Bai of Travancore objected⁵⁷. A mass petition had been submitted

⁵⁶ Uma Chakravarti, *Rewriting History: The life and Times of Pandita Ramabai*, p. 29 New Delhi: Kali for Women, 1998

⁵⁷ V. R Parameswaran Pillai, *Prachina Likhitangal* (Ancient Scripts) (Mal.), p. 319

to the Resident Dineval to desist from abolishing the *Kaimukku* upon which the Resident replied:

Fire ordeals have been banned in Western Countries for long. These trials do not help to prove innocence or guilt. There are certain medicines that when smeared on body parts prevent them from receiving burns. In such circumstances and considering, the barbaric nature of such practice I am not admitting the petition of Thombayil Raman Kandan⁵⁸.

Even after civil courts came into being, such trials were conducted. For example at the Valarpattanam Kalarivathukkal temple the orders of the civil court would be read out and the trial conducted after which the priest would certify to the act⁵⁹. It was only during the period of Swati Tirunal(1829-1847)that the practice of *Kaimukku* was banned:

the ruler feeling that people were prone to abuse the sacred, ordered the discontinuance of *Kaimukku* at Sucheendram. His conviction was that faith was of the utmost essence for the proper conduct of these ordeals and so long as the austerity and seriousness associated with the *Kaimukku* were not found in the same degree as in the days of the old, there was no propriety in continuing it⁶⁰.

The relationship between the state and castes was being fundamentally redefined with the change in state authority from the pre-colonial to the colonial age. The position of Namboothiris at the top rung of the social ladder was shaking, and their sway over administration had practically disappeared. The British systems of law and punishment became widely instituted in the place of the *sastric* ones. Hence the Namboothiris began to lose the former respect they commanded as the makers and enforcers of law. The colonial state was also intent on establishing the superiority of the ‘modern’ systems of law. The practice of the pre-colonial state in occasionally granting funds for the conduct of the *Smarthavicharam* was seriously objected by the colonial rulers. The position was symptomatic of their failure in understanding the need of the pre-colonial state to involve itself in vital matters bearing on caste structures and status. This became evident when the Diwan of Cochin, Seshagiri Rao wrote to the British Resident Colonel W. Morrison requesting permission to sanction money for the expenses of the *Smarthavicharam* in a Brahmin household where the “Namburi was unable to bear the expense of the usual investigation of the caste in consequence of his property having been appropriated to the

⁵⁸ P. Bhaskaranunny, op. cit. ,pp. 213 -14

⁵⁹ Kerala Society Papers, II Series, Appendix ,p. 5

⁶⁰ K. K. Pillai, *The Sucheendram Temple*, Madras: Kalakshetra, 1953. p. 301

Sirkar by the former Rajahs”⁶¹. The Resident disapproved of it and while questioning the need for the state to bear expenses in this regard stated thus : “(the trial) may be done with the help of the Namboothiris through the legal courts which would enable not only the working of a proper legal machinery but would also save the exchequer from extravagant spending”⁶² .

With the British colonial rule making inroads into the social body of Kerala, old conventions, mores and practices began to cave in under the new structures, western education and the ‘Christian’ values. The new legal discourse of justice and equality before the law heavily impacted on the burgeoning middle classes who increasingly harnessed the new laws to their material and social advantage. Equally important was the fact that most of the upcoming lawyers were Nairs. This catalysed the tensions between the two communities. The net result was that traditional trial methods and punitive measures as in *Smarthavicharam* came under severe criticism.

Conflicting Interests : The Legal Angle

The Kottayam First Class Magistrate had dismissed a petition filed by a Namboothiri against the *Smarthan* who had ostracised him. The public opinion was that the dismissal was legitimising the injustices perpetrated by the chastity trial. It was widely felt that due to the orthodoxy of the Hindus and the formal royal sanction granted to the *Smarthan*’s pronouncement, such verdicts had gained as much validity as those of the legal courts⁶³.

