

Contents

	PAGE
INTRODUCTION	ii
CHAPTER I	
MUTHUSAM (ANCESTRAL PROPERTY)	1
Introduction	1
Hereditary property in Thesawalamai – during the early stage of social development	2
In a matriarchal society	2
In a matriarchal cum patriarchal society	3
Judicial view of the concept of <i>muthusam</i>	7
The statutory concept of <i>Muthusam</i>	9
<i>Muthusam</i> and conversion	13
Conclusion	14
Chapter II	15
DOWRY IN GENERAL	15
Introduction	15
Dowry under the Roman Law	16
<i>Donate ante / propter nuptias</i>	19
Dowry under the Roman Dutch Law	20
Dowry under the General Law	23
Dowry in Kandyan Law	26
Dowry in Muslim Law	33
Muslim Law – <i>Sridhanam</i>	36
<i>Sridhana</i> under Hindu Law and women's right to hold property – Early position	40
The Indian Dowry Prohibition Act of 1961	46
The Act, wedding presents and <i>varadakshina</i>	50
Effectiveness of the Act	51

B. CHEEDANAM	54
Introduction	54
Structure of society	56
Practice of polyandry and matriarchy	56
Matriarchy, the Marumakkalthayam Law and the Jaffna society	64
The family under Marumakkalthayam Law	75
The family unit – the <i>Taward</i>	77
From <i>taward</i> to <i>tavazhi</i>	80
The fusion of the two systems — matriarchy and patriarchy	87
Community living in Jaffna and the origins of <i>cheedanam</i>	89
Objectives of <i>Cheedanam</i>	95
To make provision for the new house-hold	95
<i>Cheedanam</i> as consideration of marriage	97
The transition from a provision for the new household to a consideration of marriage	102
Patriarchy and the transition	104
Roman Dutch Law and the transition	113
Consideration of marriage - the judicial approach	117
Consideration of marriage - the notarial approach	122
Does <i>cheedanam</i> form the consideration for marriage - an evaluation	125
<i>Cheedanam</i> – a daughter's share in the family inheritance	135
<i>Cheedanam</i> – An expression of filial affection	139
As security and financial protection for the woman	141

To the man and his parents a means of reimbursement or compensation	143
Donations or gifts on marriage.....	144
An evaluation	148
The need for social re-thinking and legislative action	159
Legislative action – total prohibition or reform	166
Conclusion	177

Chapter III

***THEDIATHETTAM*..... 188**

Introduction

Origin of the concept Of *Thediathettam*..... 189

Characteristics of the community - The customary

law position

Community only in "profits during marriage"

Thediathettam — a concept of matrimonial partnership. 200

Profits from separate property as partnership gains..... 202

STATUTORY POSITION 204

The Jaffna Matrimonial Rights and Inheritance

Ordinance No 1 of 1911 and *thediathettam*

Thediathettam – an extended version

Community in *thediathettam* – excludes son's earnings 210

COMMUNITY IN *THEDIATHETTAM* – JAFFNA

MATRIMONIAL RIGHTS AND INHERITANCE

ORDINANCE NO 1 OF 1911..... 212

Salaries, savings and gratuities

Insurance

Investments in trade and business, stocks, shares

and the like

	PAGE
The Amendment Ordinance No. 58 of 1947 and the future of community in <i>thediathettam</i>	228
The Thesawalamai Commission – its objectives and its recommendations	229
The Bill to amend the Jaffna Matrimonial Rights and Inheritance Ordinance No 1. of 1911	232
<i>Thediathettam</i> with the Amendment	234
How the Judiciary viewed it:	240
Construction of “that spouse”, and “either spouse”	245
The words “belonging” in the new section and “remain” in the old section	249
The amendment and incidence attaching to <i>thediathettam</i>	252
Fundamental alteration without express legislation	257
The Matrimonial Rights and Inheritance Ordinance and the Married Women’s Property Ordinance in relation to the amendment to the Jaffna Matrimonial Rights and Inheritance Ordinance.	259
An evaluation	261
Views of jurists and legal writers.....	263
Conclusion	268

Chapter IV

SPOUSES’ RIGHTS AND OBLIGATIONS TO MATRIMONIAL PROPERTY

Introduction	274
RIGHTS OVER THE SEPARATE PROPERTIES	275
A. Rights over <i>cheedanam</i>	275
Rights during the subsistence of the marriage	275

Ownership, management and control –	
under the customary law.....	275
Under the Ordinance No: 1 of 1911	281
Marital power and husband's rights over wife's separate property.....	284
Wife's rights where consent is denied	289
Husband's interests in the income from wife's property..	292
Right to give dowry	293
Rights on separation and divorce under the customary law.....	298
Under the Ordinance No: 1 of 1911	302
Rights on re-allocation of property - applicability of the Roman Dutch Law	303
Applicability of the statutory provisions.....	305
The choice between Roman Dutch Law and statutory provisions to those governed by Thesawalamai.....	307
Forfeiture on divorce caused by the breakdown of marriage.....	310
Donations and forfeiture	313
An evaluation.....	315
Rights as widow / widower.....	318
Husband's right to possession and life interest- under the customary law.....	322
Under the Ordinance	325
The nature of the right to possess—rights of a usufructuary.....	327
Liability of wife's property for husband's debts	329
B. Rights over <i>muthusam</i>	330
Rights during the subsistence of the marriage	331
Right to give dowry	334

	PAGE
Rights of the widow on intestacy - to possess	336
Right of widow to letters of administration and obligation to pay debts.....	337
Rights over <i>thediathettam</i>	339
Introduction	339
Rights during the subsistence of the marriage	341
Management and control	341
The concept of marital power and the husband's position as manager	343
Husband's right or power to sell, mortgage or lease and the wife's incapacity	348
The Ordinance as amended in 1947	357
If considered as Separate property.....	359
Right to donate	362
By the Code.....	362
By the Judiciary	366
By the Amendment	371
Remedy available to the wife.....	373
Right to compensation	373
By the judiciary	374
Right to vindicate	375
Application of trust principles to <i>thediathettam</i> and rights/remedies available to a wife as against a <i>bona</i> <i>fide</i> purchaser	379
Spouses' entitlement to <i>thediathettam</i>	383
By the Code.....	383
By the Ordinance of 1911. [prior to its amendment]	383
By the Amended Ordinance.....	386
Rights of spouses on <i>de facto</i> separation.....	390
On judicial separation and divorce.....	393

	PAGE
Rights on intestacy	396
Is the surviving spouse an heir to the deceased spouse?	402
Disposition by Wills.....	405
Conclusion	406
 Chapter V	
LOCUS STANDI IN JUDICIO OF A MARRIED	
WOMAN GOVERNED BY THESAVALAMAI	410
Introduction	410
Wife's <i>locus standi</i> in relation to her separate property	411
Suits between spouses.....	411
By the wife against third parties	414
Wife's liability to be sued	416
With the Ordinance of 1911	417
The Ordinance, application of Roman Dutch Law and the judiciary.....	421
<i>Locus standi</i> as regards <i>thediathettam</i>	432
Suits between spouses.....	432
Between spouses and third parties.....	433
Community, marital powers and <i>locus standi</i> in relation to <i>thediathettam</i>	436
An evaluation	438
Conclusion	453
CONCLUSION	455
BIBILOGRAPHY	469
TABLE OF CASES	481
SUBJECT INDEX.....	488