CHRISTIAN WOMEN AND PROPERTY RIGHTS IN KERALA – GENDER EQUALITY IN PRACTICE

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PREFACE

In Kerala Christian women enjoyed a disadvantaged position as far as their property rights were concerned. Denying equal rights to women continue among almost all sections of the Christian community. The successive legislative reforms were introduced with a view to emancipate women and to achieve full equality for them, as its foremost objective. But though it has received legal sanctity, still there exists a doubt whether actual gender-equality has been achieved. There are no moral grounds upon which such denial can be justified.

The project 'Christian Women And Property Rights in Kerala – Gender Equality in Practice' has been undertaken by me with the view to provide information regarding the various legislations relating to succession laws passed from time to time, how far they have improved the rights and interests of women in Kerala and the cases taken up by Law courts in this regard.

Enclosing the revised version of the report for your kind perusal.

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Thiruvananthapuram

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CHRISTIAN WOMEN AND PROPERTY RIGHTS IN KERALA - GENDER EQUALITY IN PRACTICE

INTRODUCTION

Christians in Kerala constitute a heterogeneous community in matters relating to their rights over property. Originally, these rights were conferred on them through customs, which were the result of long-established usage among them. These customs or usage varied among the different denominations of the community. They also varied from region to region.

The need for legislation was mainly felt due to the uncertainty as to the practices determining property rights, which often lead to disputes. The first legislation guiding the rules of intestate succession, which came into existence, was the *Travancore Christian Succession Act* (Regulation II of 1092) in the erstwhile State of Travancore which denied any share to women. Following this Act, a similar legislation was passed in the erstwhile State of Cochin called the *Cochin Christian Succession Act* (Regulation VI of 1097) in 1921 but considered women as sharers provided they were not given *Streedhanam*. In the Malabar area the intestate succession among the Indian Christians were governed by the Indian Succession Act, 1865, which was later amended by the Indian Succession Act, 1925. So when the Kerala State was formed under the State Reorganization Act, 1956 by integrating the Travancore- Cochin State and certain parts of Malabar, three legislations prevailed in the three different regions - Travancore, Cochin and Malabar - guiding the succession rights of Christians in the State.

But dispute regarding intestate succession arose even after the existence of the three legislations indicating the absence of an adequate legislation guiding the rules of intestate succession and inheritance in the Travancore Cochin and Malabar areas. The dispute mainly arose regarding the determination of the rights of female heir – daughter, widow or mother- in contrast to their male counter parts. The legislation which intervened and affected the Christian succession rights was the *Part B States (Laws) Act,* 1951. This was introduced for bringing about uniformity of legislation in the whole of India including the Part B State of Travancore - Cochin formed in 1949 by merging the former princely states of Travancore and Cochin. Thereby, the *Indian Succession Act*, 1925 was automatically extended to the Travancore - Cochin State through repealing the corresponding laws of intestate succession which were in force in that State, with effect from 1-4-1951. But even after the introduction of that legislation, the Travancore Christian Succession Act, 1092 and the Cochin Christian Succession Act, 1097 were held to prevail in the Travancore and Cochin areas of the Kerala State through the various decisions of the High Courts. It was in 1986 that the Supreme Court of India held in *Mary Roy* v. *State of Kerala*[1] that the Travancore and Cochin Christian Succession Regulations stands repealed with the introduction of the *Part B States (Laws) Act*, with effect from 1-4-1951, retrospectively.

Thus the Indian Succession Act, 1925 became the uniform law governing intestate succession of Indian Christians throughout India including the erstwhile States of Travancore and Cochin, retrospectively from 1-4-1951. The Christians in the Malabar area of Kerala were already following the Indian Succession Act. Therefore, in effect the ISA, 1925

[1] 1986 KLT508

became the single law governing the rights of Christians in the matter of inheritance and succession in Kerala.

Succession Rights of Christian Women in Kerala - In General

In regard to the rights of Christian women, there was considerable uncertainty about the exact law applicable to each section. Originally the Syrian Chrisitans were said to have followed the Biblical law. But later the *Nomo Canon* otherwise known as the *Hudaya canon* became the highest authority of the Jacobite which flourished between 1226 and 1286 A.D. The main provisions of the Canon were (1) that female heirs of any degree (the daughter, the sister or aunt etc) shall get the share of the male heirs of the corresponding degree (such as the son, the brother and the uncle etc); (2) that a childless widow gets about one-fourth of her deceased husband's estate; (3) that when there are children, the widow gets a share equal to only one-eighth of that of a son; (4) that the residue, after deducting from the estate of a childless person, the share of the wife or husband, must go to the father and mother in the ratio 2:1 and (5) when the deceased childless person's father is not alive, his mother should get a share equal to that of a brother. According to the existing usage in those days, the sister of a deceased childless Syrian Christian succeeded absolutely to his property in the absence of his brothers and a Syrian Christian daughter took an absolute estate in whatever she gets by way of inheritance from her father.[2]

Another important treatise which laid down the rules regarding inheritance was the famous work of Alfonso Ligouri, an Italian scholar, on Moral Theology. According to him, both the son and daughter were equally, entitled to an equal share in their father's estate. Similarly a sister

was entitled to share equally with the brother in a deceased brother's estate. These rules were not followed by the Latin Catholics or North Travancore, nor by the Syro - Romans. But it was given prominence by certain full bench decisions of the Chief Court in Travancore (A.S No. 245 and 267 of 1085).[3]

The 'Malayalam Book of Canon' by Mar Athanasius agreed very much with the ancient usages of the community. In that work it was laid down that a man's daughter was entitled to get a dowry or *streedhanam* which is equal to half the share of a son; that when a man has only a daughter by his first marriage, and several sons by the second marriage, the first wife's daughter shall receive a share equal to that of a son, that the heir of a childless man is his wife (who takes only a life - interest) and that only after the death of a deceased's widow would his other heirs became entitled to his estate. These provisions were said to agree with the ancient usages of Malabar Christians. [4]

But there was no definite law governing the rights of women in the matter of inheritance and succession. The absence of a settled law of inheritance became a fertile source of litigation among the wealthier sections. The equal share concept was undisputedly followed by the landless Christians particularly the south- Travancore Protestants and Latin Catholics and the Anglo Indians. That state of uncertainty in Travancore existed in Cochin also. There had been several instances in which the Chief Court of Cochin applied the Indian Succession Act to Syrian Christians (A.S 132 of 1054 and A.S 59 of 1055). There were occasions in which the court declined to follow the principles of the same

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[2] L.K Anantha Krishnaiyer, Anthropology of the Syrian Christians, Cochin Govt. press, Ernakulam (1926), pp 119-120.
[3] *Ibid* pp. 120-121
[4] *Ibid* p. 121

Act. There had also been the same difficulties among the Christians of British Malabar.[5]

With the enactment of the Legislations, the daughter became entitled to only *streedhanam* under the Travancore Succession Regulation 1916 and to one-third the share of a son under the Cochin Christian succession Regulation 1921, if not given *streedhanam*. The Indian Succession Act established the *equal share* concept among the Christians of Malabar, certain South Travancore Protestant Christians and Latin Catholics, Anglo Indians and Parangis of Cochin area. But since the decision in Mary Roy case, the Indian Succession Act, 1 925 became uniformly applicable to all Christians in Kerala retrospectively from 1 -4-1951.

The History of Christian Legislations in Kerala may be divided into the following phases. :

1. the period before 191 6 (till the first Christian Succession Regulation came in to existence).
2. the period between 1916 and 1986 (from the first Succession Regulation till Mary Roy case)
3. the post 1986 period.

[5] Report of the Travancore Christian Committee, 1911,

CHAPTER 1
INHERITANCE UPTO 1916

The two concepts which were prevailing as customs of inheritance before the Christian Succession Regulations of 1916 and 1922 came into existence were: (i) *Streedhanam* and (ii) Equal share concept.

The concept of *Streedhanam* relates back to the long-established usages which had the force of law (known as customary law) prevalent among the various groups. This can also be revealed from the innumerable number of cases settled by the law courts of erstwhile States of Travancore and Cochin prior to the coming into force of the Succession Regulations.

In Malabar, since succession took place according to the rules of the Indian Succession Act 1865 and thereafter by the amended Act, 1925, not much litigation seem to have arisen in those areas. Since the Christians of Malabar were mostly the agricultural Syrian community migrated from the Travancore and Cochin areas, their customs and usage resembled very much to that of those sects in Travancore and Cochin.

Equal share concept denotes back to the various proclamations made at the *Synod of Diamper (Udayamperur Sunahadoss)* which stood for equal shares in ancestral property to both men and women.

The 16th Canon, (S. IX Decree.XIV) of the *Synod of Diamper (Udayamperur Sunahadoss)* praises the custom of giving the 1/10th of the *Streedhanam* amount to the Church (*Passaram*) as a mark of evidence. The Synod urges the need for a uniform custom throughout the State

regarding the remittance of *Passaram* so that the Church records shall be used as a concrete evidence for the daughters being left destitute without any property.[6]

The Synod furthermore declared that the non-payment of the portion that may have been promised, is no just cause to leave one's wife which he might have been careful to have secured before they were married to them and that whosoever shall forsake their wives on that account shall be punished and constrained by excommunication to live with them. (S.VII D.XI)[7] (Seen in Portuguese Canon and there is nothing corresponding to it in Malayalam).

Regarding the execution of wills (Section viii, Decree XXXVIII) the Synod declared that the bishops and prelates were to see to the execution of those wills lawfully made by Syrian Christians before their death and that if any valid will made according to the custom of the place was not complied with in a year after the death of the testator, the Bishop would by censures and other penalties see to its fulfillment.[8]

The 20th Decree of (S. IX (of Synod of Diamper) criticises the custom of denying inheritance rights to females even where there were only daughters. In such cases the inheritance went to the collateral heirs by denying the daughters any share in the ancestral property. The Sunahadoss comments that such a custom is not lawful. At the same time it insists on the provision of considering the *Streedhanam* given to daughters as well as the capital for business provided for sons alike for determining their share.[9]

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[6] Dr. Scaria Zacharia, *Udayamperur Sunahadossinte Canonakal A. D 1599,* Indian Institute of Christian Studies (IICS), 1998, p. 193
[7] *Ibid* p 202
[8] *Ibid* p 227
[9] *Ibid* p 241

The Canons form the historical documents pertaining to the culture and life of the ancient Kerala Christians. They were proclaimed at a religious conference of Kerala Christians originally called “Marthoma Nazranees” in 1599 held at Udayamperur known as the great “Udayamperur Sunahadoss”. It changed the characteristic elements of the ancient hereditary Christians of Kerala called 'Marthoma Nazranees’ which has been developed through 10-15 centuries.

The *Udayamperur Sunahadoss* conducted by the Portuguese Ruler Alexis - De Menzes, called for the adoption of the western model of Christian society through its Canons. Hence that document can be held out to be a historical one revealing the colonisation of the Christian society of Kerala. As the first trace of reform, the Sunahadoss contains many decisions which can be held out as modem thoughts or ideas flourished around four centuries back in the Christian society of Kerala. Those decisions also describe the circumstances which existed in those days when they were made and their basis. Thus this document may be chartered among those which form the elementary history of life of Kerala Christians and their culture.

The law of St. Thomas - the religious identity which the Malayali Nazranees has presented before the Portuguese as their rituals has changed into the law when passed through the foreign languages. Now the Kerala Christians too claim it to be the Law of Thomas. Those who study the history shall have to realise that the rituals and sacraments which formed a part of the religious identity has only transformed in to law and it has no relics in the Western culture. To trace the history of the rituals and practices we have to have the urge to study the Archaeology of the Kerala Christians in the past and the past is revealed as an epistemological problem

The Evolution of Property Rights of Christian Women in Kerala – An analysis

Before the 1916 legislation there was uncertainty and diversity of practice among the several denominations of the Christian communities of Travancore regarding their system of inheritance and succession. Some were said to follow the customary or Canon laws, Others were said to be governed by a ecclesiastical authority, and yet others were said to adopt the provisions of the Indian Succession Act, particularly there was considerable uncertainty regarding the exact law applicable to each community to the rights of women. The government therefore appointed a commission to investigate the customs of the several Christian communities with regard to the system of inheritance and succession and to report to the government with a view to definite legislation in the matter.

The Travancore Christian Committee so appointed on 23rd July 1911 enquired in to the customs and practices then in vogue among the several denominations of the Indian Christian Community in Travancore in the matter of inheritance.

It was observed by the Committee that in spite of the differences that existed among the several groups, with the exception of a very small body of people living in the taluk of Neyyattinkara, they were all persons who follow the Makkavazhi system of inheritance. In other words, among the vast majority of Travancore Christians, a person's property was on his death, inherited by his descendents, if had any. What differences there existed in the matter of the rules of succession observed by the different communities was chiefly in connection with the rights of women, viz., the daughter, the widow, the mother, the sister and the aunt. These difference

if observed among the various Sections, shall give an idea as to the desirability of a legislation for the first time in Travancore.

The Indian Christians of Travancore were classified under the following groups for the sake of study, by the Committee:

1. The Syrian Christians
2. The Latin Christians of North Travancore (Kottayam)
3. The south Travancore Christians, say converts and descendents of converts to Christianity from various casts that followed the Mithakshara Law
4. The Latin Christians of Central Travancore
5. The Arasars
6. The Bharathars
7. The caste Christians
8. The Protestant Christians of central Travancore
9. The Marumakkathayam Christians

The Custom were mostly varying among the Syrian Christians. The Latin Catholics, Protestants and Anglican Syrians followed the provisions of the Indian Succession Act (equal share concept). The *Marumakkathaya* Christians followed the Hindu *Marumakkathayam* Law (descent through the female line). The caste Christians followed the rules of inheritance of their non-converted follow-men or of the communities in their locality. The classification of the community into various sects being not on defined norms, the diverse customs followed by each of them, the uncertainty in following a uniform rule within the same sect etc. resulted in ambiguity as to which law should be followed in a given instance by the community.

Rights of Syrian Christians in Travancore

The following data may be considerably drawn from the Report of the Christian Committee, Travancore (1911) and from the case laws up to that period.

There was no definite law governing the rights of women in the matter of inheritance and succession. It was a well-known rule among the Syrian Christians that the daughters of an intestate should succeed to his property in preference to the intestate's brothers and other collaterals. According to the *Synod of Diamper*[10], as a result of the above mentioned practice, "great number of the daughters perish and others ruin themselves for want of necessaries, there being no regard to the daughters any more than if their parents were under no obligation to provide for them; all of which being very unreasonable, the Synod both decree and declare the system to be unjust".

In former times a Syrian Christian did not possess the right to convey his ancestral property on outright sale without the consent of his heirs. Probably the custom had its origin in the practice of a Hindu family or *Marumakkathayam tarawad* in which the ancestral property couldn't be disposed of without the consent of the junior members. But instances were reported on the contrary as well as the common practice showed otherwise. Thus it could be seen that the general usage among the Syrians was found to vary in different places as time advanced. The absence of a definite law of inheritance was then a fertile source of litigation among them.

The following were the recognized rules of inheritance among the Syrian Christians:

[10] 20th Decree of the IX Session of the Synod of Diamper

1) In the matter of inheritance there was no difference between the property of a male and that of a female.
2) There was no difference between an heir actually born at the time of the proprietor's death and posthumous child.
3) The heirs in the descending line always excluded those in the ascending or collateral line and even collateral of any degree or their descendants had priority over ascendants of the same degree.
4) The heirs of equal proximity to the last holder divided his property equally among themselves whenever they were of the same sex.
5) The heirs of any degree and their descendants generally excluded those of a remote degree.
6) Among heirs of the same degree and those related to the proprietor on the same side (ie., on the father or mother's side) and related to him in the same way whether by the full flood or half-blood the male heirs always absolutely excluded the female except perhaps when the heirs were in the descending line. There was a general impression that in the latter case the daughter or the female descendants had a claim for *streedhanam*.
7) The paternal heirs were always preferred to the maternal heirs.
8) If a son or daughter or brother or sister or uncle or aunt, whether of the full blood or half blood, and whether on the paternal or maternal side, died before an intestate, his or her descendant would, on the intestate's death, got the share in the property of the deceased, which he or she would had obtained if he or she had been alive at the time of the proprietor's death.
9) When a man died leaving no children, but only grandchildren – whether by his sons or daughters- they took among themselves what their fathers or mothers would have taken, if they had been alive at the time of the intestate's death. In other words the property was to be divided among his heirs, *perstripes* and not *percapita*.

There were some instance where the question of inheritance was doubtful and undecided. It could be seen that they were mostly related with issues of inheritance of women. Some of the instances may be cited:

1) In the case of a person dying intestate, leaving neither his wife nor his children, but only his parents brothers and sisters. There was doubt as to who should succeed him. According to some, the order of inheritance was – to his brothers and children, and in their absence to his sisters and children. The father was no heir at all. But the general sentiment of the communities was that the father of the deceased childless person might be treated as the heir in preference to the brothers and sisters.[11]
2) But opinion was seen to be unanimous as to the rights of the daughters of a deceased person who left behind him neither a son nor the descendants of any son. In such cases the intestate's property was seen to be divided equally among daughters to the exclusion of all other heirs in the ascending or collateral line.
3) In the case of a daughter to whom dowry had been paid by her father, she was considered to have received her share according to the customary law. But difficulty arose in the case of those daughters to whom no dowry had been fixed by their fathers. The amount was seen to be practically settled in the majority of cases at the time of her marriage, and that depended upon the wealth of her father and demand upon the bridegroom's side. In the majority of case, however it was equal to or more than half the value of a son's share, but in rich families, below a third or fourth of the value of his share.[12] But the brother had only a moral obligation to provide her with dowry, in the absence of father.

[11] See *Report of the Travancore Christian Committee* p. 21
[12] Id.

In the case of an unmarried daughter, she had the right to be provided with a reasonable dowry by her father. But where no such dowry had been fixed, it was impossible to say the extent of such legal right of an orphaned girl in her father's estates when she had a brother. In most cases, its extent depended practically upon the demands from the bridegroom's side and on the attitude of her own guardians and not upon any definite principles. This was because the customary law was vague with regard to the extent of the sphere or interest of an unmarried girl in her father's property.

Equally vague and indefinite was the customary law on the subject of widow's rights. According to the ancient *Syriac Canon* she was entitled to a definite share. It was also said that she had a right to manage and enjoy the entire estate. But she was only made entitled to a maintenance under the customary law. Some held that it should be reasonable. But according to some others, she would have to remain satisfied with whatever she got and often had no remedy even if she was denied of it. In some instances, provisions were made by the husband for her maintenance, before his death and in many other times sons undertook to pay a fixed sum for the maintenance of their mother. Further the order of succession among the Syrian Christian was as follows: first sons, failing these daughters, failing these brothers and children and lastly, sisters and their children.[13] The widow had no place in the order of inheritances. But the father was recognized to be the first heir in the absence of lineal descendants. But so far as the judicial decisions were considered, the right of the childless widow was seen to be recognized to the exclusion of the sister and her son, of the deceased.[14]

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[13] *Report of the Christian Committee,* Travancore, pp 28-32

[14] In 1049 M.E and 1051.E in 1081 M.E, her right to share as prescribed by the Indian Succession Act was recognized. In a full bench decision in 1087, the Travancore High Court held that the widow of a childless person was entitled only to maintenance. In the case of a widow co-existing with children, the Cochin Chief Court had allowed the former to take one

From the foregoing discussion it might be seen that the customary law on the rights of a widow was vague and unsettled, and the treatment accorded to childless widow appeared to reveal the fact that women had to bear several inequalities.