The *Smarthan*’s office was opposed on the grounds that he was no longer able to handle cases within the framework and sensibility of modern jurisprudence which in effect made the provision for the trial of men accused of violating the modesty of a Namboothiri woman. The most significant handicap of the new provisions for male trial was that the accused men had to argue their case personally without the professional help of an advocate. Worsening the scenario was the fact that there was no provision to collect and examine material or oral evidence. Since the consequences of the chastity trial involved property matters (those ostracised would be denied their stake in property), it was felt that the case acquired a civil nature that could not be effectively managed by the *Smarthan* who

⁶¹ Kerala State Archives Newsletter, Vol II, Jan- 1976, No. 1

⁶² C. Achyuta Menon, *Cochin State Manual*, p. 595

⁶³ P. K. Parameswaran Nair, *Sahitya Panchananan*. Kollam: Sree Rama Vilasam Press, 1994 pp. 290-94

had neither the competence nor the knowledge for the task⁶⁴. Things, people thought, were too serious to be entrusted with the *Smarthan*⁶⁵.

A case reported in the newspapers⁶⁶ of the time highlights the conflicts and tensions between *Smarthans* and lawyers. The plaintiff Sankaran Namboothiri of Muttambalam Koprathillam filed a case against the *Smarthan* Nambyathan Bhattatiri, his son Chitran Bhattatiri and Narayanan Namboothiri of Seevelli Thekkedathillam at whose instance the trial was conducted. The plaintiff argued that the first and second accused were present and were party to a decision taken by the Kerala Brahmana Sabha members to institute a *Purushavicharam* along with *Smarthavicharam* whenever it took place. Hence the verdict that the *Smarthan* had pronounced in the trial excommunicating the plaintiff, without first conducting a *Purushavicharam*, was an arbitrary exercise of power and therefore punishable. The logic of the argument implies that it was high time the old legal system was supplanted by its modern counterpart:

It is highly unjust and against the claims of governance that in this age of western reform and culture that a person be tried thus and his freedom curtailed. In times when the decisions regarding the welfare of the people have eased from the hands of the Raja to the legislative assembly, it is not proper to violate the freedom of a person without the permission of such an assembly⁶⁷.

The power relations between the king and the *Smarthan* were undergoing significant changes too. The *Smarthans* began to be treated more or less like subordinate officers of the state, who were obliged to abide by the king's orders and directives. For instance in Kumaranalloor near Kottayam, the *Smarthan* Bhattatiri, who hailed from Kochi, demanded sixty-four *Panam* (as his fee) in the Kochi *Veerarayan Panam*. At that time the latter currency was as powerful as the *Kali*⁶⁸, the denomination in Travancore. In an unprecedented move, the king removed him from office and appointed Pattachomayarath

⁶⁴ Idem

⁶⁵ Idem

⁶⁶ Malayala Manorama daily, 11 August 1909

⁶⁷ Idem

⁶⁸ *Veerarayan Panam* was the currency in Kochi while *Kali* was that of Tiruvitamkur. The latter bore half the value of the former.

who agreed to carry out the same responsibilities on the sixty four *Kali*. As a reward the king also assigned him an annual *homam*⁶⁹ at Ettumanoor⁷⁰.

A much discussed and controversial *Pampu*⁷¹ issue also came up for consideration around this time. As mentioned earlier those accused in the *Smarthavicharam* could, on the conviction of the *Smarthan*, acquire *Pampu* from him and proceed to Sucheendram for the *Kaimukku* trial. Accordingly, the Mallisery Namboothiri, having been excommunicated in the trial of 1905, tried to secure a *Pampu* which would enable them to at least live the life of an inferior Namboothiri in his own *illam* free from the fear of ostracism. But Pattachomayorath Jatavedan, who had originally presided over the trial, refused to do so. So he approached the *Smarthan* Moothamana Nambyattan Bhattatiri (who had not partaken in the said trial) who issued him a *Pampu*. This created a furore among the Namboothiris and in the *Murajapam*⁷² of 1906 in Trivandrum it came up for heated discussions and debates. The Namboothiris who were gathered at the Padmanabhapuram temple took the decision that Nambyattan Bhattatiri had committed a mistake in his leniency and that he should atone. The atonement was severe and the word was used euphemistically for punishment. He did not have the right to move out of his house for three years and in the fourth elaborate rites including donation of cows had to be performed. Nambyattan however refused to obey the mandate, and instead filed a defamation suit against the appointed *Smarthan* Pattachomayarath⁷³. At a higher level the terms and conditions of chastity trials also came up for critical scrutiny. The authority of the process itself was questioned: questions were raised as to the basic texts for *Smarthavicharam*, its procedures, qualifications of the *Smarthan*, collection of evidence, and possibility of appeal against the *Smarthan*'s verdict⁷⁴.