The extent of a mother's right in the property of a deceased son had been set at rest by a series of uniform decisions. Accordingly, she was considered as heir in preference to the sister's son of the deceased person.[15] It was also held that the mother and a half-brother on the father's side inherited equally.[16] It was also decided that a deceased person's mother should be preferred to his paternal uncle even though the mother had contracted a second marriage. Further the mother excluded the paternal cousin of the intestate son. The principle that a mother should get a share equal to that of a brother and that she excluded all other heirs more remote than the brother might be considered well established.

Regarding the devolution of property obtained by one's own exertions as well as those obtained from the father and the paternal relations on the one hand, and property obtained from the mother and maternal relatives on the other hand. The differences in opinion were that as to some, the property under the former category should go to the father and paternal relations while the latter should to the mother and her relatives. But according to custom, by others, there was no such difference.

Regarding their other sects, the law was more or less specific in the sense that the Latin Christians followed the equal share concept, the South Travancore Christians followed the Hindu *Mitakshara* Law, the *Marumakkathayam* Christians followed the *Marumakkathayam* Law and the caste-converts followed the either the law of their non-converted follow-men or of the communities of their locality.

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third share in her husband's estate. (A.S No. 132 of 1054, A.S No. 59 of 1055 of the Cochin Chief Court)

[15] A.S. No. 234 of 1049

[16] 12 TLR 124

The differences in the rules of inheritance shall be identified from the disputes relating to inheritance which arose before the court till the legislation was enacted.

The tribunals which had a discretion and had no positive lexfori imposed on the, rather proceeded on what actually existed than on what had existed. And forming their own presumptions, had regard rather to a man’s own way of life than to that of his predecessors. The substance of the decisions concerning the customs of native Christians was that the moment a Hindu became a convert to Christianity, the Hindu law ceased to have applied to him. The question as to by what law would he be governed in matters of property was entirely a question of evidence.

CHAPTER-II
DISPUTES ON QUESTIONS REGARDING FEMALE INHERITANCE

Disputes Before the Law Courts Regarding Inheritance Rights and Succession Rights of Christian Women of Erstwhile State of Travancore up to 1916.

The only concepts prevailing as customs of inheritance to daughters among the various denominations of the Christian community were

1. Equal share concept
2. *Streedhanam*

Disputes generally arose regarding the rights of inheritance of daughters in determining the value of their *Streedhanam* and in the nature of interest of a widow or mother in the deceased husband's or son's property in the presence of other lineal descendants. If only remote descendants were present, the question often arose whether mother or wife should be given preference over those heirs. The disputes shall be revealed by going through the important decisions of the Travancore High Court upto 1916.

Streedhanam

Starting from *Sahayam caspass Murayas* v. *Therasia Gomez*[17], the various issues regarding the nature and extent of *streedhanam* were dealt with in the decisions which followed.[18]

[17] 6 TLR 26

In the year 1916, the general characteristics of *Streedhanam* had been lucidly given in *Mathula Louis* v. *Eapen Rosa*[19], a case in which the Court received assistance from such leading lights in the legal and social world, as Messrs. E. J. John and M. Pathrose Mathai, Advocates who held:

> It is well known that among the Syrian Christians it is customary to settle at the time of the marriage the amount of the *Streedhanam* or the dowry to be paid to the bride from her own family. It has been repeatedly held by this Court that the *Streedhanam* has to be looked upon as a substitute for the daughter's share in her father's property[20]

In *Mathen Kuruvila* v. *Mathen Maria*[21], Dewan Bahadur. Venkobachariar, C.J and Mr. Justice Hunt held that among the Syrian Christians, the widow had the right to get the *Streedhanam* given by her father, even during the life- time of her minor daughter.

The *Streedhanam* was usually paid by the bride's father or other head of the family. But the practice seems to be that the *Streedhanam* is handed over not to the bride herself but to her would-be father-in-law or

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[18] *See Kochuvava John* v *Nazrani Vasthian Elizebath* (13 TLR 215) where the Travancore High Court held that daughters who have been given *Streedhanam* are not entitled to a share in the properties of their parents

[19] 6TLJ 464

[20] *Ibid* paras 5 and 6

[21] 17TLR46. In the aforesaid case it is said that, the plaintiffs father-in-law, by will, bequeathed all his property in favour of his second wife and children by her, to the prejudice of the plaintiffs husband who is one of the sons by the first wife. When the daughter-in-law demanded for her *Streedhanam*, the father-in-law's contention was that her minor daughter was entitled to it, and not its mother.

other head of the bridegroom's family. The general understanding seemed to be that when the father-in-law divided his property among his children, or the latter divided among themselves the property of their deceased father, the amount brought by each daughter -in-law would be given due consideration in determining her husband's share and that the daughter-in-law also would agree to this course. The correct view seems to be to regard the one who received the dowry as a mere custodian with whom the *Streedhanam* is deposited on behalf of the bride. He was not burdened with the duty of utilising the same for any specific purpose or in any particular manner. Legally there was always the liability to have the *Streedhanam* handed over to the woman herself if she desires, yet ordinarily the expectation was that the necessity for enforcing her claim would not arise. The Court also observed: "It is settled law among this community that the daughter gets *Streedhanam* in lieu of her share in her father's property".[22]

In *Thommen Varki* v. *Chakko Anna*,[23] the Court observed: *Streedhanam*, it is scarcely necessary to say, is a gift solely to the woman and hence the gift of property in lieu of money or her share in the family property is to her absolutely. Among the class to which the parties belong, *Streedhanam* - grant seems to be equivalent to the allotment of a share in the patrimony

Thus there arose confusion of there being no settled personal law governing the succession and devolution of the properties among Syrian Christians in Travancore, the customary law being very vague and indefinite, each section, and sometimes each family claiming to have its own customary law administered. The Court observed: "Legislation

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[22] *Ibid*
[23] 18 TLR 8

would seem to be the only remedy for the removal of these difficulties and the community would do well to agitate the matter".[24]

For the sake of analysing the concept of *Streedhanam* the entire Christian Community among whom that custom prevailed can be classified as Syrians and Romo Syrian Christians and Latin Christians. Among the Syrians, generally the custom of giving only *Streedhanam* to the daughter persisted. But among the Latin Christians, the "equal share" concept was re-asserted by the law Courts only after the passing of the Christian Succession Regulations.

1. Syrians & Romo Syrian Christians

It had been pointed out in many cases that the Syrian Christians had no settled personal law governing the Succession and devolution of their properties. The customary law seemed to be very vague and indefinite. Each Section and sometimes each family claimed to have their own customary law administered. So legislation turned to be the only remedy. It was settled law among the Syrians that daughters gets *Streedhanam* in lieu of her share in her father's property.

Regarding the right of a widow to *Streedhanam*, it was said that the consciousness of the Syrian community was that the mother does not take the *Streedhanam* in the presence of her issue from her father -in-law's property. This consciousness was negatived by the Travancore High Court in its decision. Because it did not appear to the Court that the same consciousness was felt by the entire community or even by any great section of it as a body. The Hon'ble Court went to the extent of holding

[24] Mathen Kuruvila v. Mathen Maria The need for legislation was for the first time felt in this case.

that it looked pre-posterous that a mother could be controlled in her appropriation of what was her absolute property by her own children[25]

A Full Bench of the Travancore High Court adverted to the fact that "the current rulings of the Court has established beyond question that *Streedhanam* or dowry, as it is called, is among Syrian and Romo Syrian Christians, a substitute for a share of the patrimony"[26] following its own decision in *Thomman Varkey* v. *Chacko Anna.*[27]

The necessity for the legislation which was indicated in the above decision- was apparently pursued though slowly, and the Christian Succession Act became law in the year 1092, (1916A.D). *In Eleesa* v. *Aeliya*,[28] there is a reference to the provisions of the original Bill and changes they underwent when the law was ultimately enacted. The proposed original Section in the Bill relating to the *Streedhanam* gave a share to the daughter even as Section 16 of the Bill did to the widow[29]. But when the Bill passed in to law, the Section relating to the widow was left intact as it was but the Section relating to the daughter's share was amended so as to make it into a money claim and not a share in the estate.

Thus the custom of considering *Streedhanam* as share equivalent of a daughter was not recognised when the legislation was enacted. It was

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[25] *Id* at 47
[26] *Mathai* v *Ouseph Kora*, 22TLR 205
[27] 18 TLR 8

[28] 1947TLR285

[29] Where the intestate has left a widow, if he has also left lineal descendants, a share equal to that of a son shall be allotted to her.

considered only as a money claim and not as a claim for a share in the family property.[30]

The legal background regarding the concept of *Streedhanam* prior to 1916 legislation is revealed from the above judicial decisions.

If the social behaviour of the community as indicated above is duly considered and appreciated, it would be evident that ordinarily the marriage would not have been fixed, unless at least a substantial part of *Streedhanam* had been paid at the time of or before marriage. Cash and marry was a well known expression in the business circles. It may not be far wrong in assuming that, by and large and ordinarily, 'cash and marry' had been the accepted practice within the community.

2. Latin Christians

The customs regarding Stridhanam which prevailed among the class of the community were highlighted in two decisions Sahayam Kasspass Murayas v. Theresia Gomez[31] and Kochuvava John v. Nazrani Vasthian Elizabeth.[32]

In the first case, the mother filed a suit to set aside an attachment in execution of a decree obtained by a third person against her daughter and grand son. The mother's contention was that she and her sons were the only heirs of her late husband and hence were in possession of the

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[30] See also *Mathen Kuruvila* v *Mathen Maria*, 17 TLR46; *Sahayam Kaspass Murayas* v *Therasia Gomez* 6TLR26; *ThommanVarkey* v *Chakko Anna* 18 TLR8; *Ouseph Mathai* v *Quseph Kora* 22 TLR 205; *Eayo Eli* v *Mathai* 2 TLJ 441; *Mathula Louis* v *Eapen Rosa*, 6 TLJ 464.

[31] 6 TLR 26

[32] 13 TLR 215

property. The defense was that the parents jointly assigned the property to the daughter as *stridhanam*.

Regarding the entitlement of share to the daughter, the appellate court directed the lower court to consider the following issues:

1. Among the class of persons to which the parties belonged, did the daughters get a share in the father's property when there were sons, if so, to what extent?
2. Was the claim for share in any way affected by the grant of dowry or *stridhanam* and if so how and to what extent.
3. Is the widow of the acquirer entitled to share, if so how much?

The lower court held that according to the customary law by which the parties were governed, the daughters shared equally with the sons in their father's property and that no share was allowed to them if they had already received their dowry or marriage portion.

In Kochuvava John[33] A. Govinda Pillai and T, Kunhiraman Nair, JJ held that according to the customary law of Latin Christians, the daughters who had received *Streedhanam* at marriage did not share in their father's property along with their brothers. It was also held that sisters do not inherit their brother's property, so long as there are brothers or brother's children.

There are strong precedents against sister's right to inherit to their brothers. It was so held by the Sadr Court in Review No. 7 of 1041[34] in which case the daughters of a Latin Christian sued to set aside a sale by his son's daughter. On evidence taken as to usage and following a precedent of the Alleppey Court (10 of 1032) and also decisions in prior

[33] *Ibid*
[34] This arose from A.S 182 of 1039 reported in the Travancore Gazette of 29Margaly 1043

escheat cases, the learned Judges held that not only that a sister, if married with *Streedhanam*, does not inherit the property of a father with her brother, but also that a sister does not inherit her brother's property if brothers and brother's children were alive as in the present case.[35] But after the enactment of The Travancore Christian Succession Regulation, 1092, the above mentioned decisions were overruled holding them to be only a doubtful exposition of the actual customary law (revealed from the report of The Travancore Christian Committee, 1911) on the succession rights of daughters among the Latin Christians of Central Travancore. The old custom by which the daughters shared equally with the sons had its origin in the fact that Quilon, Angengo, Thankasseri were the ports in Central Travancore where the Portuguese and the Dutch gained access to and their custom of inheritance which was then practiced by their descendants had influenced the formation of the above mentioned customs. But gradually that "equal share" concept would have disappeared and the custom of giving *Streedhanam* or dowry to daughter at the time of the marriage gained prominence.

3. The Nature and Extent of the Rights of Mothers and Widows

In *Mathu* v *Pyli* [36], the Travancore High Court considered the extent of a mother's right in the line of succession. The Court held that the Law of Succession in all Christian Countries places the mother of a deceased person after the father on failure of lineal descendants in the line of succession. In A.S.1 of 1072, an unreported decision, the mother's claim was allowed in preference to the father's direct brother (uncle). The Court held that 'his property (the father's) vested in his minor sons who must be taken to be the last owners of the property, for it is conceded on all hands that when an intestate dies leaving sons, they are his preferential heirs. So if the minors who also died issueless, the mother is the

[35] |A..S 99 of 1042 reported in Govinda Pillai's Select Decisions para I at p16.
[36] 12TLR124

preferential heir of her sons in the absence of any lineal descendants of such sons". In a late Sadr Court's decision decided by Mr. Chellappa Pillai and Dr. Ormsby, the mother was preferred to the sister's daughter of the deceased.[37]

In *Kunchandi Geevariathu v Kunchandi Elia,*[38] Bahadur *C. Venkobachariar* C.J and *Kunhiraman Nair,* J held that the claims of the mother of the last owner to his assets should be preferred to those of his divided grand uncle among Syrian Christians. In this case the Court relied on the unreported decision in S.A I of 1072 in which the mother was preferred to the uncle. This Court considered that much more therefore should she be preferred to a grand uncle. The customs on that point were vague and indefinite and the Courts couldn't afford any reasonable basis for their decision one way or the other. That the parents succeeds the sons dying issueless was also the opinion of the late Mr. Mar Mathew Athanasius as will be seen from his answers to questions of the late Sadr Court, given in a pamphlet published by Mr. P.I Cherian, the President of the Travancore Christian Committee, in 1894.[39]

Among Syrian Christians where the competitions to the estate of an intestate was between mother and paternal grand father, the Court held that mother was the preferential heir and the principles of Hindu Law had no bearing on the succession to property among Christians. Section 39 of the ISA,1865 applied.[40]

In a Full Bench decision the Travancore High Court held that were property were once vested in a person as last- holder, it descended to the nearest in blood. No difference existed between the Syrian Christians of

[37] A.S 234 of 1049 in the report of The Christian Committee 1911, p.34
[38] 17TLR94
[39] *Id* at 96
[40] *Cherian Acham Pillai v Cheriyathu Kurivila* 23 TLR84

all sects and parties and all other Christian bodies, be they Protestants, Romo Syrians, Roman Catholics and so forth. The court viewed that "the community seems not to know its own mind definitely and the rules of the Indian Succession Act embodying the enlightened views of large number of Christians after considering the results of the 'wisdom of the ages' might safely be treated as in consonance with justice, equity and good conscience" In this case, among the Syrian Christians, where the competition to the estate of the intestate was between the widow and the mother, the Court held that each of them was entitled to a moiety (half of the share) thereof by following the ISA.[41] This view was endorsed in a decision[42], where it held that father was the preferential heir to succeed to the deceased childless son's estate in the presence of the child's maternal grand father.

The precedents were S.A No. 180 of 1063 where the Sadr Court held that a widow was held to be a preferential heir to a sister and sister's sons and sister's daughter respectively. It referred to the decision of the same Court in S.A 99 of 1042, that among the Syrian Christians a daughter and widow had no right of inheritance when there were sons[43]. The Latin catholic mother was given an equal half share along with the step brothers of the deceased, though under ISA she would get only a 1/5 along with them[44]. In the case of Protestant Christians, Krishna Swamy Rao, C.J and Kunhiraman Nair, Jyin *Checha* v. *Yohannan*[45] held that a widow was entitled only to maintenance when there was a male issue and refused to follow the I.S.A. But four months prior to this decision Kunhiraman Nair and Sita Rama lyer JJ held that under the customary Law of Syrian Christians, the widows and lineal descendants, and in the

[41] Gee*vargeese Maria v Kochu Kirian Maria* 22TLR192
[42] Mathai v. Ouseph Kora 22 TLR 205
[43] Rhe Report of the Christian Committee, Travancore, p 31.
[44] *Ibid* p. 48
[45] 11 TLR150

absence of the latter, parents and sisters are the nearest kindred and the rules of ISA, 1865 (Section. 34 - 41) might be followed in the absence of a definite usage, though it was not the law then in Travancore.

According to the custom among the Syrian Christians, a widow was entitled only to maintenance out of her husband's properties and not to any share within. Therefore, where a Syrian Christian died intestate leaving only a widow and his brother's daughter behind him and where each of them claimed to be his sole heiress, the Court comprising of Mr. M.Krishnan Nair C.J, Ramachandra Rao and Muthunayakam Pillai J.J held that the niece was the heiress. According to the Chief Justice and Justice Ramachandra Rao, where witnesses who were old and otherwise competent to speak on the subject swear to the existence of a custom showing a continuous user and of a right as far back as living memory can go and were there was no evidence that the custom was of recent origin, it was lawful to presume that custom as ancient. Per Muthunayagam Pillai, if a follower of a particular system of law relies on a special usage departing from that system, strict proof showing its existence from a time preceding the memory of usage be insisted on. But in the Syrian Christian Community there is no system of law as such of which they are followers. All their law is unwritten and usage alone governs them. In a given case, therefore, it is not a departure from any recognised rules of inheritance of their system that a party seeks to prove but the rule itself. That being so, it is not necessary that any great antiquity of the usage set up need be proved. All that can be expected in such cases is the testimony of a number of men of age and experience who speak to the usage. It is within the memory of the majority of such witnesses there have been no instances to contradict the usage set up, it may be presumed to be sufficiently ancient to be recognised and given effect to as a rule of law. The question of succession should be governed by the customary law of parties as there was no legislative enactment in the State regulating

succession among Syrian Christians. If no custom having the force of law is shown to exist, the Court has to decide according to "justice, equity and good conscience"[46].

In A.S No. 182 of 1039 Travancore High Court comprising of late Mr. Sadasivan Pillai and three other judges held the following order of succession to the property of an intestate 1. Sons, 2. Daughters, 3. Brothers and their children, 4. Sisters and their children[47].

In *Narayanan* v *Anna*[48], Dewan C. Venkobachariar, C.J and Mr. Justice hunt held that among the Romo Syrians, the presumption was in favour of division, i.e., the onus of proving no-division was on those who asserted it. The claims of widow to the assets of her deceased son was preferred to those of her deceased husband's brother. The Court followed the decision in *Kunchandi geevqriathu* v. *Kunchandi Alia*[49] in which it was held that among the Syrian Christians, the claims of the mother of the last owner to his assets, should be preferred to those of his divided grand - uncle. The ruling in *Mathu* v *Pyli*[50] was then referred to with approval. That was a case in which the competition lay between the mother and her step- son, and the decision of the Court was that the mother is the preferential heir of the son, in the event of the latter dying issueless.

The Court held that according to the usage and law of the Church of Rome (since parties are Romo - Syrians), if a man dies intestate without issue, and if his Father is dead, but Mother is living, and he has neither brother nor sister nor child of any brother or sister, the property

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[46] *Avuseppu Rosa* v. *Avuseppu Anna*, 27 TLR 220. See also 12 TLR 124,17 TLR 94, 19 TLR 105, 22 TLR 192, 23 TLR 84, where the mothers' right to succeed to her deceased son's property was upheld.
[47] Reported in the Travancore Gazette of 29th Margali 1043
[48] 19 TLR 105
[49] 17 TLR 94
[50] 12 TLR 124

shall belong to the mother, (as per Sections 34 and 39 of ISA, 1865). Relying however on the decisions of the law Courts, it is inferred that mother is the sole heir of her deceased childless son in the absence of father, brothers or sisters or lineal descendants of such brothers or sisters.

It has been held by the Travancore High Court that "a variation of the principle (that the mother is the sole heir of her sons in the absence of any lineal descendants of such sons) would be contrary to the general law established by the decisions above cited and can only be supported by overwhelming the evidence of a special custom to the contrary"[51].

As the early Syrian Christians, as their descendants in modern times, lived in the midst of the followers of the *Marumakkathayam* law and Hindu laws, and must be considerably influenced by their laws and customs. According to the rules of *Marumakkathayam* law, a widow was not entitled to succeed to the properties of her husband. According to the early Hindu law also, Hindu women were excluded from inheritance. It was only at a later stage of Hindu law that the right of widows and other female heirs to inherit was recognised by lawgivers (*Sarvadhikari's* Tagore Law Lectures on the Principles of Hindu Law of Inheritance). This principle was transmitted to the Syrian Christians as a legitimate rule of inheritance to their posterity[52].

So the principles enunciated in the several decisions referred to established beyond doubt that the provisions of Section 39 of the Indian Succession Act, 1865[53] embodies the correct principles of law governing

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[51] 23 TLR 84,90

[52] *Avuseppu Rosa* v. *Avuseppu Anna*, 27 TLR 220, 235

[53] If the interstate's father is dead, but the mother is living and there is neither brother nor sister, nor child of any brother or sister of the intestate living, the property shall belong to the mother.

the principles of all creeds entitling the mother to succeed to the property of her intestate son in the absence of his lineal descendants or father.

II. Disputes Regarding Inheritance of Christian women in the Erstwhile State of Cochin up to 1921

The Committee on Christian Succession in Cochin has revealed in its report[54] that the real cause of the strong sentiment against inheritance by daughters was that their fore-fathers thought of society in terms of families, not individuals, and tradition stereotyped the attitude towards women which that formula set. It was because of that so many of the witnesses cried 'woe' and declared that the 'tarawad' was doomed if daughters were allowed to inherit.[55]

The prevalent disposition in those days was to preserve the corpus of man's wealth for his male descendants. The extent of the daughter's portion turned on consideration which couldn't be collected under any general rule. In most families there was a standard set by 'mamool' for her dowry. Since the dowry given to a woman bore no direct ratio to her father's wealth, the poor man's daughter got a relatively larger share of her father's property than the rich man's. [56]

The Chief Court of Cochin has laid down the law through its various decisions that in the absence of proof of a specific custom, the provisions of the Indian Succession Act should be followed as rules of equality, justice and good conscience.[57] But on certain instance, the same

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[54] The Report of the Cochin Christian Succession Bill Committee, 1096 M.E (1920 A.D)
[55] *Ibid* p. iii
[56] *Ibid*, p.10, para.27
[57] See *Eliswa* v *Namia*, 19 CLR 101; *Ramaswami* v. *Chacku*, 20 CLR 101; *Narasinga Mallen* v. *Mariam*, 10 CLS 319' *Mathamma* v *Pyli*, 26CLR 54; See also *Martha* v. *Mathai*, 34 CLR 533

court has also held that the law on that point was uncertain and that a major part of the community did not consider female members as shares in their fathers property.[58]

The widow's right to inheritance was also recognized by the Court.[59] In A.S No. 132/54, a case relating to catholic Syrian, Messers. Subramonia Pillay and Locke JJ held that a widow was entitled to one third of her husband's property when the intestate has left a son as well. The court also held in A.S No. 59/55 that the widow was entitled to 1/3rd and the daughters took the remaining 2/3rd against the intestate's brothers and the deceased brother's son. In A.S. No. 92/83, a contrary view was taken by the same court holding that the widow was entitled only to maintenance, but this rule was specifically confined to the case of Jacobite Syrian of Kunnamkulam. But the view of Mr. T.S. Narayana Iyer, C.J, regarding that decision was that "As regards the decision in A.S. No. 92/83, this is only one instance in which the custom has been recognized and I do not think that we can take the general custom to be made out from such an instance, more especially when the specific evidence adduced to prove it is very unsatisfactory"[60].

The nature of the disputes indicates indicate that no uniform custom or usage was followed throughout the state regarding the inheritance of female heirs. Hence the need for a legislation was incessantly raised by the community as a whole as well as by the courts in its various decisions on succession disputes regarding female heirs.

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[58] *Suthia* v. *Pappu*, 27 Cochin 196; *Accha* v. *Mariam*, 28 Cochin 353; *Chakku Philippose* v. *Mariam*, 11 Cohin 360.
[59] *Mariam* v. *Josephina* 6 CLR 319
[60] The Report of the Cochin Christian Succession Bill Committee 1920 p. 11, para 28.

CHAPTER III

INHERITANCE BETWEEN THE PERIOD 1916-1986

During the period 1916-1986, intestate succession among Christians in the three regions of the Kerala State were governed by three enactments namely:-

1) The Christian Succession Act, 1092 (Travancore Act II of 1092) in the Travancore area;
2) The Cochin Christian Succession Act (VI of 1097) in the Cochin Area;
3) The Indian Succession Act 1925 (Central Act39 of 1925) Part V in the Malabar area:

The innumerable litigations regarding intestate succession which arose before the Law- Courts during the above mentioned period indicated the necessity for a more adequate legislation. The demand raised was either for a uniform law (or unilateral law) applicable to Christians of Kerala, as a whole, belonging to all the three regions - Travancore, Cochin and Malabar areas, or for a reform in the provisions of the existing legislations ensuring gender -equality.

The disputes mainly arose in regard to the disparity in the provisions dealing with the inheritance rights of a male heir and a female heir, and also due to the different provisions as regards the people residing in the three areas and belonging to different denominations within the community, under the three Acts.

An overview of the cases which came up before the Courts of Travancore, Cochin, Madras, Travancore-Cochin and Kerala High Courts

during the aforesaid period indicated that the main causes for the disputes relating to Intestate Succession were that -

1) the succession of Christians in the three regions were governed by three different enactments.
2) Even among the Christians of any of those regions, their separate legislations could not be applied uniformly to all of them in that particular region.

For instance, the provisions of the Travancore Act could not be applied to those Indian Christians who followed the *Marumakkathayam* system of inheritance. They were specifically excluded vide Section 3 of the Travancore Act.

The Cochin Act was not applicable to the members of the European, Anglo Indian and Parangi communities and to the Tamil Christians of Chittur Taluk (Palghat District), who followed the Hindu Law vide Section 2(2) of the Cochin Act.

3) Disparity existed in the provisions of the Travancore and Cochin Succession Act relating to the inheritance rights of male and female heirs of the intestate. Those provisions were not applicable to certain classes of Christians.

In the Travancore area, under the Travancore Act, if a person dies intestate leaving sons and daughters, the daughters will have a claim only for *Streedhanam* which was limited to one-fourth of the value of the share of a son, or Rs. 5,000 which ever is less.[61]

[61] Section 28 of the Travancore Christian Succession Act, 1916

In the Cochin area, under the Cochin Act, the daughter was also a sharer but entitled only to one-third of the share of a son's, but she was excluded by the other male heirs, if she had been given *Streedhanam*.[62]

In the Malabar area, under the Indian Succession Act, a son and a daughter were treated alike in the matter of inheritance.

4) Limited interests of certain female heirs under the Travancore Act were not applied to certain classes.

Section 24 (widow or mother had only a life interest terminable at death or re-marriage over any immovable property to which she may become entitled), Section 28 (limiting the interest of a daughter to *Streedhanam* alone) and Section 29 (female heirs or descendants of the deceased female heirs to take only in the absence of male heirs in the respective groups or of the lineal descendants of such male heirs who may have pre-deceased the intestate) of the Travancore Act, are not applicable to certain classes of the Roman Catholic Christians of the Latin Rite and also to certain Protestant Christians living in Karunagappally, Quilon, Chirayinkizhu, Trivandrum, Neyyattinkara and other taluks, according to the customary usage among whom the male and female heirs of an intestate shared equally in the property of the intestate.[63] Dispute arose with respect to the interpretation of 'and other taluks' (wherein some instances it was held by the Courts that it includes all taluks and not the taluks specifically mentioned along) as well as the extant of proving the 'customary usage' among whom the male and female heirs shared equally.

[62] Section 20 (b) of the Cochin Christian Succession Act, 1921.
[63] section 30 of the Travancore Christian Succession Act, 1916.

5) The difference in the nature and definition of *Streedhanam* under the Travancore and Cochin Acts.

Under the Travancore Act, *Streedhanam* means and includes any money or ornaments, or in lieu of money or ornaments, any property, moveable or immovable, given or promised to be given to a female or, on her behalf, to her husband or to his parent or guardian by her father or mother[64], or after the death of either or both of them, by any one who claims under such father or mother, in satisfaction of her claim against the estate of the father or mother'. The maximum amount which a daughter can claim as *Streedhanam* was Rs. 5,000/- which limit was fixed 70 years ago (before 1986). This *Streedhanam* has no reference at all to marriage.

Under the Cochin Act, *Streedhanam* means any property given to a women, or in trust for her to her husband, his parent or guardian, in connection with her marriage, and in fulfillment of a term of the marriage treaty in that behalf.[65] Disputes arose with respect to the nature *Streedhanam* as to whether it is a money claim or a claim for share.

6) The difference as regards the devolution of property and the nature of interest each sharer takes under the three Acts.

Under the Travancore Act, daughters were not sharers, but have only a right to claim 'Streedhanam'[66]. Under the Cochin Act, the daughter was also a sharer, but her share was limited to one third of that of a son[67]. She was excluded from inheritance, if she had been paid *Streedhanam* Under the Indian Succession Act, 1925 (ISA) the sons as well as the daughters were sharers and were treated alike without any discrimination.

[64] Ibid Section 7
[65] Section 3 of the Cochin Christian Succession Act 1921
[66] Section 28 of the Travancore Christian Succession Act 1916

Under the Travancore Act, where the mother or the wife of the intestate is a heir and there are other heirs also, she gets only a limited interest over her share in immovable property, terminable on her death or re-marriage[68], while under the Cochin Act, and under the ISA, she gets an absolute right.

When a person dies intestate leaving as heirs only grand children, under the Travancore and Cochin Acts, the devolution is on 'per stripes' basis, while under the ISA the devolution is on 'per capita' basis.[69]

Disputes arose with respect to the rights of a female heir and the grand children through the sons, and between the grand children through daughters and those through sons in the matter of preference.

With respect to the facts mentioned above, the disputes which arose before the law Courts shall be analysed, with respect to 1. the rights of daughter and 2. widows.

1. Rights of daughters

Concept of *Streedhanam*:

Among the Syrians, the daughter got *Streedhanam* in lieu of her share in her father's property.

In *Mathai Kunjamrna* v. *Geevargeese Kochu kurian*[70], the Court held that the daughter gets *Streedhanam* in lieu of her share in her father's

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[67] Section 20(b) of the Cochin Christian Succession Act 1921

[68] Section 24 of Travancore Christian Succession Act, 1916

[69] On 'per stripes' basis, the grand children would divide among themselves in equal shares only what their parents would have got if she or he were alive. On'percapita' basis, the entire property of the intestate would be divided equally among his or her grand children

[70] 1984KLT 128

property, and it is a substitute for her share of the patrimony. It followed the decision in *Mary* v. *Cherchi & others*[71], in which the following questions were discussed:

1 Is a Christian daughter, still a Cindrella as regards her patrimony?
2. Are not the provisions of the Christian Succession Act violative of Article 14 of the Indian Constitution to the extent the daughters are given a disadvantageous deal.
3. Whether *Streedhanam* a money claim and not a share in the estate?

The case was an appeal, a continuation of an attempt of a Christian girl of the Syrian community to get back from her husband and her father-in-law what was given by her father by way of *Streedhanam* more than fifteen years back taking 'passaram' paid to the church as a record.

The facts of the case were that: the bridegroom's people, in accordance with the custom of the community met in the house of the bride on 18-1-1968. Persons present on the occasion included the priest of the parish and a lecturer in a college examined as plaintiffs witnesses, the trustee and accountant respectively of the St. Mary's Church who too were examined as plaintiffs witnesses and a member of the bridegroom's party examined as defendants witnesses. The *Streedhanam* amount though fixed as Rs. 8001/-, an amount of Rs. 5001/- was given by the bride's father to the defendants (bridegroom and his father). Passaram, the due of the Church in connection with the marriage was paid on 10-2-1968 evidenced by document.

[71] 1980 KLT 353

The query raised was how justice could be met to a party entitled to the return of money paid 15 years back, by counteracting the high inflationary trend?

After one year of marriage and begetting a child, the girl was sent to her paternal house where she delivered a boy on 25-2-1969 and with a sickly father was left uncared for, and there after with myriad financial and other problems.

The demand for *Streedhanam* was first made by the girl on 10-3-1970 and a suit was filed. The trial Court upheld her claim and decreed the suit (based on payment of Passaram at the rate of 5% (Rs. 254). The trial Court observed: "The custom prevalent in the Christian community to demand and pay dowry is well known, and the provisions contained in the Travancore Christian Succession Act as well as the enactments in the erstwhile Cochin State gave statutory recognition and ample safeguard to the community". The lower appellate Court misread the statement of the trustee that "Passaram had to be paid to the Church irrespective of the actual payment of the *Streedhanam* (The normal practice was to pay to the Church, Passaram dues at the fixed percentage on the *Streedhanam* paid. An exceptional instance or out of ordinary possibility of payment of Passaram to Church without payment of *Streedhanam* cannot destroy the plain effect of Church records).

Appreciating the legal background of the concept of *Streedhanam*, the judgement of the lower appellate Court was set aside and that of trial Court restored. But the Cochin Christian Committee viewed that on the question of *Streedhanam*, the passaram (literally a tenth) levied by the church on the occasion of a marriage is not an unering indication of the

amount of actual *streedhanam* paid or promised, nor does it even prove that any *Streedhanam* was at all paid or promised.[72]

The Kerala High Court has held that under sections 22 and 23 of the Cochin Christian Succession Act, when a daughter is married the levy of passaram by the church is not proof of payment of *Streedhanam*. All that the church records showed was that the passaram was levied on a notional *Streedhanam*. Section 23 of the Act has laid down that not withstanding the levy of passaram by the church on the occasion of a marriage, it is a question of act whether any *Streedhanam* was given or contracted to be given for the marriage. There must be independent proof that *Streedhanam* was given or at least that *Streedhanam* was contracted to be given for the marriage. [73]

Regarding the character of *Streedhanam*, it was held in *Eleesa* v. *Aeliya17*[74] *and* followed in *Leones* v *Lilly*[75], that it is only a money claim and can only enforce a charge upon the property. But it is barred by limitation beyond the period of 12 years.

In *Thomas* v *Sarahkutty*[76], a suit by the wife for the *Streedhanam* amount paid to her husband and father in law was barred. But it was overruled in *Mary* v *Cherchi*[77] wherin it was held that such a suit for *Streedhanam* was maintainable and not hit by the Dowry Prohibition Act, 1961. This view was confirmed in *Mathai Kunjamma* v *Geevargeese Kochukurian*[78] where it was held that the daughter get *Streedhanam* in lieu of her share in her father's property. It is a substitute for her share of

[72] The Report of the Cochin Christian Committee, 1 920, para 30.
[73] 1957 KLT SN. 19
[74] 1947 TLR 285
[75] 1966 KLT636
[76] 1975 KLT386
[77] 1980 KLT 353
[78] 1984 KLT 128

the patrimony. A suit by the wife for the *Streedhanam* amount paid is maintainable and not hit by the Dowry Prohibition Act.

Stridhanam and Dowry under the Dowry Prohibition Act

Christians of all class levels share with Hindus their notions about the desirability of conferring property on daughters at the time of marriage. It includes mainly of jewels and household goods which remain in the women's possession. Secondly it includes cash payments to be paid by the parents of prospective bride to the parents of their intended husbands. The custom of handing over bride groom price violates and differs from the classical notion of dowry (Stridhanam) in two main senses. For one thing, it cannot have the connotation of a daughter's portion of the household estate, since it is alienated from her, and in so far as this is the case, actually diminishes her rights to and share in the family property. For another, the bridgroom's parents, to whom it passes, generally to not hold it from the benefit of the young couple, but utilize it to acquire husbands for their own daughters, or regard it as recompense for resources already expended on the latter.

A dowry system in which property rights are vested in women is incompatible with a groom price system such as that found in much of India, in which the property is transferred to the husband and his kin whether as female property or as groom price, dowry's role is the same wherever it is found. So the question of who has what right in, or control over, the property should be considered separately, as it is more likely to be linked up with the organization of kinship and marriage and to the right to property rather than to the type and function of the transaction as a marriage payment.

2. Equal Share Concept

Latin Catholics and Protestants

In *Kesava Pillai Kunju Pillai Kurup* v. *Sebastian Eluprasya Fernandez*[79], the Court considered the customary usage among Latin Catholics. A number of decisions had been followed in this case which shall be dealt with below.

The Christian Succession Act, 1092 of Travancore has abrogated all customs regarding intestate succession among Christians except what has been permitted under the Act. Section.30 of the Act has recognised a custom under which the male and female heirs share equally the properties of the intestate which held:

> Sections 24,28 and 29 shall not be applicable to certain classes of the Roman Catholic Christians of the Latin Rite and also to certain Protestant Christians living in Karunagapally, Quilon, Chirayankizhu, Trivandrum, Neyyattinkara and other Taluks, according to the customary usage among whom the male and female heirs of an intestate share equally in the property of the intestate.

But in order to obtain the immunity provided under Section 30, it is not enough if the plaintiff proves that she is a Roman Catholic Christian of the Latin Rite, she must also establish that she belongs to a class of Roman Catholic Christians of the Latin Rite among whom the usage specified does obtain. The words “and other Taluks” occurring in the Section show that the enumeration is not exhaustive, and that residence in

[79] 1963 KLT 737

any one of the Taluks of Travancore will suffice. The parties and the Court misdirected themselves as to the nature of the enquiry under Section 30 perhaps in view of the earlier decided cases on the subject.

In the decision of a Full Bench of Travancore High Court in *Antony Sebastian Fernandez* v. *Vareethu Lassar Femandez*, and *8 others*[80] the question was whether among the Latin Catholic Christians of certain Taluks of Central Travancore, married daughters who had been given *Streedhanam* on marriage are entitled to share in the properties of their deceased parents.

The case was decided with respect to the provisions of Section 30 read with proviso to Section 33 of the Act[81] which referred to the legislative history of the Act and the Christian Committee report which in turn referred to an old custom among certain Sections of the Christian community according to which the female heirs shared equally with the male heirs, the properties of an intestate Christian.

It is evident from Section 30 of the CSA (Act II of 1092) that the custom applicable to certain classes of the R. C Christian of the Latin Rite and also to certain Protestant Christians has been preserved only to the extent of retaining the usage among them for the male and female heirs to share equally in the property of the intestate and not to the extent of excluding female heirs from inheritance merely because *Streedhanam* has been received. It is just this latter exclusion that is contemplated by Section 28 of the Act and Section 30 has expressly made Section 28 not applicable to the classes mentioned in that Section. The same idea is

[80] 30 TLJ 470

[81] Section 33 of Travancore Christian Succession Act provided that subject to the provisions of section 28 (female heirs who were paid *Streedhanam* to be ordinarily left out of consideration) any *Streedhanam* paid to a female shall be taken into account in estimating her share, but not as to compel her to refund anything already received as *Streedhanam*.

almost expressly suggested by the proviso to Section 33, which explains the consequences of the payment of *Streedhanam* on the right to claim shares by the females.