The institution of chastity trial was also being challenged in the modern courts of law by the ostracised men. The *Smarthans* against whom these cases were filed found themselves caught between the two irreconcilable and contradictory worlds. To take a specific case,

⁶⁹ *Homam* refers to the sacrifices and accompanying prayers

⁷⁰ Malayala Manorama daily, 21 November 1901

⁷¹ This was the letter of consent given by the *Smarthan* for the *Kaimukku* trial

⁷² This prestigious occasion of prayers and chanting of Vedas was held annually at the Padmanabhaswamy Temple at Thiruvananthapuram

⁷³ Kanippayyur Sankaran Namboothirippad, *Ente Smaranakal*, Vol III, pp. 133- 35. vol I-III, Kunnankulam: Panchangam Press, 1991 (1964)

⁷⁴ Idem

the MuvattupuzhaMunsif Court asked the *Smarthan*PattachomayarathJatavedar what right he had to ostracise the appellant (who questioned his ostracism in court).The*Smarthan* responded that he and his family had the traditional right invested by Sage Parasurama and consented by Sankaracharya⁷⁵.*Smarthan*Pattachomayorath wrote to the king thus:

My *illam* members have been for a long time exercising the right and honour of conducting the trial of *Smarthavicharam*. As per this right, in a trial at TrikkaroorPulleriillam, Muvattupuzha, ArakkalVadakkeMadhom Raghavan Nambiar was named second by the *Sadhanam* and was given *Bhrashtu*. Now he has filed a case against me, the *Purakoyma* and the householder by making a deposit ofRupees two thousand. I have now received a summons for hearing in this regard. These kind of trials of *Smarthavicharam* have been in practice for a long time now. Approaching legal courts for intervention in these *vicharams* have been unheard of. This *vicharam* is as per *Sastraic* injunctions and we are not answerable to any questions posed in this regard. Questioning our actions through courts will affect us negatively both in our status and in our functioning. If these practices are being regulated through courts, it will render the adherence to traditional customs impossible. Hence I appeal to you to urgently look into this matter and decide: upon courts not accepting such cases in the future⁷⁶.

The *Smarthans* resisted attempts at reform even as they found nothing wrong in approaching modern courts for their own survival. The larger society began to criticise traditional trial practices more and more harshly. There were several occasions when even the verdict of the *Smarthan* would be violated:

One Poduval who had been excommunicated in Thathri's trial refused to leave the place either because he considered himself to be innocent or because he wanted all his family members led into his own predicament.A petition was filed by his family members in the Ottappalam Munsif court to get this botheration ended once and for all⁷⁷.

The chastity trial was dragged into legal discussions of different other kinds motivated by a time when property was becoming partitionable. A case was filed by the members of an *illam*against a contract drawn up by one MoosathNeelakantan Namboothiri to provide maintenance to an ostracised woman with whom he had had relations. The Moosath having expired, the *illam* members were trying to get the contract annulled since it had no precedence in tradition. The *Vaidikan* (Vedic Scholar) ofThaikkat*Mana* was called before

⁷⁵ Malayala Manorama daily, 29 May 1897

⁷⁶ Mathilakam Records, Vol. 97, pp. 591 -2, Central Archives, Thiruvananthapuram

⁷⁷ Malayala Manorama daily,20 September 1905

the Kootanad District Munsif court to give evidence in the case. The *Vaidika* deposed that the contract was against both the *Sastras* (texts) and the existing practices. He quoted *Yajnavalkya Smriti* on this. The *Vaidika* had earlier warned the deceased Namboothiri on the inappropriateness of the act of executing such an unheard of contract. His advice, however, had gone unheeded. Upon this the Namboothiri was subjected to *Kshetravirodham* (ban on entering temples) till his death. The ban was not merely for the contract which had no precedent in caste practices, but for also continuing contact with a woman who was already declared an outcaste. The *Vaidika* had also made enquiries on the precedence, if any, of such provisions for maintenance.

All such incidents pointed to the fact that a suitable replacement for the traditional system of justice by the 'modern' legal system was greatly sought. As already mentioned the king had invited Bhashyam Iyyengar, a lawyer, for consultations in the 1905 trial⁷⁸. The public also gave suggestions for the amendment of the procedure. Here is a specimen:

The judge should consider the accused not guilty unless and until so proven by the plaintiff (as per page 302 and section 346 of best of evidence). Eliciting the confession of the woman and then listing the names of men involved is not agreeable to. Such confessions may be motivated and mediated. The following steps may also be followed 1) After the woman is confined to the *Anjampura* an important person in the household should appear before the District Magistrate and inform him of the suspicion of immoral conduct raised against the Antarjanam. The court on deeming it fit should summon the witnesses mentioned by the appellant and record their testimony.

2) The appellant should seek the court's permission to withdraw the complaint upon being convinced, through questioning the witnesses, that the complaint was unnecessary.

3) After the testimonies of the plaintiff and the witnesses are collected the District Magistrate should write to the Raja for permission, stating also the grounds for being convinced about the need for the trial.

4) The royal authority would now provide for one or two *Smarthans* and a magistrate and also make provisions for a separate court to meet with prominent Namboothiris to act as jury. The plaintiff should give testimony and the representative of the *Sadhanam* could do the cross questioning.

5) If the court and jury feel convinced that the accused is guilty the charge sheet should be prepared and the accused be brought to court (at a secluded place without exposing her to public view) and the charge sheet be read out to her. If she insists on her innocence, the evidence for such should be collected.

⁷⁸ Deepika daily, 9 April 1907

6) If the jury feels that she is guilty the court can examine evidence and give ruling. On getting royal consent on this ruling the procedure of *Bhrashtu* will be followed.

7) Appeals on this ruling could be filed in the High court⁷⁹.

Changing Perceptions and Identities

The procedure and methods of punishment in the chastity trial came in for more serious scrutiny and challenge in the case of Thathri in 1905 since the men involved belonged to highly respectable families ranging from the Namboothiri to the Nair. Appeals went directly to the king seeking reform of the procedure. An excerpt from the *Smarthavicharam* records goes:

We came to hear of the *Smarthavicharam* going on in the Kochi state that has left not only the people here, but of Malabar and, Tiruvitamkur as well, angry and fearful. Since any reform of rules would have a direct bearing on the whole of Kerala and since it would any day be better for your Highness to know the opinions of people residing elsewhere, we thought it fit to send this appeal on humanitarian grounds to save all Malayalis from the dangers ensuing from the *Smarthavicharam*⁸⁰.

The appeal narrates in great detail how God created only one man and woman seeking unto them to multiply through the *dharma* of sexual union. Though this *dharma* was activated by love and desire in humans, it was not yet decided as to which man would have which woman and vice versa. After a time when many men desired one woman and many woman one man, it became necessary to establish some order and stipulate that a woman on once becoming a man's could not become another's. This was how, according to them, the idea of ostracism was incorporated into the *Smritis*. It is interesting to note that the appellants' ire is directed at Namboothiris for upholding such a practice:

Namboothiris either for their mental satisfaction or pride cling on to the practice. The royalty supported the Namboothiris in up keeping this tradition since the Namboothiris officiated at their rituals and rites. Their women had the *Sambandham* relations with the Namboothiris⁸¹.

⁷⁹ Deepika daily, 9 April 1907

⁸⁰ S R; 141 F, Regional Archives, Ernakulam

⁸¹ Ibid

By invoking and appealing to the idea of the *dharma* of sexual union, the appellants were trying to bail out the accused men by remaining staunchly within their tradition.