The reason is that the parties are governed by Section 30 of the TCSA, according to which the customary usage in vogue at the time when the Act 87 came into force has been expressly preserved; the customary usage itself is incorporated in the Section, which is that the male and female heirs of an intestate share equally in the property of the intestate

In Anthony Vasthiyan_Decruz v. Palppu Krishnan[82], Kumara Pilli, J held that S.30 of the TCSA II of 1092 expressly recognises the customary usage among certain classes of the R.C Christians of the Latin Rite in the taluks of *Karunagappally, Kollam, Chirayinkizhu, Thiruvananthapuram and Neyyattinkara* of male and female heirs sharing equally the properties of the intestate and directs that nothing in the provisions of the TCSA relating to intestate succession should be deemed to affect the said custom.

A Full Bench of the Travancore HC in *Kesava Pillai Kunju Pillai Kurup* v. *Sebastian Eluprasya Fernandez*[83] after considering the decision in XXX TLJ 470, stated " it is evident from the above that the two customs arose for consideration in that case. The plaintiff set up a custom of sons and daughters taking equal shares in their parent's properties. That was admitted by the defendants. So, no question of its proof or validity came up for decision in the case.

The defendants set up a custom of exclusion from inheritance of females who had received *Streedhanam* at marriage. That was held to have been abrogated by the Act and therefore of no legal force. It has not

[82] 1956 KLT 289
[83] 1963 KLT 737,740

been decided that all the Latin Catholic Christians or Protestant Christians even of the Taluks mentioned therein do follow the custom specified in Section 30. So it follows that in order to obtain the immunity provided under Section 30 from the operation of Sections 24,28 and 29 to all Roman Catholic Christians of the Latin Rite it is not enough if the plaintiff proves that she is a Roman Catholic Christian of the Latin Rite, but must also establish that she belongs to a class of Roman Catholic Christians of the Latin Rite according to the customary usage among whom the male and female heirs of an intestate share equally in the property of the intestate.[84]

In *Vasthiyan Alexander* v *Maria Isabella Fernandez*[85], Mr.Justice M.S Menon & Mr. Justice T.K Joseph held that among the RC Christian of Latin rite, under Section 30 of CSA (Act II of 1092) daughters who were paid *Streedhanam* at the time of their marriage were still entitled to a share equally with sons in their father's properties.[86]

The Full Bench observed that the legislature had specifically expressed in Section 30 that what was stated therein was the real customary law in vogue among the Central Travancore L. C. Therefore, apart from the fact that the TCSA overrides the previous decisions in *Sahayam Kaspass Murayas v. Theresia Gomez*[87] *and Kochuvava John* v. *Nazrani Vasthian Elizabeth*[88] which were at best only a doubtful expression of the customary law on this point amongst the Latin Christian of central Travancore, there is the additional circumstance that the enactment incorporates 'the actual' and 'long established' customary law

[84] *Ibid*
[85] 1960 KLT 1134
[86] See also 30 TLJ 470
[87] 6 TLR 26
[88] 13 TLR 215

that prevailed among the Central Travancore Latin Christian community. But the plaintiff was liable to pay 1/5 of the mortgage debt[89].

In *Anthony Barbara and others v Agasthian*[90] the decision in *Sebastian Fernandez* v. *Lasser Fernandez* (30TLJ40) contriving that Section 30 of TCSA embodies the customary law that male and female children share equally in the property of their intestate parent, was not accepted. [Two appeals arose out of 2 suits. One suit was for establishing rights *interse* between sons and daughter. The 2nd suit was for excluding the married daughters from sharing the property of the mother (who had already received *Streedhanam*)].

In the present case, Justice Velupillai explained that what the Sebastian case (30TLJ40) provided is that Sections 24, 28 and 29 of the aforesaid Act by which female heirs are excluded would have no application to the Roman Catholics of the Latin Rite among whom there was a custom by which male and female heirs share equally. The custom has to be alleged and proved in order to attract Section 30.

The married daughters contended that they too were entitled to the property of their mother as per custom among the Latin Christians under Section 30, TCSA. The Court, in the instant case rejected this contention on the ground that no such custom was pleaded. The plea in the written statement does not constitute an averment of custom.

The contesting respondents held that the property belonged as *Streedhanam* to the mother and devolved on her death on the son and the unmarried daughter.

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[89] Para.305 of the Travancore Christian Committee stated that among RC of the Latin rite the daughters share equally with the sons in their father's property.
[90] 1962KLT 641

The other appeal was for establishing the rights inter-se and daughters to succeed to their parents who were R.Cs of the Latin Rite. According to the sons, the property belonged to their father absolutely and was assigned to them by title deeds.

The Court (trial and appellate) found concurrently that property belonged to the mother. The higher appellate Court also held that custom has to be alleged and proved.

The latest position held by the Court regarding the applicability of section 30 was that (1) Section 30 is an incorporation of the actual customary law that existed and (2) matters required to be proved to claim protection.

The meaning of the interpretation is that Section 30 itself embodies the customary law that among the R.Cs of Latin Rite male and female children share equally in their intestate parent's property. The plaintiff needed to prove that she/he belonged to the particular community which followed the custom whereby male and female children would equally share the intestate property of their parents.

A custom will have the force of law if proved that a person is one who belong to that community who follow a customary usage whereby male and female children would inherit equally their intestate parent.

A Division Bench of the High Court in *P. J. Leones* v. *Lilly*[91] stated: "It has been held in *Kunjupillai Kurup* v. *Sebastian Elaprasya Fernandez* (1963KLT737) that in order to attract Section 30, it is not

[91] 1966KLT 636s

enough if the plaintiff proves that she is a Roman Catholic Christian of the Latin Rite, but it must further be proved that she belongs to a class of RC Christian of the Latin Rite, among whom the usage obtains. The parties and the Courts misdirected themselves as to the nature of the enquiry under Section 30, perhaps in view of earlier decided cases on the subject. We feel that the question as to the custom under Section 30 has to be treated and decided by the lower Court, on evidence to be adduced by the parties[92].

So the latest position as to the nature of inheritance of Latin Christians as discussed by the Full Bench of the Kerala High Court in *Daisy* v. *Annamma George*[93], and in *Thankamma Esther v Kunjamma* [94] is that it is not enough if the parties prove that they belong to the particular community but should also prove that the community to which they belong follows the customary law of inheritance recognised and preserved by Section 30. (This is different from saying that the plaintiffs have to prove the custom itself- the question as to whether the plaintiffs belong to a community that follows the customary mode of inheritance recognised by Section 30 of the Act, is not considered by the Courts below). The custom need not be alleged and proved, but the only proof required is that the particular person belongs to the community among whom the usage is followed and obtained.

But now since the TCSA has been repealed with the decision of the Supreme Court in *Mary Roy* v. *State of Kerala*,[95] the *Indian Succession Act* 1925 become applicable to Indian Christian Community of Kerala, irrespective of the denominations.

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[92] *Id* at 637
[93] 1982KLT 196
[94] 1986 KLTSN 19
[95] 1986 KLT 508

Protestant Christians

The issue was ultimately discussed in *Daisy* v. *Annamma George*[96] in an appeal against the decision of the lower Courts. Both the Courts below (trial Court and lower appellate Court) have held that the custom of inheritance set up by the plaintiffs (sisters) is not proved in the case and sisters not being legal heirs of the deceased brother under the Act are not entitled to any share in the suit- property. But under Section 30 of the Act, Sections 24, 28 and 29 of the Act37 which excludes female heirs from succession to the properties of an intestate Christian shall not be applicable to certain classes of the Roman Catholic Christians of the Latin Rite and also to certain Protestant Christians living in *Karunagappally, Quilon, Chirayankizhu, Trivandrum, Neyyattinkara* and other Taluks among whom the male and female heirs of and intestate share equally in the property of the intestate.

The only question raised before the second appellate Court was as to whether it was necessary that a custom of inheritance by the sisters of a *Protestant Christian* of Trivandrum city should be proved before they can claim inheritance along with their brothers. Proof of custom requires evidences of immemorial, continuous and undisputed usage of the custom pleaded. Whether such proof of custom is required in a case relating to inheritance to the estate of a Protestant Christian of Trivandrum city governed by the TCSA will have to be decided with respect to Section 30 of the Act.

Section 30 of the Act recognises and preserves the customary mode of inheritance among the male and female heirs of an intestate Christian belonging to the classes enumerated under the Section. It is not enough if the plaintiffs prove that they belong to the *Protestant Christian*

community but should also prove that the community to which they belong follows the customary law of inheritance recognised and preserved by the Section. The two things to be proved are: (1) the party belonged to that community (2) the community followed the customary law of inheritance recognised under Section 30 This is different from saying that the plaintiffs have to prove the custom itself. The rigour of proving the custom is dispensed with on account of its recognition and preservation by Section 30 of the Act. The Courts below are wrong in dismissing the suit, on the ground that the plaintiffs have failed to prove the custom of inheritance by female heirs of an Indian Christian. The question as to whether the plaintiffs belong to a community that follows the customary mode of inheritance recognised by Section 30 of the Act was not considered by the Courts below. (The custom that male and female shared equally need not be proved - it is already given statutory recognition under Section 30). So the judgement and decree of Courts below were set aside and remanded to the trial Court for fresh disposal in accordance with law and in the light of the observation and directions contained in this judgement on a reading of Section 30, it would appear that a custom of inheritance by male and female heirs among the classes of Christians mentioned in the Section appeared to have been recognised by the statute itself.[97]

Christian Converts

In Chinnaswamy Koundan v. *Anthonyswami*[98], the Kerala High Court held that the *Tamil Vaniya Christians* of Chittur Taluk is governed by rules of Hindu law in matters of inheritance and succession. (*Hindu Mitakshara Law*) The community left Hinduism for Christianity many years ago and the personal law applicable to them is of paramount importance in the case of property rights. In the matter of property rights

[96] 1982KLT196
[97] 1982KLT196,197.
[98] 1960K LT 848

of inheritance and succession alone they are governed by *the Hindu Mithakshara Law*. The son by birth is entitled to a share in the ancestral property and that even during the life time of his father the son has every right to demand his share in the ancestral property. In the community, the property of a man becomes on his death the ancestral properties in the hands of the sons and thereafter it continues forever to be the family ancestral property and therein the son has by his birth a right to a share even during the life time of the father. The custom is a very ancient one and is adopted as the law from time immemorial and governs the community. The above is the customary law of *the Tamil Vaniya Christian* accepted and followed by them from ancient times.

The Court held "The profession of Christianity releases the convert from the trammels of the Hindu law, but it does not of necessity involve any change of the rights or relations of the convert in matters with which Christianity has no concern, such as the rights and interests in, and his powers, over property. By what law he should be governed as to his personal interest and rights over property such as inheritance or succession, may be by his course of conduct after his conversion which shows by what law he intended to be governed on these matters. He may have done so either by attaching himself to a class which as to these matters has adopted and acted upon some particular law or by having himself observed some family usage or custom. Nothing can surely be more just than that the rights and interests in his property and his power over it, should be governed by the law which he has adopted, or the rules which he has observed. It is common ground that no statutory enactment affects the controversy"[99].

The report of the Cochin Christian Committee stated that " as to the *Tamil Christian* of the Chittur Taluk, the evidence shows that they

[99] *Id* at 851

follow the Hindu law of succession and inheritance" and recommended that they should be excluded from the proposed legislation. The recommendation was accepted in Section 2(2) of the CCSA, (VI of 1097) providing that "nothing therein contained shall be deemed to affect succession to the property of the Tamil Christians of Chittur Taluk who follow the Hindu law"[100].

The Tamil Vaniya Christian community is governed by the rules of Hindu law in matters of inheritance and succession. The fact that they are governed by the Hindu law in those matters, however does not mean that every branch of law is applicable to them. The word "succession" in relation to the Indian Succession Act embraces both succession by inheritance and succession by survivorship. Therefore the rule of Hindu law by which a son gets by birth to a right in ancestral property is not opposed to Christian faith. The only question for decision is whether the evidence on record is sufficient to come to the conclusion that the rule has been adopted by the Vaniya Christians of the Chittur Taluk as part of their law on their conversion from Hinduism. It is clear from the above case that according to the law applicable to the community the son acquires a right by birth in ancestral property.

The Chief Court of Cochin held that the community was governed by the rules of Hindu law in matters of inheritance and succession.[101]

In *Lourde Mary Amma* v. *Souriyar & Others*[102] (following *Anthonyswamy* v. *M. R. Chinnaswamy Koundan and others* (AIR 1970 SC 223) the Court held that the expression "any other law for the time

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[100] The Cochin Christian Committee Report 1921, p 9

[101] 4 SD 485 (Cochin)
[102] 1987(1) KLT288

being in force" of the ISA, 1925 (S.29(l)) includes the Hindu Mitakshara law. The profession of Christianity releases the converts from the trammels of Hindu law, but does not necessarily affect matters to rights in property with which Christianity has no concern. Therefore, Hindu Mitakshara law govern matters of succession in the case of Tamil Vaniya Christian of Chittur Taluk. There is no warrant to hold that statutory law has replaced the customary law of succession viz, the Hindu Mitakshara law.

3. RIGHT OF A WIDOW

Nature of widow's interest in her husband's property.

Under the Travancore Succession Act, 1092 the right of a widow was only that of a life - estate holder.[103] But the widow is also a sharer along with other sharers in respect of properties left behind by her husband.

The fact that the right of a widow on her husband's property is a "life interest terminable at death or remarriage" did not in any way curtail the right already given to her namely, of her claiming a share and having a separate allotment of the properties and enjoying them.[104] No doubt her rights in the property terminate at death or remarriage. From the death of the intestate, the Christian widow became a tenant in - common along with others and became entitled to the share specified in the Act. An allotment of share cannot be done unless law recognizes a full right. The Indian Succession (amendment) Act, 2001 has now made the right of the

[103] Section 15 of the Travancore Christian Succession Act, 1916

[104] *Joseph* v *Jeseph Annamma,*1979 KLT 322; *George* v *Narayana Filial* 1960 KLT 433

widow absolute by deleting the provision restricting her right to enjoyment under that act.

The various issues regarding the widow's estate had been discussed in a series of decisions by the courts. Often doubts existed with respect to the nature of a limited estate and thereby disputes arose frequently.

The position of a widow under the Christian succession Act was entirely different from the position of a widow under the Hindu law. So far as a Hindu widow is concerned, the property becomes vested in her, and for the time being she becomes the full owner thereof although her interest was characterised as a limited estate. But a Christian widow inheriting under Christian succession Act got only a life interest over one half of the property left behind by the deceased which right terminated on her death or remarriage. She had no right to alienate the property as such although it was opened to her to transfer her life interest.[105] But all the rights in the alienee or transferee based on the assignments made by the widow came to an end with her death or remarriage.

Where a Christian governed by the Travancore Succession Act died leaving behind his widow and the minor son as the only heirs, the son had a vested interest in the property even during the life time of his mother, subject to her life interest terminable on her death or remarriage. If the mother has made any alienation, it would have to be set aside by the son within 3 years of his attaining majority under Article 44 of the Limitation Act. Any suit instituted by him for recovery of possession of

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[105] *Neelakanta Pillai* v *Abraham*,1963 KLT 271

the property after the expiry of the said period would be barred by limitation.[106]

Under the Hindu Law a reversionary cannot be said to have a vested right in the property taken by the widow of the last owner. It is true that it is the heir of the last owner who succeeds to the estate on the death of the widow. But it is the person who will be the heir of the last owner at the time of the death of the widow who succeeds the estate. He need not be the person who was the heir of the last owner at the time of his death. For this reason under the Hindu law a person who is an heir of the last owner at the time of his death cannot be said to have a vested interest during the lifetime of the widow. It has been held in various cases that the right of a reversionary heir expectant on the death of a Hindu widow is *spes* successions and is not transferable property.[107]

But under the Christian law, if the heir to the last full owner to the widow died before the termination of her estate, the right devolved on his heirs. The widow's interest was described as a limited interest, limited estate or life estate. The right of a person who succeeded to an estate subjected to a life interest created in favour of another was not a mere spes succession is. It was a vested interest which could be attached and sold in execution of a decree.

The Christian widow had a saleable interest in the property which could be attached and sold in execution of any decree that was obtained against her and all those benefits ensured the benefits of the person

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[106] *Sosa Antony D'costa Nicolas D'costa.* v *Emakala Perumal Nadar Sivasubramania Nadar* AIR 1956 TC 107

[107] *Ramaswamy Pillai Velayudhan Pillai* v *Arumanayagam Seemon.*AIR 1955 TC 20

entitled till the death or remarriage of the Christian widow. The logical conclusion reached by the courts was that in the absence of any restriction, the Christian widow was the absolute owner of her share and of the income accruing from her share, during her life time and till death or remarriage. She could deal with the property as she pleased till any of the contingencies happened. It was opened to her to make transfer assignments or alienation, but all the rights of the alienee or transferee ends with her death or remarriage.[108]

On the determination of the limited estate of the widow or the mother, the property over which she had such limited interest should be distributed among the heirs of the original estate, as if the holder of the life estate had not survived the intestate.

The duration of widow's estate up to death or remarriage was a reference made only to the quantum of the estate in point of time which had nothing to do with the question of her enjoyment of the property personally.[109]

Under Travancore Christian Succession Act[110], what the widow got only was a life interest. She had under no circumstances been given the right to transfer the property, meaning thereby fee simple interest in it.[111]

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[108] *Sqbastian George* v *Velayudhan Narayana Pillai* 1960 KLT 463; See also *Velayudhan Pillai* v *Daniel* ILR 1954 TC 442 and *Nicolas D'costa* v *Sivasubramania Nadar* 1956 KLT 177

[109] I*bid*

[110] Section 24

[111] Cheshire, *Modern Real Property* (8th Edition), p,35.

Being life estate, the provisions of the Land Reforms Act entitling to own or hold or to posses under a mortgage lands in the aggregate, in excess of the ceiling area, did not apply to a Christian widow.[112]

Till the decision in Mary Roy it was always uniformly accepted by the courts in Kerala that the Indian Succession Act did not apply to Christians of the erstwhile Travancore and Cochin State. This position was accepted for about 35 years (1951 to 1986). It was evidently on this basis that daughters did not challenge it. Mary Roy's case has now laid down that the provisions of Indian Succession Act would apply uniformly to all Christians in Kerala.

[112] *Thomas Mariamma* v *Taluk Land Board*, 1976 KLT 306

CHAPTER – IV

LEGISLATIONS DURING THE PERIOD 1916 TO 1986

The Christians in Kerala forming 19.32 % of the State's population (as per Census of India, 1991) were governed by three different statutes even after the integration of the erstwhile State of Travancore, Cochin and the Malabar area to form the State of Kerala. It was through the Supreme Court decision in 1986 that the ISA, 1925 was uniformly made applicable to the Christians of Kerala as a whole in respect of intestate succession. Legislations which were in vogue in Kerala, prior to 1986 were:

1. The Travancore Christian Succession Act (Regulation II of 1092) applicable to Christians of erstwhile Travancore State (TCSA).
2. The Cochin Christian Succession Act (Regulation VI of 1097) applicable to Christians of erstwhile Cochin State (CCSA).
3. The Indian Succession Act, 1925 (Chapter II of Part V) applicable to Christians of Malabar area of the State of Kerala (ISA).

Even in those days, though the Indian Succession Act, 1925 was not applicable to Christians in the Travancore - Cochin areas, its provisions still governed the succession to the property of a person, in those areas, marrying under the *Special Marriage Act*, 1954 (Section 21 of the *Special Marriage Act*, 1954).

Giving due respect to the customs of the Community Section 3 of the Travancore Act exempt members of the Indian Christian Community following Marumakkathayam law and Section 2(2) of the Cochin Act exempt members of the European, Anglo Indian and Parangi Community

and Tamil Christians of Chittur Taluk who follow the Hindu law, from the operation of the respective Acts.