The appellants, however, argued that whatever be the original reasons behind the institution and continuance of the practice, the present times demanded urgent reform of the same: In early times people rarely indulged in falsehoods and deceit. In those days when Antarjanams out of innocence or lack of direction ended up in committing such acts they would own up the truth in the interrogation. They would not try to hurt others maliciously. The Antarjanams involved in the trial nowadays are skilled in deceit and in getting their way. The Tiruvitamkur and Kochi governments should take note of this and provide a revised regulation for the conduct of *Smarthavicharam*⁸².

The changed climate therefore also saw changed perceptions of women and their sexuality. The *Smarthavicharam* trials had never before in their procedure doubted the women of wrongly implicating men. However, these women were now began to be viewed suspiciously and condemned as a menace to the social peace; reform of the trial practice was sought since the traditional system was seen as incapable of addressing and punishing the sexually wayward women.

It was being increasingly felt that the chastity trials were arenas for wayward women to maliciously destroy men of wealth and prestige:

Earlier only those men who were guilty were ostracised and rarely was an innocent punished However the case now is different. Using the influence of the *Sadhanam*, a *dasi* or the *Smarthan* even the Raja could be ostracised or a rich man reduced to penury and desolation⁸³.

The Namboothiri women and the chastity trials were viewed as more consternating than the plague or smallpox⁸⁴ and the appeal exhorted the king to bring about requisite changes in it. The chastity trial, it was argued, would remain acceptable only as long as it aimed at preserving law and order; but if it disturbed the peace of the people there was no reason to unfoundedly insist on its continuance⁸⁵.

⁸² Malayala Manorama daily, 22 July 1905.

⁸³ Ibid

⁸⁴ Ibid

⁸⁵ 141 A, SR, Regional Archives, Emakulam

The social reform debates in the late nineteenth and early twentieth centuries were gradually making an impact on the people, emboldening them to challenge even those practices which were considered holy and unchangeable. Identities were now being contested and negotiated not merely on the level of caste, but in relation to the idea of a 'modern' subject within each caste group. The debates on the chastity trial was essentially one of discrediting and dismantling the institution altogether. This was not merely because these trials were a threat to the 'individual citizen' who was fast growing in stature but also because of the changed perceptions on sexual indulgences by men. In the modern environs, sexually adventurous men were thought of as not deserving the rigorous punishments as they did before. But this attitude did not in any way loosen the control over women and dilute the idea of female chastity.

Apart from this there was also the need for preserving property that was so essential in improving individual enterprises. Since excommunication entailed loss of share in family property, it meant that a considerable number of men would be deprived of any source of livelihood. So, while there is a general agreement on letting those proven guilty to undergo caste punishments (which under the present conditions would anyway be diluted) amounting to removal from all matters of caste, their right to property was to be left untouched:

Since there were laws overruling acts committed out of spontaneous anger as not amounting to crime, a human tendency to perform a *Purushartha*⁸⁶ upon a spontaneous momentary desire should be punished only mildly and not by depriving him of his livelihood⁸⁷.

The sexual acts of men became sanctified as the performance of a *dharma* while at the same time normalizing and naturalizing it. In the debate on trial procedure, it was argued that only the first man having had licentious relations with the woman was guilty of caste offence. Since the first act would technically amount to a loss of caste for the woman, all others who physically related to her were not in effect committing the offence of sleeping with a high caste woman⁸⁸. Such arguments and others attempted to cleverly exonerate the men involved, while there seemed to be a tacit consensus that women who broke rules

⁸⁶ There were four *Purusharthas* ordained in a man's life - Dharma, Artha(wealth), Kama(lust) and Moksha(salvation). Every man had to strive towards the attainment of these.

⁸⁷ 141 F, SR

⁸⁸ Idem

deserved exemplary and deterrent punishment. As the society as whole drifted towards endogamous marriage and nuclear family, it became imperative that the wife remained chaste lest the very institution of marriage would collapse.