As a general rule, the Christians followed the agnatic line of descent. The property descended from father to son, son to grandson and grandson to great grandson and so on. Every lineal descendant excluded his own descendants from inheritance. For instance if A has 3 sons, B, C & D and B having 2 sons E & F, C having two sons G & H, and D having one son I, and if A dies intestate, his property is divided only among B, C and D each getting 1 /3 share of it. The grandsons are excluded from inheritance by the surviving sons.

As in the case of a Hindu *Mitakshara* family or *Marumakkathayam* law, a person does not get any right in his or her ancestor's property by birth and the concept of a coparcenary is something unknown to Christian law. A man is said to die intestate in respect of all his property of which he has not made a testamentary disposition which is capable of taking effect and the Christian law of succession applies to that property only. Because a person is free to dispose of his property at his wish during his life time or even after his death through a will. There is also no distinction between a person's self-acquired property and ancestral property. A female also has the same right in respect of her property.

From 1916 to 1949, the Travancore and Cochin Christian Succession laws prevailed without any dispute as to the sanctity of those laws. In 1949, the Travancore-Cochin State integration took place. On 1950 January 26, the Constitution came into existence and Fundamental Rights was included under Part III of the Constitution. Under Article 14 of Part III, equality before law was ensured. Article 13 held that all laws in force in the territory of India immediately before the commencement of

the Constitution, in so far as they are inconsistent with the provisions of Part III, shall, to the extent of such inconsistency, be void. The 'law' under this Article (under 13 (3) (a)) included any ordinance, bye-law, rule, regulation, notification, custom or usage having in the territory the force of law. So automatically, the Travancore and Cochin Succession laws would have become repealed even since the date the Constitution came into existence. But still these laws were held to govern succession of Indian Christian in those areas by a number of judicial decisions.

The Travancore - Cochin State was also included in the Schedule of Part B States under the Constitution. But no one challenged this aspect before any Court. Further the *Part B States (Laws) Act*, 1951 extended the Indian Succession Act, to all Part B States since its inception from 1/4/1951. Under the *State Reorganization Act*, 1956, Malabar area was joined with the then Travancore - Cochin State to form the State of Kerala on 1/11/1956. Even after the formation of Kerala State, the Travancore Christians were continued to be governed by the Travancore Christian Succession Act, 1916 and the Cochin Christians, by the Cochin Christian Succession Act, 1921. The Malabar Christians were governed by the Indian Succession Act, 1925. This was obviously for the reason that the legislature did not take any step to formulate and pass a unified law governing the Christians of the State of Kerala as a whole.

Though these Acts seem to be progressive pieces of legislation, in practice they are highly discriminatory towards women. Significant differences exist in their provisions as regards men and women. Those provisions can be dealt in detail.

1. Sons and Daughters

Under the Travancore Christian Succession Act, 1092, the sons excluded daughters and a daughter becomes entitled to share in the

father's or mother's property only if there were neither sons nor lineal descendants of a son. If there are sons or his lineal descendants, the daughter gets only *Streedhanam* which is but not equivalent to share of the son in his parental property. Under Section 28 of the TCSA, 1092, *Streedhanam* due to a daughter shall be fixed at one-fourth the value of the share of a son or Rs. 5,000/ whichever is less. Under Section 20 of the Cochin Christian Succession Act, 1097, a daughter is entitled to a share which shall be fixed at one - third the value of the share of a son.

Under the Indian Succession Act, 1925, the property of the intestate has to be divided equally among his children ie, the males gaining no advantage and females any disadvantage because of their sex[113].

The Concept of *Streedhanam* Under the Travancore Christian Succession Act, 1092 and of the Cochin Christian Succession Act, 1097.

According to Section 28 of the TCSA, 1092, after allotting a share equal to that of the son to the widow, sons and the lineal descendants of pre-deceased sons shall be entitled to have the whole of the residue divided equally among themselves, subject to the claims of the daughter for *Streedhanam*.

The *Streedhanam* amount due to a daughter shall be fixed at one-fourth the value of the share of a son, or Rs. 5,000 whichever is less.[114]

Provided that any female heir of an intestate to whom *Streedhanam* was paid or promised by the intestate, or in the intestate's life-time either by such

[113] Section 37 of The Indian Succession Act, 1925
[114] *Ibid* Section 28 para. 2

intestate's wife or husband, or after the death of such wife or husband by her or his heirs, shall not be entitled to have any further claim in the property of the intestate when any of her brothers (whether of the full blood or half blood by the same father) or the lineal descendants of any such deceased brother shall survive the intestate.[115]

Any *Streedhanam* promised, but not paid by the intestate, shall be a charge upon his property. The provision to Section 33 of the TCSA says that, subject to the provisions of para 3 of Section 28, any *Streedhanam* paid to a female shall be taken into account in estimating her share, but not so as to compel her to refund anything already received as *Streedhanam*.

Under Section 21 (a) of the Cochin Christian Succession Act, 1097, for the purpose of determining the share of a woman or her lineal descendants, as the case may be, at the intestacy of her father, mother, paternal grandfather or paternal grandmother, when a *Streedhanam* had been given or contracted to be given, to or in trust for her by any of her said ascendants whomsoever, the amount of her *Streedhanam* or its value at the date of the intestacy, if it was not money shall be brought into hotchpot.

The Sub-section provided that nothing shall be construed by the provisions to make a woman or her lineal descendants liable to refund any portion of her *Streedhanam* or its value. It further provided that the *Streedhanam* given to a woman shall not be brought into consideration more than once, in any subsequent intestacy after share having been given or become due as provided in the Section. Sub-Section (b) of Section 21 provides that the *Streedhanam* which an intestate contracted to give shall be a charge on his estate.

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[115] *Ibid* para 3

Section 22 of the Act excludes a woman who had received *Streedhanam* or any lineal descendant of hers as such from inheriting a distributive share in the property of her father, mother, paternal grandfather or paternal grandmother dying intestate if (a) a brother of the said woman, being a lineal descendant of the intestate, or (2) the lineal descendant of such a brother, survive the intestate.

The Indian Succession Act is more liberal to female descendants by providing equal shares to both male and female children of the intestate in his or her property. Section 37 of the Act provides that where the intestate has left children the property shall be equally divided among all his children. There is no question of *Streedhanam* in such a case.

Widow's Share

Under the Travancore Succession Act the intestate's property first devolves on his wife (or her husband) and is thereafter divided among his / her kindred in the order according to the rules prescribed in the Act.[116]

Under Section 16 of the Act, the widow co-exist with the deceased's children and is entitled to a share equal to that of a son. It is provided by the Section that if there are only daughter or the descendants of any deceased daughter or daughters, the widow's share shall be equal to that of a daughter.

Section 17 of the Act states that a widow co-existing with the intestate's father or mother or paternal grandfather or any lineal descendants of his father or such grandfather, she shall be allotted one-half of the intestate's property. If the intestate has left none of the kindred referred to in Sections 16 and 17, his widow shall be entitled to the whole of his property as per Section 18.

[116] Section 15 of the Travancore Christian Succession Act, 1916

Under Section 24 of the Act, over any immovable property to which a widow becomes entitled under Section 16 or 17, she will have only a life-interest. On the termination of such life-interest, the property shall be distributed among the heirs of the original intestate as if the holder of the life - estate had not survived him.

The Cochin Christian Succession Act, 1097 provides that the property of the intestate devolves upon the wife or husband or upon those who are of the kindred of the deceased under the Act.[117]

Where the widow co-exists with the son or lineal descendant of a son, a share equal to two-third of that of a son shall belong to her.[118]

Under Section 12 where the intestate has left a widow, and also lineal descendants, but no son or his lineal descendant, a share equal to that of a daughter shall belong to her.

If the intestate has left no lineal descendants but had left his father or mother, or paternal grandfather or any lineal descendants of his father or paternal grandfather, one half of his property shall belong to his widow.[119]

If the intestate has left none of the kindred referred to in Sections 12 and 13, the whole of his property shall belong to his widow.[120]

But under The Indian Succession Act, 1925 where the intestate has left a widow, if he has also left lineal descendants, one-third of the property shall

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[117] Section 10 of the Cochin Christian Succession Act, 1921

[118] *Ibid* Section 11

[119] *Ibid* Section 13.

[120] *Ibid* Section 14.

belong to the widow and the remaining two-third shall go to the lineal descendants according to the rules prescribed in the Act.[121]

The sub-Section (b) of Section 33provides that if the intestate has left no lineal descendant but only persons who are of kindred to him, one-half of his property shall belong to his widow, and the other half shall to go those who are of kindred to him, in order and according to the rules presented there under in the Act

Sub-clause (c) of Sections 33 provides that if there is none left, as kindred to the intestate, the whole of the property shall belong to the widow. The devolution of the property upon the widow is made compulsory by deleting the explanation to Section 32 of the Act which says that a widow is not entitled to any property if by a valid contract made before her marriage, she has been excluded from her distributive share of her husband's estate. It is the Indian Succession (Amendment) Act, 2001 passed by the Loksabha on 3/5/2002 that has deleted this explanation enabling a Christian widow to inherit a share in her husband's property even when there is a contract to the contrary.

Mother's Share

Sections 20 to 23 of the TCSA, 1092 specifies the devolution of intestate's property on his mother. Section 20 states that the mother shall not be entitled to any share, if the intestate has left any lineal descendant or his father.

When the intestate has left neither lineal descendants of father, a share equal to that of a brother of the intestate shall be allotted to her.[122]

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[121] *Ibid* Section 33
[122] *Ibid* Section 21

It is provided by the above Section that where the lineal descendants of the intestate's father consists only of daughter or the lineal descendants of deceased daughter or daughters, the mother's share shall be equal to that of a daughter.

Sections 23 provides that if the mother co-exists with the intestate's paternal grandfather or his lineal descendant, one-half of the intestate's property shall be allotted to the mother.

When the intestate has left none of the kindred mentioned above, his entire estate, or if he has left a widow, the residue after deducting her share, shall belong to the mother.[123]

Section 24 of the Act states that over any immovable property to which the mother becomes entitled under Sections 21 and 22, she will have only a limited interest terminable at death or re-marriage.

On the determination of the limited estate of the mother, the property over which she had such limited intestate shall be distributed among the heirs of the original intestate, as if the holder of life-estate had not survived the intestate.

. The Cochin Christian Succession Regulation, 1097 states that where the intestate has left no lineal descendants, after deducting the widows share, if he has left a widow, the property devolves on the father.[124]

If the father is dead, but has brothers (of the full blood or of the same father) or lineal descendants of any pre-deceased brother, the mother shall take a share equal to that of such a brother.[125]

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[123] *Ibid* Section 23

[124] Sections 24 & 25 of the Cochin Christian Succession Act 1921

[125] *Ibid* Section 26

But if there are no brothers or lineal descendants of any pre-deceased brother or brothers, the mother shall share equally with that of a sister or the lineal descendants of any pre-deceased sister of the intestate.[126]

When the intestate's mother is living and he has left none of the kindred mentioned above, but his paternal grand father or the lineal descendants of his paternal grandfather is or are living, one-half of his property shall belong to his mother. In all other cases entire property shall belong to the mother.[127]

Under the Indian Succession Act, 1925 the property devolves on the mother only if there are no lineal descendants and the father of the intestate is dead. If there are no lineal descendents and the father of the intestate is living, he shall succeed to the property.[128]

Under Section 43, if the intestate's father is dead, but only his mother, brothers or sisters and there is no child of any pre-deceased brother or sister surviving, the mother and each living brother or sister shall succeed to the property in equal shares.

Where intestate's father is dead and his mother, brother or sister, and children of any deceased brother or sister living, then the mother and each living brother and sister, and the living child or children of each deceased brother or sister, shall be entitled to the property in equal shares. Such children (if more than one) take in equally only the shares which their respective parents would have taken if living at the time of intestate's death.[129]

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[126] *Ibid* Section 27.
[127] .*Ibid* Section 28.

[128] Section 42 of the Indian Succession Act, 1925

[129] *Ibid* Section 44.

Where the intestate's father is dead, and his mother and children of any deceased brother or sister living, the mother and child or children of each deceased brother or sister shall be entitled to equal shares. Such children (if more than one) taking in equal shares, only the shares which their respective parents would have taken, if alive.[130]

Section 46 states that if the intestate's father is dead, but the intestate's mother is living and there is neither brother, no sister, nor child of any brother or sister of the intestate surviving, the property shall belong to the mother.

Grand Children

Where the intestate has left no child, but grand child or grand children and no more remote - descendants through a deceased grand child, the property shall belong to his surviving grand child if there is one, or shall be equally divided among all his surviving grand children under Section 38 of the Indian Succession Act, 1925.

To illustrate if A has 3 children, and no more, John, Mary & Henry. They all die before the father. John leaving two children, Mary three and Henry four. Afterwards A die intestate, leaving those nine grandchildren and no descendant of any deceased grandchild. Each of his grand children will have one-ninth of A's property. But if Henry had died, leaving no child, then the whole is equally divided between the intestate's five grandchildren, the children of John and Mary.

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[130] *Ibid*, Section 45.

Under the Indian Succession Act, there is per-capita division among the grand children if there are no children.

But under the TCSA, 1092, the lineal descendants of a deceased heir are allowed to represent such heir. That is, under Section 26 of the Act, if a son, or daughter, or a brother or a sister or a nephew or a niece, or an uncle or aunt, or a first cousin of an intestate, who if alive would have been a heir, shall have died in his life-time the lineal descendant or descendant of such heir, shall solely or jointly take such share which they would have taken if living at the intestate's death and in such manner if such deceased heir had died immediately after the intestate's death (per stripes).

Under Section 20 (c) of the Cochin Christian Succession Act, the share of the lineal descendants of the deceased heirs (Children) of the intestate shall be divided among them per stripes and shall bear the same ratio as if such children of the intestate had survived the intestate.

To illustrate A has 3 children, John, Jacob and Joanna. John has 2 sons, Jacob has 2 daughters and Joanna has 3 children, Mathew, Mary and Martha, of whom Mathew has 2 children, Thomas and Teresa. Jacob; Joanna and Mathew predeceased A. the property of A shall be divided as follows in accordance with the Cochin Christian Succession Act.

John shall get 3/7 of the property. Since John is alive, his children are excluded from inheriting the property of A. Jacob also would have got 3/7 of the property of A, if he were alive. Since he pre-deceased A, leaving 2 daughters, his share shall be equally divided among his two daughters, each getting 3/14 share of the whole property.

Joanna, the daughter of A would have got only 1/7 of the property if she were alive. But since she is dead, her son, Mathew would have got 3 parts (ie., 3/5 of 1/7), Mary shall get 1/5 of 1/7 and Martha shall also get 1/5 of 1/7. Since Mathews also pre-deceased A, his son Thomas shall get $^{3}/_{4}$ of (3/5 of 1/7) and Thresia shall get one part of Mathew's share [ie.,1/4(3/5 of 1/7)].

According to the Indian Succession Act, the property shall be equally divided among the surviving children, grand children, and great grand children if any of the deceased children or grand children. Accordingly, John, 2 daughters of Jacob, Mary, Martha, Thomas and Thresia each shall get 1/7 of the property of the deceased A.

Provisions for the Different Denominations

Under Section 3 of the TCSA, 1092 it is held that the provisions of the Regulation shall not apply to intestate succession of such members of the Indian Christian Community who follow the *Marumakkavazhi* system of inheritance nor shall they apply to any intestacy occurring before the date on which this Regulation came into force.

Under Sections 4 of the Act government was given the power to exempt from the operation of the whole or any part of this Regulation any individual or the members of any race, sect or tribe or to extend the operation of the whole or any part of this Regulation to any individual or the members of any sect, race or tribe.

As regards the *Marumakkathayam* Christians (a small body of Christians in the Taluk of Neyyattinkara), the Christian community says, "So far as those people are concerned there is no vagueness or

indefiniteness about their law of inheritance, for the principle of *Marumakkathayam* law are well known. Unless the principle of individual partition is established and each member enabled to obtain his or her share of the family property, it is neither possible nor desirable to impose any law of succession upon them except perhaps in the case of individuals, who after abandoning all claims to the Taravad property desire to be governed by any other system of law"[131].

The power under Section 4(1) was intended to be taken by the Government to make the proposed law applicable to persons other than Indian Christians. For e.g., there was a class of people in Central Travancore who followed a religion called '*Yuyomayam'*. These people were Christians -mostly Syrians - before they adopted this religion. They denied to be Christians after their conversion. Their usages in the matter of inheritance seemed to be those of the Syrians. There were also a few Unitarians in the Central Travancore who also had no separate law of their own. The Jewish community at Parur also did not have any settled law of their own. In British India, all these communities besides Europeans Eurasians and Indian Christians were governed by the Indian Succession Act. The Central Travancore Latin Christians too followed customs very nearly the same as that of the Indian Succession Act.

Section 24 (widow and mother taking only life-interest terminable at death or remarriage), Section 28 (female heirs excluded by male heirs and entitled to *Streedhanam* only) and Section 29 (certain other female heirs such as sister, paternal grand mother, sisters of the half blood, maternal grand mothers etc., takes only in the absence of male heirs in the respective groups) shall not be applicable to certain classes of the Roman catholic Christians of the Latin rite and also to certain Protestant

[131] The Report of the Travancore Christian Committee 1911 para 279

Christians living in Karunagappally, Quilon, Chirayankizhu, Trivandrum, Neyyattinkara and other Taluks according to the customary usage among whom the male and female heirs of an intestate share equally in the property of the intestate. So far as those Christians are concerned, nothing in the above Sections shall be deemed to affect the said custom obtaining among them.

Under Section 2 (1) of the CCSA Regulation (VI of 1097), nothing in the Act shall be deemed to affect succession to the property of

1. members of the European, Anglo Indian and Parangi Communities.
2. The Tamil Christians of Chittur taluk who follow the Hindu law
3. Any intestacy occurring before the date on which this regulation came in to force.

The IS A, 1925 applies to Indian Christians in general and there is no distinction as to its application to the various denominations. But Section 3 of the ISA, 1925 gives power to the State Government to exempt any race, sect or tribe in the State from the operation of the Act by notification in the Official Gazette either retrospectively from 16 March 1865 or respectively from the operation of Sections 5 to 49, 58 to 191, 212, 213, 215 to 369, to whom it considers it inexpedient or impossible to apply such provisions or any of them mentioned in the order.

There is no distinction as Catholics and non-Catholics for applying the provisions of the Travancore and Cochin Christian Succession Acts But the Central Travancore Latin Christians and Protestants are excluded from its application because a long established usage having the force of

law is obtained among them by enabling the male and female members to share equally in the intestate property.

Application of Section 29 (2) **of the Indian Succession Act to the Travancore and Cochin Succession Acts**

Ever since the Constitution of India came into being in 1950, any existing law inconsistent with the fundamental rights under Part III was held to be void according to Article 13. So the Succession Laws which were derogatory of the right to equality under Article 14, and discriminatory against women being violative of Article 15 would have automatically been repealed since 26-1-1950. The Travancore Cochin was included in the Schedule of Part B States under the Constitution. But no one seemed to have approached any Court for a declaration as to the repeal of the discriminatory laws relating to succession which prevailed in the Travancore and Cochin areas of Travancore -Cochin State with the inception of the Constitution.

On 14-1-1951, the Part B States (Laws) Act, 1951[132] came into existence whereby the Indian Succession Act was introduced in the Part B States including Travancore - Cochin.

But even after the Part B States (Laws) Act been introduced, the judgment pronounced by the full bench of the Travancore Cochin High Court held that the succession relating to Christians of Travancore would be governed as if it were before the introduction of the Part B States (Laws) Act (Kurian Augusthy case (1957).[133]

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[132] Intention of the Act was to extend the Central Acts and ordinances included in the Schedule of the Act to Part B States as early as possible. ISA was included in the Schedule of Acts under the Part B States (Laws) Act, and was therefore extended in to Travancore - Cochin State with effect from 1-4-1951.

[133] AIR 1957, Trav - Cochin 1.

Very soon after this judgement, the Travancore- Cochin State was merged with Malabar forming the State of Kerala. The southern region of Travancore Cochin State (Nagarcoil & Kanyakumari districts) merged with the State of Madras.

The Madras High Court, in many of the disputes that followed relating to intestate succession of Christians belonging to these areas that originally formed part of Travancore- Cochin, held that the Indian Succession Act, 1925 was the law applicable in such cases since the introduction of the Part B States (Laws) Act But four years later, the Madras High Court overruled its earlier decision and held that since the two Acts viz., the Christian Succession Act, 1092 and the Indian Succession Act, 1925 deal with intestate succession, the TCSA,1092 is a law corresponding to ISA, 1925.

The inconsistency as to the exact law applicable in the case of intestate succession among Christians of Kerala continued till Mary Roy case in 1986.

So the important decisions which discussed the question as to whether the Christian Succession Acts of Travancore and Cochin were saved by Section 29 (2) of the ISA shall be dealt with in detail.[134]

The first case which discussed this issue after the merger of Travancore and Cochin to form the State of Travancore-Cochin in 1949, was *Kurien Augusty v. Devassy Aley*, which was a second appeal from A.

[134] Section 29 (2) says that except as expressly provided under the Act or by any law for the time being in force, the provisions of ISA relating to intestate succession (Chapter II, Part V) shall constitute the law of India in all cases of intestacy.

S. No. 1377 of 1955 from the judgment of the District Court, Kottayam in O.S No. 98 of l953.[135]

In this case the Full Bench of the Travancore-Cochin High Court on 1-8-1956 represented by Jeseph Vithayathil and Varadaraja lyengar, JJ held that even after the introduction of the Part B States (Laws) Act 1951, the law of succession relating to the Christians of Travancore was the Travancore Succession Act, 1092. The Travancore Act had not been repealed by reason of the introduction of the Indian Succession Act, 1925 into the Travancore -Cochin State by Section 6 of the Part B States (Laws) Act, 1951.

The Court justified the fact on two grounds viz; (1) Section 6 of the Part B States (Laws) Act, provided that, if immediately before the appointed day, there is in force in any Part B States, any law corresponding to any of the Acts or ordinances then extended to that State, that law, save as otherwise expressly provided in the Act stands repealed. (2) Section 29 (2) of the Indian Succession Act was not intended to interfere with the personal law of communities which have settled laws of their own as regards intestate succession. Even if Travancore formed part of the former British India, the Christians of the State were governed by TCSA.

The Court relied on *Nabujan* v *Paushimoni*, 54 Calcutta WN 2 DR14 (A), where the Calcutta High Court held that the customary laws of the Garos community would fall within the expression any other law for the time being in force in sub - Section (2) of Section 29 of ISA, 1925, and if the requisites of a valid custom having the force of law were established, the Garos would be governed by that custom and not by Part

[135] AIR 1957 Trav. – Cochin 1

V of ISA regarding intestate succession. Similar view was held in *Premchand* v *Lilawati*.[136]

Another way approached by the Court was that Indian Succession Act, must me deemed to have adopted by reference, all laws in force relating to intestate succession including the Travancore Christian Succession Act. The Court held that the Travancore Act could in no sense be regarded as the law corresponding to Part V of the Indian Succession Act. If the TCSA cannot be regarded as a law corresponding to ISA it is clear that it is not repealed by Section 6 of that Act.

Following the reorganisation of Kerala State the High Court of Kerala held in Mary and Others v Aleyamma and Others[137] that "any other laws for the time being in force" under Section 29 (2) of ISA 1925 includes the TCSA 1092 and therefore a dispute to which the latter Act applied was saved from the operation of the Indian Succession Act by virtue of Section 29 (2).

Regarding the extent of applicability of TCSA the Court held that it does not apply to property situated outside Travancore area wherever the owner of the property might have been at the time of his death. Succession to such property would be governed by the law of India irrespective of the fact that the properties belonged to a person of the Travancore Christian Community.

Contemporaneously the Madras High Court held in *Soloman* v *Muthaiah*[138] that since the passing of the Part B States (Laws) Act, the Indian Succession Act uniformly applied to all Christians. Thereby, the

[136] AIR 1956 HP 17
[137] 1973 KLT 728
[138] 1974 (1) MLJ 53

son and daughter became equally entitled to succeed to the property of their father.

The above decision was overruled by the same Court in *Chelliah* v *Lalitha Bai*[139] by holding that since the 2 Acts, Travancore Christian Succession Act 1092 and the Indian Succession Act 1925 dealt with intestate succession, the Travancore Act is law corresponding to the Indian Succession Act and hence saved by Section 29(2) of the latter Act.

The decision in Kurian Augusty case (1957) was followed by the Kerala High Court as the law of the land till the Mary Roy decision in 1986, which held that the Travancore Christian Succession Act stands repealed retrospectively with effect from 1 /4/1951.

Same view was followed in V.M. *Mathew v Eliswa*[140] wherein the Court held that the Cochin Christian Succession Act too stands repealed by the Part B States (Laws) Act with effect from 1/4/1951. The learned Judges specifically ruled that thereafter all the sons and daughters are entitled to equal shares in the estate of the deceased.

In *Kunjippalu* v *Kochumariam*[141] Justice Ramakrishnan held that the Christian succession Act, (Cochin) stands repealed by the Part B States (Laws) Act and the parties are governed by the Indian Succession Act

A general view regarding the application of the provisions of the Indian Succession Act was reiterated by the Court in *Annakkutty* v

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[139] AIR 1978 Madras 66

[140] 1988 (1)KLT310

[141] 1990 (1)KLT29

Xavier[142] wherein Justice Manoharan held that the Christian Succession Act stands repealed with the inception of the Part B States (Laws) Act.

The Cochin Christian Succession Act, 1097 was not applicable with respect to property situated out of Cochin even if the deceased was living within the State.

The Court referred to its decision in Mary v *Aliyamma*[143]. Under Section 4 of the CCS A the succession to immovable property situated in Cochin alone would be regulated by the Act. Therefore it was not held applicable to properties situated outside Cochin. The plaint Schedule property was situated in Fort Cochin, which was outside the former Cochin State. The Part B States (Laws) Act came into effect from 1/4/1951. The law applicable would be that law when the succession opened (which was in 1950 in this case). Though in 1950 the CCSA was in force, Section 4 of the Act limited its application to properties situated in Cochin. So the law governing succession in such a case was held to be the Indian Succession Act 1925.

The decision in Mary Roy was referred to in *Abraham Mathew* v *Chacko Mary*[144]. In this case Justice Balakrishnan held that on coming into force of the Part B States (Laws) Act 1951, the TCSA, 1092 stood repealed and thereafter the Succession of Travancore Christian was governed by Chapter 2 Part V of ISA 1925. But the Court upheld the claim of the sister for payment of Rs. 5000 by her brother being instructed by her father to pay it who didn't keep word and hence the suit. His contention was that since the suit was filed under Section 28 of the

[142] 1991 (1)KLT342

[143] 1973 KLT 728 in which the question that arose for discussion was with respect to property situated in Malabar. But the Court took a general stand that Section 29 (2) of ISA saved the Travancore Christian Succession Act, which cannot be treated as a correct one

[144] 1988 (2) KLT 869

Travancore Act, which stood repealed retrospectively, the decree passed was a nullity.

The Court substantiated its view by holding that under Section 37 of Indian Succession Act 1925 the children inherit equally. A female child was entitled to get a share equally to that of a male child where as under TCSA, the female gets only a lesser right. So what ever the present decree holder got under the decree is less than what is due to her, the decree was passed a the time when she had a pre-existing right over the family property and hence not a nullity.

THE LAW COMMISSION REPORTS ON CHRISTIAN SUCCESSION IN KERALA

The law commission reports which are significant in the context of Christian Succession rights are the Fourth Report by the Law Commission of Kerala on the Law of Intestate Succession Among the Christians in Kerala, 1968 and the 110th Report of the Law Commission of India on Indian Succession Act, 1925.

The Report on the Law of Intestate Succession Among Christians in Kerala. (Fourth Report), February, 1968.

The Law Commission of Kerala was a temporary body appointed to study some of the important legal issues during the period 1966-68. Sri. T. R. Balakrishna lyer was its chairman. It submitted four reports, three of them relating to the study of personal laws viz.

1 The First report on personal laws relating to Hindu *Marumakkathayis* submitted to the Government in December, 1966.

2 The second report on the personal laws of Hindus governed by the Kerala Namboodiri Act, and the *Mitakshara* law in May 1967.
3 The fourth report on the intestate succession among the Christians in Kerala in February, 1968.

This Report of the Law Commission was the study of the statutes regarding intestate succession in Kerala and arrived at the following conclusions with proper justifications for it. They were as follows:

1) That the law governing intestate succession should be uniform and should apply to all Christians without any exception. The reason put forward by the Commission were:

a) the continuance of different laws over different regions in the State, indefinitely, might not be consistent with the principles underlying Article 14 of the Constitution of India.
b) A uniform law of intestate succession applicable to all Christians in Kerala might be a step towards the establishment of a -Uniform Civil Code envisaged by the Constitution
c) Above all, the Kerala Government itself appeared to have realised the need for a uniform law relating to intestate succession among Christians and in 1958 introduced 'The Christian Succession Acts (Repeal) Bill, 1958' seeking to make the Indian Succession Act, 1925 govern succession among all Christians in Kerala, though lapsed.
d) The vast majority of the persons who gave evidence and who replied to the questionnaires were also in favour of a uniform law of succession governing all Christians in Kerala. None following the *Marumakkavazhi* system came forward to give evidence. The Tamil Christians of Chittur Taluk who gave evidence also favoured a uniform law.

2) That the new law might be modeled on the Central Act incorporating necessary changes. The justifications for this view were that:

a) Such a course of action would facilitate to a considerable extent the enactment of a uniform Civil Code for India since that Act was applicable to the majority of Indians.

b) The Travancore and Cochin Acts treated female heirs differently from male heirs. This did not seem to be consistent with the principle underlying Article 15 of the Constitution of India which says that there shall be no discrimination on the ground of sex alone,

c) The High Court had suggested the passing of an enactment on the lines of the Succession Act in force in British India with such alterations as may be considered necessary to give effect to well established usages which were recognised by the community. It had also on several occasions followed the provisions of the Succession Act in deciding cases of inheritance where the local usage was proved to be vague and unsettled (TCCR, para 298)

d) A small number of cultured and respectable members of the Syrian community, who owned property in Travancore and British India, a number of South Travancore Christians including some who had property in Travancore and Tinnevelly advocated the adoption of the Indian Succession Act as a whole. Those who vehemently opposed its introduction were mainly persons who had no practical experience of the working of that Act.

4) The changes that were to be made to the Central Act were proposed as follows:

a. the widow, co-existing with lineal descendants might be entitled to a share equal to that of a child on the per stripes basis and

b. the father and mother be treated alike and grouped together, each being entitled to an equal share simultaneously and neither excluding the other
c. the property taken by a female on intestacy would be her absolute property.

5) It was proposed to have a provision for pre-emption as in Section 22 of the Indian Succession Act since alienation to strangers might cause some inconvenience to the other heirs whether they be by a male heir or by a female heir.
6) It was proposed that a murderer should be disqualified. However, such disqualification should not extent to the issue of the disqualified heir.
7) That a provision should be incorporated in the new Act similar to Section 49 of the Indian Succession Act, 1925. Thereby, whatever had been paid, given or settled to a child, or for its advancement by the intestate during his life time should not be brought into the hotchpot at the time of distribution of the intestate's property, including *Streedhanam*.

It was suggested that a special provision need not be incorporated in the proposed Act to disinherit a heir by a record during the lifetime of the intestate. Because if a person is not inclined to give a daughter any share in the property left by him he should disinherit her by executing a will. There is no reason why he should be asked to disinherit her earlier at the time of marriage.

8) It was proposed not to provide for any limited interest to any heir in the new Act.
9) It was proposed to provide that in cases whether on payment or promise of payment of Streedhanam under the Travancore or Cochin Act prior to the coming into force of the new Act, a female would not be entitled to a share under section 28 and Section 22 of the

Travancore and Cochin Acts respectively. She would not be entitled to claim a share in the estate of the intestate who died after the new Act.

10) It was proposed to provide that the provisions of the new Act should not affect existing limited interest under the Travancore Act.

In the case of the properties that had already become vested in the reversioners, it was not possible to give absolute right to females who had only a limited interest at the commencement of the proposed Act

11) It was proposed to abolish the joint family system among the Tamil Christians by providing that on the coming into force of the proposed Act, all joint tenancies replaced by tenancies-in-common,. Each member would have a share as he would be entitled to on a partition among all the members on that date. As a corollary, the right by birth should also be abolished and the rule of pious obligation should cease to operate without the right of creditors, if any, already accrued, being affected.

The committee therefore recommended to have a new self-contained Bill modeled on the Central Act incorporating the necessary changes, the transitory provisions and provisions abolishing joint family among Tamil Christians.

In the light of the conclusions reached, the Commission made the following recommendations:-

1) uniform law of intestate succession among Christians in Kerala be enacted, on the lines of Part V of the Indian Succession Act, 1925 incorporating changes as regards the rights of the widow, and the father and mother as indicated in its conclusion and also the provisions as to the disqualification of a murderer, right of pre-emption,

retention of Section 49 of the Central Act, excluding special provisions as to disinheritance of a heir by record during the life time of the intestate and abolishing limited interest and

2) the joint family system among Tamil Christians of Chittur Taluk be abolished by replacing joint tenancies by tenancies-in- common, the shares the members would be entitled to, being what they would get if a partition would have taken place among them on that date.

But this report did not see light and was doomed for ever.

110th Report of Law Commission of India, 1985

The 110th Report on the Indian Succession Act, 1925 by the Law Commission of India with Justice K. K Mathew as chairman was submitted in January 1985.

The law of intestate succession under Part V of the Act was examined by the commission. It mainly focused on two points where there existed a conflict of judicial opinion regarding the Christian Succession Regulation in Kerala.

a)Whether, by virtue of Section 6 of the Part B states (Law) Act, 1950, the Travancore Christian Succession Regulation II of 1092 stood repealed with effect from 1st April, 1951, or whether that Regulation is saved by the words 'save as provided in …….any other law for the time being in force" which occur in Section 29 (2); and

b) Whether customary law of succession is saved by Section 29 (2)

The question on which a conflict of views has arisen is whether the Travancore -Christian Succession Regulation (2 of 1092) was a law

corresponding to the Indian[145] Succession Act, 1925 and if so, whether it stood repealed on the enactment of the Part B states (Laws) Act, 1950 with effect from 1-4-1951.

On this point, the Madras High Court and the Travancore- Cochin High Court expressed conflicting views. While the former held that the Travancore Christian Regulation was a law corresponding to the Indian Succession Act and did not fall within the preview of Section 29 (2)[146], the latter held that the Regulation 1092 was saved by Section 29 (2) of the Indian Succession Act, 1925 and was not repealed by the Part B States Laws Act, 1950, as it could not be considered a law 'corresponding' to the Indian Succession Act, 1925.[147]

The Law Commission also examined the fact as to which law would have governed Syrian Christians domiciled and having lands in those taluks transferred from Kerala to Tamil Nadu different from that of Syrian Christians domiciled and having lands in other taluks of Tamil Nadu. Similar was the position in the case of law which would be applied in areas that formed part of Travancore-Cochin State, which was a successor to the Princely States of Travancore and Cochin. The same uncertainty happened regarding the Cochin Succession Regulation also.

The Working Paper forwarded by the Catholic Bishops Conference of India (CBCI) also emphasized the need for abrogating the Travancore and Cochin Acts.[148]

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[145] Section 6 of the Part B States Laws Act provided that any existing law in a State, "corresponding" to the Central enactment, extended to the State, shall stand repealed. That Act was enacted to extend certain Central Acts to Part B States, and among the Central Acts extended was the Indian Succession Act, 1925.

[146] *Solomon* v *Muthiah*, 1974(1)MLJ, 53

[147] Kurien Augusty v Devassey_Aley, AIR 1957 T-C1

[148] Catholic Bishops Conference of India, letter dtd. 3-10-84

Another controversial point discussed by the commission was that whether the customary law of succession was saved by Section 29 (2) of the Indian Succession Act, 1925. Conflicting views were expressed on this aspect also. According to one view, the expression any other law for the time being in force' in Section 29 (2) covered customary law also.[149]

The commission suggested that there should not be any controversy on such issues since the very object of Section 29 (2) was to provide what should be the law of intestate succession for the person concerned. An amendment was therefore held required so that no controversy might arise.

The following recommendations were made by the commission in that regard.

a) the Travancore Christian Succession Regulation of 1092 should be repealed by an express provision. This course may be adopted, if as a matter of social policy, it was considered that the Indian Succession Act should apply to the persons governed by the Travancore Regulation.

If on the other hand, it is considered that as a matter of social policy, the provisions of the Travancore Christian Succession Regulation should govern succession to the persons concerned, then there should be inserted a provision in Section 29 of the Indian Succession Act to the effect that the Travancore Regulation would apply to Christians governed by that Regulation in respect of intestate succession: (1) in the State of Kerala,

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[149] *Nabujan* v. *Paushimoni,* 4 Cal W.N 12; D. R (Customary Law of Garos); *Premchand* v. *Lilawati,* AIR 1956 H. P. 17

and (2) the adjoining areas in the state of Tamil Nadu (in the district of Kanyakumari and Sencottah taluk)

b) Besides the above amendment, an explanation should be added to Section 29 (2) of the Indian Succession Act, to the effect that 'law' in this Section does not include custom.

c) What we have recommended in Sub-paragraph (a) above in relation to the Travancore Act applies with necessary adaptations, to the Cochin Christian Succession Act, also.

The Law Commission suggested that if the Indian Succession Act become applicable to the persons in question, it would be just and fair to consider and take into account the provisions made for daughters by their father whereby the consideration in which such a custom had its genesis would no longer subsist.

It was therefore recommended that if the Indian Succession Act, 1925 becomes applicable to the persons in question, suitable provision should be made to the effect that from the share to be distributed to a daughter on intestacy, the amount or value of the property so provided by the father during his life time should be deducted, provided that following conditions are fulfilled.

a) the making of such gift is evidenced in writing, whether or not the writing is stamped or registered; and

b) the amount of the gift or provision or its value on each individual occasion is not less than five hundred rupees.[150]

Regarding the rules in cases of intestates other than Parsis, generally, the commission made the following recommendations regarding widows.

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[150] 110th Report of the Law Commission of India 1985. para 8.12

1) In the case of an intestate leaving his widow, has no lineal descendants, but has kindred, the widow should get the whole of the property (Section 33)

2) Even where brothers and sisters of the intestate are alive, the father and the mother take the property. They share equally, and if only one of them survives he or she takes the whole. Sections 43-46 should be so amended.