Controlling Mechanisms

It is clear that in the late nineteenth century and early twentieth centuries, traditional notions and praxis of justice got seriously criticised and dented. Men began to challenge those rules when they worked against their interests. Up until this phase the caste system, though it did create patriarchal structures on its own, heavily appropriated the prevalent patriarchal power loops to stake new claims and to frame new rules. By the late nineteenth century, the colonial systems of law, morality and cultural practices started to percolate into the hegemonic spaces and started to whittle them away. The new conditions were used for renewed assertions of patriarchal control whereby men, contrary to the earlier practice, tended to be exonerated to a large extent. If the chastity trial was aimed at preserving the caste purity by controlling the sexuality of women, it had also affected the men involved very seriously. The colonial legal systems with their insistence on fair trial and equal justice, however, provided occasion for the men to be absolved but the control on women would continue uninterrupted.

Without valorising traditional structures it could be said that the transformations from the 'pre-colonial' to the 'colonial' undermined a sense of morality that had evolved through a history of lived experiences where sexuality was neither taboo nor shameful, restrictions on the caste woman notwithstanding. It is interesting to note that with the entry of the modern legal discourse onto the scene, women's sexuality was either condemned, viciously attacked or suppressed. The 'modern' legal apparatus with its claims of gender neutrality before law served this end and helped in furthering the patriarchal ideology inherent in an already hierarchically ordered society. Sexual norms which were central to gender relations changed considerably during the colonial period and changes in the material base laid the foundation for a more hierarchical definition of gender relationships⁸⁹.

While the debates on reforms in the traditional systems of trial were widespread, what was perhaps left unsaid was their impact on women. Little attention was paid to the fact that

⁸⁹ Veena Poonacha, "Redefining Gender Relationship: The Imprint of the Colonial State on the Coorg/Kodava Norms of Marriage and Sexuality" p. 61 in Patricia Uberoi (ed.), *Social Reform, Sexuality and the State*, New Delhi: Sage, 1996.

women were still being tried for their chastity and punished for such transgression. Strangely, in this regards there was no contradiction between ‘feudal’ practices and the emerging ‘modern’ identities. It is noteworthy though the procedure for trial and resultant punishment were reformed, the accused women’s plight and tribulations did not ameliorate in anyway whatsoever. The demand to allow a lawyer (invariably a male) to represent women was intended to silence her once and for all⁹⁰. Interestingly, none of the reformers in the Namboothiri Yogakshema Sabha found it necessary to take up the issue of these trials even after the stormy episode of Thathri’s examination and excommunication.

The Namboothiri obsession with virginity and insistence that female sexuality could find expression solely within monogamous, heterosexual marriages exerted control over and inhibited female sexuality. The Antarjanam’s sexuality was regimented, restricted and censored in ways specific to the internal mechanisms of community control. As long as female sexuality was delimited within the legally contracted procreative couple, even the shift from *Sambandham* to endogamy and monogamy merely extended traditional control on women.

The concepts of purity, hierarchy, separation and opposition are very strongly present in most patriarchal cultures. The pure/impure dichotomy is essentially applied to indicate men (pure) and women (impure due to menstruation, childbirth, etc). ‘Hierarchy’ specifically meant that the men were the heads of families while women were the subordinates. Such a separation implied that men and women would be viewed as a binary opposition: men active and women passive. In the transformative processes where the traditional caste identities were contested by that of the ‘modern’ subject, though the control of tradition through mechanisms of pure and impureness were being eroded, patriarchy was reinforcing itself taking recourse to the ideas and practices of hierarchy, separation and opposition.

In other regions, the colonial state brought women more and more into the ambit of the colonial laws, thereby subjecting them both to the legal structure administered by the caste groups and the British Indian courts⁹¹. The fallout of this was that while the British common law treated all individuals as equals irrespective of their status, the gender bias was retained⁹². Interestingly however, no women involved in *Smarthavicharam* cases, not even

⁹⁰Deepika daily, 9 June 1907

⁹¹ Uma Chakravarti, *Rewriting History: The Life and Times of Pandita Ramabai*, p. 134

⁹² Meera Kosambi, “Gender Reform and Competing State Controls over Women: The Rakhmabai Case (1884- 1888)” in Patricia Uberoi (ed, op.cit.,p. 270)

the most daring Thathri, approached legal courts for redress as the accused men did. The few Namboothiri women who came out of their cloistered surroundings were those who became part of the reform movement among the Namboothiris.

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