Regarding the establishment of right to property of deceased by a widow, the commission recommended that Section 213 should be amended by providing that where probate has not been obtained, what is barred is only the passing of a decree, and not the institution of a suit. Section 213 should be so amended and consequential changes be made, wherever necessary, in other Sections of the Act.[151]

[151] *Ibid* para 34.18 & 18A

CHAPTER V

MARY ROY AND OTHERS VERSUS STATE OF KERALA & OTHERS - AN OVERVIEW

In Mary Roy, the limited question that was decided was:

1) Whether the Travancore Christian Succession Act 1092 or any part thereof survived the Part B states (Laws) Act 1951.
2) or is such intestate succession governed by the Indian Succession Act, 1925 and
3) if it continues to be governed by the Travancore Christian Succession Act, 1092, whether Sections 24, 28 and 29 of that Act are unconstitutional and void as being violative of Article 14 of the Constitution.

The Court did not go into the facts of any particular writ petition, but traced the history of the legislation in regard to intestate succession to the properties of the members of the Indian Christian Community (ICC) in the territory forming part of the erstwhile State of Travancore

Prior to July 1949 the State of Travancore - Cochin was a princely State and the laws in the force in the territories of that State in regard to intestate succession to the properties of members of the ICC was the TCSA. This Act was promulgated by His Highness the Maharajah of Travancore with a view in consolidating and amending the rules of law applicable to intestate succession among Indian Christian in Travancore. The statements of objects and reason for enactment of this Act provided that the usages of the various Sections of the Christian community do not agree in all respects. Separate legislation for the various Sections of

Christians is neither desirable nor practicable and is likely to lead to much litigation and trouble. It is therefore thought necessary to enact a common law for all the various Sections of Indian Christians".

Section 2 of the Act accordingly provided : " except as provided in this Act, or by any other law for the time being in force, the rules contained herein shall constitute the law of Travancore applicable to all cases of intestate succession among the Indian Christian community"

Section 16 to 19 which laid down the rules of law applicable to intestate succession among Indian Christians was held to be discriminatory against women by providing interalia that so far as succession to the immovable property of the intestate is concerned, a widow or mother becoming entitled under Sections 16, 17, 21 and 22 shall have only life-interest terminable at death or remarriage. Daughter shall not be entitled to succeed to the property of the intestate in the same share as the son but she will be entitled to 1/4 the value of the share of the son or Rs. 5000/- whichever is less. Even to this amount she will not be entitled on intestacy if *Streedhanam* was provided or promised to her by the intestate or in the lifetime of intestate either by his wife or husband or after the death of such wife or husband, by his or her heirs. On account of such discrimination these rules were held unconstitutional and void as being violative of Article 14.

The consequential effect of the extension of the ISA, 1925 to the former State of Travancore by virtue of Part B States (Law) Act, 1951.

The Part B State of Travancore Cochin was formed in 1949 by the merger of the former State of Cochin with the former State of Travancore. With a view to bring about uniformity in the application of legislation in

the whole of India including Part B States, the Parliament enacted the Part B States (Law) Act providing the extension to the Part B states, of certain Parliamentary statutes prevailing in rest of India. The Schedule to the Act which consisted of the Acts and ordinances so extended included the ISA, 1925. The Part B States (Laws) Act came into existence on 1 - 4 -1951.

It was provided in Section 3 of the Part B States Act, that the Acts and Ordinances specified in the Schedule shall be amended in the manner and extended to such limits as stated in the extent clause thereof. As per Section 6 of that Act, if immediately before the appointed day (ie. 1-4-1951), there was in force any law, corresponding to any such Acts or ordinances so extended, in force in the Part B States to which it is extended, that law shall, save as expressly provided in that Act, stood repealed.

The petitioner's contention was that the TCSA was a law corresponding to Chapter II, Part V of the IS A, 1925, which was admittedly in force in the Part B State of Travancore-Cochin immediately before the appointed day, ie., on 1-4-1951. Both these laws related to intestate succession. The Court relied on the decision of the Madras High Court in 1974 (1)MLJ 53 by J. Ismail (*Solomon* v. *Muthiah*) which held that the conclusion was irresistible that the TCSA, Regulation II of 1092 is a law corresponding to the provision contained in Part V of the ISA, 1925 so far as the Christians were concerned. The learned Judge took the view that TCSA, 1092 was wholly repealed by virtue of Section 6 of the Part B States (Laws) Act, 1951 and it could not be held to have been saved by Section 29 Sub-section (2) of the IS A, 1925 (But the basic fact to be considered is that when the ISA, 1925 was extended to Part B States of Travancore-Cochin, every part of that Act was so extended including Chapter II of Part V and the TCSA was a law corresponding to Chapter II

of Part V, since both dealt with the same subject matter, namely intestate succession among Indian Christians and covered the same field)

In *D.Cheliah* v. G. *Lalithabai*[152], the Division Bench of the Madras High Court rejected the conclusion reached by the very same Court's single bench in *Solomon* v. *Muthiah*, but accepted the position that the TCSA was a law corresponding to Part V of the ISA, 1925. And if that be so, it would be difficult to resist the conclusion that by section 6 of the Part B State's (Laws) Act 1951, the TCSA, 1092 stood repealed in its entirety. The Court also rejected the contention of the respondents that by Section 29 (2) of the ISA, 1925, it must be deemed to have adopted by reference all laws for the time being in force including the TCSA, 1092 relating to intestate succession. By reference, the legislative intention is to avoid the verbatim repetition of provisions of a particular statute by incorporating it in another statute by reference to the earlier statute. The opening words of Section 29 (2) indicates that it is only an excepting or qualifying provision and not a provision for incorporation by reference.

The Court was therefore of the view that on the coming in to force of Part B States (Laws) Act, 1951, the TCSA stood repealed and Chapter II of Part V of the ISA, 1925 became applicable and intestate succession to the property of members of the Indian Christian community in the territories of the erstwhile State of Travancore was thereafter governed by Chapter II of Part V of the ISA, 1925. On this view, it becomes unnecessary to consider whether the Sections 24, 28 and 29 of the TCSA, 1092 are unconstitutional and void. And therefore allowed the writ petition and declared that the intestate succession to the property of Indian

[152] AIR 1978 Mad 66

Christians in the territories of the former State of Travancore is governed by the provisions contained in Chapter II Part V of the ISA, 1925.

When Section 6 of the Part B States (Laws) Act, 1951[153] provided in clear and unequivocal terms that TCSA, 1092 which was the law in force in Part B State of Travancore-Cochin corresponding to Chapter II Part V of the ISA, 1925 shall stand repealed, it would be subversive of the legislative intent to hold that TCSA, did not stand repealed but was saved by Section 29 (2) of the ISA, 1925.[154]

So the impact of the decision was that the TCSA stands repealed with effect from the date of inception of the Part B States (Laws) Act, 1951. The TCSA was abrogated and repealed, being a law in force in the Part B States (Laws) Act corresponding to Chapter II Part V of the ISA, 1925 which was extended to that State and not being expressly saved by the Part B States (Laws) Act, 1951 stands repealed retrospectively with effect from 1-4-1951.

This is only a general judgement and has only decided the limited question as to what was the impact of the extension of the ISA, 1925 to all Part B States including the State of Travancore-Cochin with effect from 1 April 1951, which was the appointed date under the Part B States (Laws) Act, 1951, on the continuance of the TCSA, 1092 in the territories

[153] Repeals and savings: If immediately before the appointed day, there is in force, in any Part B States any law corresponding to any of the Acts or Ordinances now extended to that State, that law shall, save as otherwise expressly provided in the Act, stand repealed.

[154] Section 29 of ISA, 1925 - application of Part). This part shall not apply to any intestacy occurring before the first day of January, 1866, or to the property of any Hindu, Muhammedan, Buddist, Sikh or Jaina.(2)Save as expressly provided in subsection (1) or by any other law for the time being in force, the provisions of this part shall constitute the law of India in all cases of intestacy.

forming part of the erstwhile State of Travancore. Did the introduction of ISA, 1925 have the st effect of repealing TCSA, 1092 so that from and after 1 April, 1951, intestate succession to the property of a member of the ice in the territories of the former State of Travancore was governed by the ISA, 1925 or did the TCSA, 1092 continue to govern such intestate succession despite the introduction of the ISA, 1925.

These questions related only to the uncertainty as to the application of the exact law in a Part B State. It never went into such aspects as considering the discrimination in property rights against daughters as violative of the right to equality under the Constitution or as to the declaration that male and female heirs are equally entitled to or are cosharers to the property of their intestate parents.

But in effect, when the Court held that the discriminatory law relating to intestate succession as a whole stood repealed and that too with retrospective effect, the right of equality as to the property rights of daughters were declared as equal to their male counterparts in the property of their parents for a period of 35 years, i.e., from 1951 to 1986.

By disputing the applicability of the general law relating to intestate succession, the discrimination existing against female through denying them a share equivalent to the male has been wiped of with out specifically holding that those provisions which were male biased were violative of the principle of equality ensured in our Constitution.

The legal impact of the decision is that the ISA, 1925 became uniformly applied to the Indian Christians irrespective of the separate laws in force in the various Part B States including Travancore-Cochin.

The Sociological Impact of the Decision:

1) The awareness of the fact that a son and a daughter should be considered on equal footing while dealing with intestate succession was made among the members of the community.
2) That the women got an opportunity to claim their rights on the property of their intestate parents which were denied to them for the past 35 years and their claim had a legal sanctity after all.
3) That daughters were either given property or cash equivalent to their share and such claims began to be settled more cautiously by men and supported by documents. Now-a-days, properties are mostly seen to be purchased in the name of sons in Christian families to escape from litigations (opinion)
4) The verdict enhanced the potential of gender equality within the community

But certain ill-effects were also produced by this decision of the Supreme Court.

1. More property happened to be disposed of by wills during the life-time of the holder itself.
2. The daughters were compelled to sign documents declaring that their claims had already been settled.
3. That collusive suits began to be filed by brothers & sisters taking advantage of this decision, for evading from re-payments of huge loan amounts taken by pledging properties as security, from banks and other Financial Institutions.
4. That Banks and other Financial Institution hesitate to give money by accepting properties of Christians as security unless it was cleared by a legal opinion that “the Mary Roy

decision is not applicable in this case” by their legal consultants. Circulars were issued by authorities of such institutions insisting on such legal opinions.

CHAPTER VI
MARY ROY AND ITS AFTERMATH

It was in 1984 that Mary Roy filed a writ petition before the Supreme Court of India in which she challenged the Travancore Succession Act, which declared that when a man died intestate (i.e., without leaving a will) his widow would receive a mere life - estate in one - third of his estate, and the daughter shall receive a quarter of the share of a son or Rs. 5,000 whichever is less, as violative of her Constitutional right to equality under Article 14 and 15 of the Constitution.

The reason for filing the petition was an insult suffered by Mary Roy, about 25 years ago when her mother and brother arrived in Ooty with several ‘goondas’ and ordered her to vacate her father’s cottage in which she had been living with her children, immediately. It was then she first came to hear about the Travancore Succession Act, which denied daughter any share in intestate property. She refused to vacate as there was nowhere to go. So the only option left to her was moving the Court. The Court would have to be the Supreme Court and the action would have to be a plea for her Constitutional right to equality.

The Supreme Court struck down the Act, Travancore Christian Succession Regulation, 1916 in 1986. The Church, the Legislature and the press created a hue and cry then and even afterwards that the judgment could cause calamities that would hurl Kerala into hellish turmoil; that a flood of litigation would swamp the Law Courts; that the affluent Syrian Christian community would face economic distress. All transactions involving Syrian Christians, like the sale of property and bank security,

would become invalid. It was also feared that an estimated 30,000 nuns who were not given dowry and therefore wedded to the Church would demand their shares in their father's property.

It must be noted that the Supreme Court laid down the general law to be followed in the case of intestate succession. It did not specifically deal with her case.

In 1989, Mary Roy filed a case in the Kottayam District Court for one-sixth share in her fathers intestate property (because the mother gets 1/3, the remaining 2/3 among herself and her 2 brothers and 2 sisters equally, ie; in 4 equal parts, 2/3 x 2/4 = 2/12 = 1/6). But the Court ruled against her and declared that she had no right in the properties for 2 reasons: (a) no partition could be valid while the mother's life estate existed, that partition would be in order only after her death and (b) since she had been gifted a house in Udhagamandalam (Ooty) by her mother, her two brothers and her sister. The Court held that this was in lieu of her 1/6 share in her father's property. The Court did not take into account the facts that those gift deeds were written at different times between 1964 and 1966 and therefore were pure and simple gifts. At that time when those gifts were made, the Travancore Succession Act was in force, which did not visualize any share for any women in a family. She went on appeal against this decision.

Quashing the Lower Court order, the High Court held that the terms of documents did not show that these properties were given to Mary Roy in lieu of her share in the Kottayam property. For the terms clearly showed that it was a gift deed executed as part of natural love and affection to Mary Roy. The Court was unable to uphold the reasoning of the Lower Court that Ms. Roy had waived her right over the Kottayam property (Mathrubhumi Daily dt. 2/4/2002). (Judgment delivered by the

Division Bench of the High Court comprising of Justice S. Sankarasubhan and Justice R. Bhaskaran on 1/4/2002).

Though the Supreme Court declared only the general law applicable to intestate succession, when read together with the subsequent decision by the High Court entitling the partition of intestate father's property equally among the sons and daughters, the Supreme Court decision too had been conferred a specific importance. It has declared that it is the Indian Succession Act which is applicable to the Indian Christians of Kerala since 1/4/1951 retrospectively. But awareness about this judgment has not yet been made among the Christian women in Kerala. The main reasons being the misinterpretation of the community as well as by Ecclesiastical authorities. The women have not been persuaded to fight for their rights either by the men or by the Church. Unless they come out of the grip of the Church and the men, this decision has nothing to do with the clarification or assertion of rights of Christian women in Kerala.

On lines with the decision in Mary Roy; by the Supreme Court in 1986, the Division Bench of the Kerala High Court comprising of Balakrishna Menon & Shamsudhin, JJ, declared that the Cochin Christian Succession Act, 1097 too stands repealed with effect from 1/4/ 1951[155]

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[155] In *Joseph* v *Mary*, 1988 (2) KLT 27), the question which arose minis case was whether payment of *Streedhanam* in 1950 disentitled the daughter from claiming any share in properties left by her father who died in 1944. Under Section 22 of the Cochin Christian Succession Act, 1097, if *Streedhanam* was paid to a women by any of the four relations (father, mother, paternal grandfather or paternal grandmother) during their life-time, and a brother or lineal descendants of that brother is alive, the women will be excluded from inheritance of the said four persons by such brothers or lineal descendants of brothers. In the instant case, admittedly no *Streedhanam* was paid to the woman before the death of the father in 1944. The marriage was in 1950. The Court held that the 'right to share accrued to

Since the Act also stood repealed with effect from 1/4/1951 even the payment of *Streedhanam* will not disentitle the daughter from claiming her share.

The fact that the women were not sufficiently aware about the extent of their rights declared by the Supreme Court is revealed in a decision the High Court of Kerala by Justice Balakrishan. Wherein the decree holder was the sister of the revision- petitioners before the High Court. The writ was filed for Rs. 5,000 which the father had undertaken to pay to the daughter. At the time of his death, he instructed his sons to pay it, but they didn't keep word and hence the suit. The contention of the revision petitioner was that their sister had filed the writ under Section 28 of the Travancore Succession Act, 1916. Since it stood repealed with effect from 1/4/11951, the decree passed is a nullity.[156]

The Court held that on the coming into force of Part B States (Laws) Act, 1951, the TCSA stood repealed and the Kerala Christian are thereafter governed by Chapter II, Part V of the Indian Succession Act, 1925.

It is pertinent to note that under the Indian Succession Act, 1925 the children inherits equally.[157] A female child is entitled to a share equal to that of her brother. So what the present decree holder gets is only a lesser right than what is actually due to her (which she has not claimed).

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her even before *Streedhanam* was given'. In such a circumstance, the payment of *Streedhanam* subsequently will not disentitle her to claim her share in the property left behind by her father since the succession already opened on the death of her father in 1944 (i.e. six years before her marriage).

[156] *Abraham Mathew* v *Chacko Mary*, 1988 (2) KTL 869
[157] Section 37 of the Indian Succession Act 1925

The decree passed at the time when she had a pre-existing right over the property would not therefore be a nullity.

In the instant case, the female could amend her plea for an equal share to that of the brother. But since she had not claimed for it, the Court couldn't *suo moto* grant it to her.

In *V.M. Mathew* v *Eliswa* and Others[158], C.S.A, 1097 was held to be repealed by the Part B States (Laws) Act, 1951. The Court held that the parties were governed by the Indian Succession Act.

of the progressive realisation of the society shall not set to retard the movement of time, still else, to set back the hands of the clock.

The defendant is the appellant. Suit was filed for partition. The plaintiff and defendant were the children of *Mariam* and *E. C. Vargese.* According to the plaintiff daughters the property devolved on them and the defendant in equal shares (1/3 each).

The defendant's contention was that the plaintiff was not entitled as they were being given *Streedhanam* as sovereign and cash. (It was also contented that it was Father's property, not mother's though acquired by her, since father has given consideration).

The lower Court held that the plaintiffs were entitled to 1/3 share each and there was no evidence to show that any amount alleged by defendants being paid to plaintiff at the time of marriage.

[158] 1988 (l)KLT 310

The contention of the defendants could have force only as long as the Act stood. Under Section 37 of the ISA, the parties are entitled to share the property equally in as much as the Cochin Succession Act, 1097 has been repealed. Since death of Mariam was after the commencement of the Part B States Act, the law that governed is the Indian Succession Act. Consequently the limitation envisaged as per Cochin Succession Act with respect to the right of daughters to claim share, no longer stands. The High Court held that there was no law which disqualified a daughter to inherit her parents on the ground that she was paid *streedhanam*. But 2/3 of the funeral expenses was ordered to be born by the plaintiff sisters also along with the brother.

To conclude, we can say that though the Court was reluctant to deal with the issues of succession rights of Christian women in Kerala specifically in the beginning, we can see that in the post - Mary Roy decision the Court has started to deal with the issues more specifically. But this itself can be regarded as the impact of the foremost and fundamental decision of the Supreme Court in the Mary Roy case in which the Court only declared that the Travancore succession Act stood repealed with the coming into force of the Part B Slates (Laws) Act, 1951 and the intestate succession thereafter was governed by the Indian Succession Act, 1925 in the erstwhile Travancore State.

In the words of Mary Roy, “And let me in a few words, tell you what I am made to suffer, as a woman who has stepped beyond the limits of decorum”.[159] She was a woman who could come out of the influence of the Church and the community and hence she got the ‘manpower’ to challenge her rights before the Superior Court of the land.

But dissenting judgements were also passed by the Kerala High Court very rarely. The Division Bench of the High Court including U. L Bhat, Sankaran Nair, JJ held in *Lourde Mary Amma* v. *Souriyar*[160] that the expression "any other law for the time being in force" of the Indian Succession Act includes the Hindu *Mithakshara* law.

It was held by the Court that the appellant (plaintiff) and defendants 2 to 9 who claimed for partition of their father's property were Vaniya Christians. The profession of the Christianity releases the converts from the trammels of Hindu law. But does not necessarily affect matters to rights in property with which Christianity has no concern.

The plaintiff (appellant) relied on Mary Roy case for her claim and challenged it on 3 grounds.

1. That the Indian Succession Act governs the parties.
2. That the customary law was replaced by the statuary law
3. That the findings on adverse position was wrong

The Court referred to the decision of the Supreme Court in Mary Roy and observed that the limited question that was decided in Mary Roy was whether the Travancore Act or any part thereof survived the Part B States (Laws) Act, 1951. Therefore the contention of the appellant that by reason of the law declared in Mary Roy by the Supreme Court, the ISA would govern the parties should therefore fail. For, the expression 'any other law in force' in under Section 29 (2) of the ISA included Hindu *Mithakshara* Law.

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[159] Mary Roy, "Three Generations of Women", *Indian Journal of GenderStudies* vol 6 n.2, 204 at p 212.
[160] 1987 (1) KLT 288

The important judicial decisions and the sociological aspects dealt with by them through their application in determining the rights of Christian women in the intestate's estate has already been dealt with in the previous chapter. Occasionally, the Courts have declared that those documentary laws which prevailed in the erstwhile states of Travancore and Cochin would be regarded as the 'laws in force' under Section 29 (2) of the ISA relating to intestate succession and therefore the provisions of chapter 2, Part 5 of the ISA do not apply to communities having their own laws relating to intestate succession, which included the Christians of the erstwhile states of Travancore and Cochin. Such a decision was taken by the Court even after the introduction of the Part B States (Laws) Act as in *Mary Elias Kunjamma* v. Eliamma and Others.[161]

Relating to the rights of a daughter on *Streedhanam* the Court has distinguished between 'a money claim' and a claim for a share. In *Sosa* v. *Varghese,*[162] Parrethu Pillai J held that *Streedhanam* is only a claim for money and not a claim for a share of the intestate's property.

The essence of this decision is that a daughter cannot advance a contention that she is a co-owner through her claim for *Streedhanam*. It should be a separate claim.

The Court's view was that under Section 28 of TSR 1092 claims for *Streedhanam* is only a claim for money and not a claim for a share of the property. Except for a money claim charged upon the property, the plaintiff cannot advance the contention that she is a co-owner along with her brothers (defendants). Merely because *Streedhanam* remained unpaid plaintiff does not become co-owner.

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[161] 1973KLT 728

So what a woman should claim is a claim for her share and not for her *Streedhanam* which now comes under the provisions of the Dowry Prohibition Act, 1961 since the succession regulations stand repealed[163].

Even the 110 report of the Indian Law Commission (1985)[164] on Indian Succession Act had put forward two recommendations regarding the applicability of that Act. The commission held that it is a matter of social policy that the ISA should apply to the persons governed by Travancore Regulation, the latter Act should be repealed by an express provision. If on the other hand, it was considered as a matter of social policy that the provisions of TCSA should govern succession to the persons concerned, then there should be a provision in Section 29 of ISA to the effect that the Travancore Regulation would apply to Christians governed by that Act in respect of intestate succession. 1) in the State of Kerala and 2) the adjoining areas in the State of Tamil Nadu (in the District of Kanyakumari and Shenkottai Taluk).[165]

But this has not been taken into consideration by the State of Kerala and no amendments have been made on lines with the recommendations made by the Indian Law commission.

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[162] 1993(2)KLT798

[163] *Zacharias* v *Joseph* 1991 (1) KLT 235 where Justice Shamsudhin held that it was not possible to treat the *streedhanam* promised in Lieu of share in view of the decision in Mary Roy and a claim for *stridhanam* promised was not sustainable.

[164] See Supra Chapter 3

[165] *Ibid*

The approach of the community and the State towards the repeal of the Travancore and Cochin Succession Act.

Till the 1986 decision of the Supreme Court, the official worth of a Christian woman was *A* that of a Syrian Christian man, or to be more specific, Rs.5,000 at the maximum. Through its verdict the Supreme Court has attempted for law making by holding that Indian Succession Act applied uniformly to the Indian Christians of Kerala as a whole, with effect from *1/4/1951*. But nobody challenged it on behalf of the Christian women of Kerala for 70 years (1916-1986).

The introduction of the Indian Succession Act retrospectively has been accompanied by a certain degree of destabilization in society through maintaining the status - quo of women. The Church, the government and the Courts are equally guilty of keeping silence in this matter before 1986. Through the pronouncement of the judgment, which assured justice to women the claim that the "community is in peril" was made by the Supreme Court due to the problems that the retrospective effect would raise. But it would have caused less stabilisation than what would have been, if the Supreme Court pronounced a gender justice judgment based on the constitutional right of women specifically, which would have had more repercussions, all over India.

After the 1986 decision, the Kerala High Court had declared through a number of decisions that Travancore and Cochin Christian Succession Acts are not saved by Section 29(2) of the Indian Succession and that it stood repealed with the introduction of Part B States (Laws) Act, 1951 as per Section 3 of that Act

The members of the community seemed to be less concerned about the prosperity which the judgment has conferred on women. The less

number of litigations which arose in the subsequent years indicates this attitude of the community. Only women like Mary Roy who were capable of challenging their rights and who could come out of the hierarchy of the Church resorted to Court action.

On the other side, the prominent and wealthy faction of the community had made use of the judgment to gain their needs. Some of the litigation prima facie indicated that they were filed in collusion between brothers and sisters so as to evade from repayment of huge sums of money taken as loans from Banks by mortgaging landed-property.

The Christian Fourm for Women's Rights and the Joint Women's Programme (JWP), are the women organisations who stand for Christian women holding that they would not allow any more amendment diluting the justice ushered by the Supreme Court.

Any way the male members are now more vigilant while disposing of the shares of women in the family. Very often they obtain any document any evidence, at least a signature of the women on a white paper, assuring that she has no more rights in the family property while they were married off. The intestate succession deals only with that property of the deceased intestate for which he has not made any will and he had not been disposed of at his free will during his life time. So that tendency now-a-days is to make a will for the whole property and the problem of intestate succession seldom arise in Christian families. Women are also preferring money which could be received in hand at the time of marriage rather than waiting for years for their share in intestate property.

Now-a-days, the size of family been reduced leaving only one or two children for a parent as his lineal descendants. So the chance of

litigation claiming one's share too will be very rare in the coming days. And within the next 15 or 20 years, such a problem would be practically disappear from the scenario of Christian families as well as among other communities. The tendency of giving parental homesteads to daughters particularly in Trivandrum and other southern most areas of Kerala also indicates that the women are being preferred to men while allotting family property.

Among the middle class groups of the community, the demand for dowry is gaining much importance in the marriage market. A stage had reached that good alliances are possible only if a bulky *Streedhanam* is offered Now-a-days males prefer families of females owning house as share. The value of landed property in a particular locality is also taken in to account while demanding dowry. But we cannot be secure unless the existing trends also has the support of a legislation. First of all, we shall have to get a legal claim for ensuring equal rights to female heirs when compared with their male counter parts.

Any special provision in a legislation which curtails the rights of women shall have to be amended. For instance, prior to the 2001 amendment of the ISA, an explanation was given to Section 32 taking away the widow's rights in her deceased husband's property, if there was a contract to the contrary made before their marriage. The Indian Succession (amendment) Act, 2001 has deleted the explanation there by making the widow's right absolute in her husband's property.

The existing state of legislation is that the daughter is entitled to an equal share to that of a son. The widow is entitled to 1/3 property of her husband absolutely and remaining 2/3 is equally divided among their children.

The anomalies which exist in the ISA, 1925 are with regard to the rights of the mother and the widowed daughter-in law. The most glaring discriminatory provision is that the father is preferred over the mother. If a person is unmarried and childless, and both parents are alive, the father inherits all. If a person has a spouse but no children and both parents are alive, the spouse gets half and the father gets half. But if the father is dead the mother has to share with the brothers and sisters. The sisters and brothers under this scheme inherit equally. Similarly, the law makes no provision for a widow of a son or grandson to inherit the father-in-law's property. However the laws allows a person to make a will and disinherits any one he likes. If daughters are inherited by this means, they will not get any share in the father in-law property either, if they are widowed. The State shall have to suitably amend the legislation so to rectify those anomalies in that Act referred above.

The Ecclesiastical authorities and the heads of Churches are against the retrospective effect of the Supreme Court decision in Mary Roy for they fear that the community would be in peril due to the litigation which would arise had they been aware of the scope of the decision in assuming and ascertaining their rights. But the expectation that a swamp of litigation may doom the society was proved to be out of place. The number was very meager coming up to only about 50 reported cases from 1986 -2002. Adding it to the pending and unreported judgments it will come only up to 75 cases. The main reason for this feeble response from Christian women would have been the influence of Church and the patriarchal supremacy afforded by the legislations. Even in the property of a deceased childless son, the father takes half of it. Exercising his testamentary power, the male heir can dispose of his property at his free - will even disinheriting his wife and daughters.

On the part of the Christian community the Joint Women's Programme had taken initiative through different meetings involving the participation of Bishops, clergy, lawyers and the laity of various churches and social activists in 1983. Carrying the movement further, the JWP along with the Church of North India drafted the Indian Succession Amendment Bill, 1994 and it was sent to the Government in February 1994. The drafts were also sent for comments to all the churches. The participants consisting of the members of the various commissions, committees, boards and fellowships of the different diocese, the Church of North India, other Churches and Church bodies, urged the Government to take immediate action upon the Draft Bill.

The following changes had been recommended in the Indian Succession Amendment Bill, 1994.

1. There should be one law of succession for all Christians giving equal rights to men and women.
2. The succession Act should be changed so as to give the wife full right in the property of her deceased husband, if he died intestate without leaving any lineal descendants and parents, without sharing it with the remote kindred.
3. The explanation to Section 32, depriving a widow of her right in her husband's estate, if there is a pre-marriage contract, should be deleted.
4. Sections 24,33, 41 and 48 should be modified so that the widow gets full property.
5. The father and mother should share equally (under Sections 42-46)
6. Sections 213 (that wills should be probated) should not apply to Indian Christians.

Among these recommendations, the Government accepted No. 3 & 6 and incorporated it in the Indian Succession (Amendment) Act, 2001.[166]

The Kerala Women's Commission had suggested certain amendments in the Indian Succession Act, 1925 regarding the rights of widows and mother. It has proposed to amend Section 32 by deleting the explanation limiting the rights of widows. Section 42 relating to the rights of parents of intestate surviving was also proposed to be amended so that the mother and father should inherit equally. (The first recommendation had been incorporated under the Indian Succession (Amendment) Act, 2001).

The onus for every reform lies on the opinion makers in communities. The desire for every reform must come from within communities. The Government on its part has never seen to make any attempt for preparing the grounds for any such reforms. It has always preferred to avoid any controversial legislation which could prove politically inconvenient. In these circumstances, any attempt from the part of the Government to eliminate gender injustice from personal laws even in a piece meal fashion is welcome as its need is indeed recognised by the community itself.

[166] The Indian Succession (Amendment) Act, 2001 passed on 3-5-2002 brought a great relief to the Christian widow.

CONCLUSION AND SUGGESTIONS

Though rapid changes have been brought about in the property rights of Christian daughters and wives through new changes in legislations in effect, the Community opt for the traditional customs and ancient legislations. The females are frequently excluded by the males from inheritance and succession to their ancestral property through exercising the right of testamentary disposition of property. In effect, the law of succession has not changed much even after the introduction of a uniform law. But it has indeed produced serious thoughts and repercussions among the insitutionalised hierarchy within the Community to a small extent. For, men are now very cautious while making transactions relating to their ancestral property.

So the suggestion is to place restriction on the rights of a person to will away his entire property. Because the advantages which would have accrued to women through any legislative reform in succession laws could be by-passed through the unrestricted power of testamentary disposition of property by a person.

The various bills introduced at the Centre and the State to hold back the retrospective effects of the State indicated the illegal nexus between the community and the members of the Legislatures in upholding the patriarchal values and norms. Though the Community was reluctant to accept retrospectively of the decision in Mary Roy case initially, now they have come forward to accept the reforms ensuring gender-justice in Succession Legislations. The move urging for amendments in the nature of interest enjoyed by the widow, by the Catholic Bishop’s Conference of India (CBCI) and the recommendations suggested by the All India

Council of Christian Women (a unit of National council of Churches in India (NCCI) are notable changes in this regard.

The Christian women's organisations like the Joint Women's Programme (JWP), the Forum of Christian Women for Women's Rights and the All India Council of Christian Women had proposed recommendations for reforming the rights of women and have drafted Christian Succession Amendment Bills. The 110 Law Commission had also recommended the State Government to take it as a matter of social policy for unifying the laws relating to succession in Kerala.

The most pathetic incident in Kerala was the reluctance showed by the Government of Kerala keeping its eyes closed towards the recommendations put forward by the Fourth Report on 'Law of Succession Among Christians in Kerala' by the Law Commission of Kerala as early as in February 1968. In the light of the conclusions reached, the Commission recommended that a uniform law of intestate succession among Christians in Kerala be enacted on lines with Part V of the Indian Succession Act incorporating changes in regard to the rights of the widow and the father and mother. It therefore proposed that: (1) the widow, co-existing with lineal descendants may be entitled to a share equal to that of a child on the per stripes basis and (2) the father and mother be treated alike and grouped together, each being entitled to an equal share simultaneously and neither excluding the other. The Chairman of the Commission was Sri. T. R. Balakrishna lyer who was a prominent jurist and a Judge. He had also served as the Law Secretary of the State during the late 60's. but may be due to political repercussions which would have been produced, had the recommendations been adopted, that the State Government turned away from considering the recommendations. This report seemed to have been locked up since it is evident from the fact that not a single word had been referred to, about

this progressive legal achievement even in the 110th Report of the Law Commission of India particularly made on the Indian Succession Act.

The new changes which had recently been made in the Succession Laws affecting Christian women in Kerala is the Indian Succession (Amendment) Act, 2001 passed on 3-5-2002 by the Lok Sabha. The Christian widows who were suffering from loss of inheritance rights through a pre-marriage contract got a major relief with the enactment of this new legislative reform. It enabled a Christian widow to get a share in her husband's property even when there was a contract to the contrary. By this amendment, the explanation to Section 32 of the Indian Succession Act, 1925, was deleted which was discriminatory in nature for the Christian widow as they lost the right of inheritance following a contract at the time of marriage (The explanation to section 32 of the ISA, 1925 itself says that there may be a situation where a widow of a Christian, on account of any contract made at the time of marriage, may be excluded from inheritance).

A lot needed to be done by way of legislative changes in personal laws so as to ensure human dignity and equality for women in particular. For this, the institutionalized patriarchal hierarchy of the religious institutions as well as the society as a whole should change. Women themselves need to revolt against the practices diminishing their status, which have been handed over from generation to generation. The true spirit of equality must prevail and for this, there must be a fundamental change in the way in which the society view these reforms. Gender equality and gender justice must become part of the ethos of the society. Law and justice should transcend gender-biases. A legislation by itself cannot bring any reformation or change unless accompanied by corresponding or complementary political or social movements.

If we trace the history of the legislations which had yet been passed on Christian succession, we can see that the Committees formed to study and report on the actual situation of the life of Christian women in Kerala lacked women representation. The number of women witnesses selected for viva-voce or for recording answers to their questionnaires were also meager in number. Those who were included came from affluent Syrian families who were propertied and extremely rich. So the few women witnesses who gave their answers stood against in giving property rights to women. The following classes of Travancore Christians were resolved to be invited to give evidence, by the Committee: (1) All persons paying a tax of Rs. 50 and above per annum (2) All Civil court Vakils (3) All Government servants who draw a monthly salary of Rs. 35 and above (4) Pensioners who had held appointments that carried a monthly salary of Rs. 35 and above (5) and (6) All graduates. Out of the 985 witnesses appeared, 401 were agriculturists, 89 were traders, 102 were clergy men, 76 public servants and 76 private employees, 14 pensioners, 85 vakils and 142 were others. 722 of them belonged to the affluent Syrian community. The male witnesses numbered 934 while the female witnesses numbered only 31. (pp.2-4 of the Travancore Christian Committee Report, 1912). The Cochin Christians Succession Bill Committee, 1920 invited 393 witnesses for examining viva-voce, of which 357 were males and 36 females. 154 were Agriculturists, 63 traders, 76 Government servants, 14 vakils, 16 clergy and others. According to tax assessed, 204 of them paid Rs. 30 & above. 360 of the witnesses who answered interrogatories, 307 were males and 53 females. 211 were Catholic Syrians, 48 Jacobite Syrians, 77 Latin Catholics and others. 193 among tern were agriculturists, 34 traders, 39 public servants and pensioners and others.

From the above -mentioned facts, we can come to the conclusion that the interests of the mighty were represented than that of the weaker

sections, who were the ultimate losers. Hence disputes arose frequently even after the Travancore and Cochin Christian Succession Legislations came into existence evincing the need for an adequate legislation to tackle the problems of the depressed sections, particularly of the women heirs-daughters, widows and mothers.

Since dowry became the basis of share -concept in the case of daughters in the erstwhile States of Travancore and Cochin, even now the share of daughter is given either in 'gold or as cash' in those areas (Kottayam, Thrissur etc). But in the Malabar areas, since dowry has not been the basis, but only 'equal share' concept, they were always willing to give shares in land to daughters.

By examining the legislative changes and the disputes which arose during the past century, it is possible to evaluate the transformation in the social position of the Christian women in Kerala during that period. Almost from the beginning of the process, there was a struggle between the Reformists and Conservatives, the Community leaders, the Government and the Women Organisations as to who should adequately represent the problems of women.

Following the Mary Roy Judgment, there was a State wide propaganda that the 'Community is in peril'. The Joint Action Council, an organisation formed to resist against the Court decision, was in the fore-front. Their arguments were that (1) there would be a flood of litigations if the retrospective effect was not cancelled, (2) this would lead to a freezing of Bank transactions with Christians holding their title to be defective and (3) it would ultimately lead to the disruption of the Community as a whole. The first argument is seen to be incorrect at the instance of the number of cases on property rights that came up before the Law Courts. Regarding the second arguments, bank transactions were

affected only by the suits in collusion between sisters and brothers to evade from repayment of huge loans. The community won't be in peril if the property is parted, because partition is unanimously agreed already in the case of sons. Then the question arises as to why the disruption or impartibility of estate applies only to female heirs when the same is allowed for male-heirs.

The women who went to the law for securing their rights either had the courage to come out of the influence of the Church or to break the patriarchal hierarchy of the Community. They were often called rebels and were considered as out-casted by the Church and the community. So they were few in numbers and hence lesser number of disputes arose before the Law Courts.

The State and Church maintain an illegal nexus between them in the sense that the State fears of political antagonism. It has to please the community leaders. Unless the demand for reforms come within the community, the State has no guts to take action in its own initiative. This has been well indicated by the Travancore and Cochin Validation Bills introduced in the Kerala Assembly twice by the members belonging to the Christian Community itself.

Even the media is community -biased. The New-papers like Deepika and Malayala Manorama (under the management of Christians) reported the news-items regarding the Mary Roy verdict holding titles 'The Mary Roy Judgment- the Court went wrong', 'The Indian Succession Act - A Law to be amended', 'Buying Affection through share in the property', Christian Succession - a solution far ahead', etc. These indicated the patriarchal attitudes of the community towards succession legislations.

The Indian succession Act, 1925 with its 2001 Amendment is sufficient requiring slight changes as far as the property rights of daughters and widows are concerned. Gross injustice is with regard to the right of a mother and a widowed daughter-in-law or a grand-daughter-in-law (daughter-in-law of a grandson). Where else has a women to go, if all her wealth brought by her to the in-law's house has been exploited and she is driven out of the marital household to face a crisis? The JWP has suggested in its Indian Succession Amendment Bill, 1994, certain amendments to enhance the rights of widows and mother. It shall be taken into consideration by the Government. The widow shall be allotted the whole of the property of the intestate if there are no lineal descendants. In the era of nuclear families, the property shall have to be kept in-tact between the parents and their children. The mother or father, if alive, shall be compulsorily allotted a share. If both father and mother of the intestate are living, they shall succeed to the property in equal shares, where he has left no widow or lineal descendants.

The power of testamentary disposition shall have to be restricted to the extent that no person who is a Christian and who has a spouse, lineal descendants or kindred shall have power to bequeath more than one-half of his or her property by a will.

The law should ensure gender justice, 'and not gender -justice in essence. But on one-side whatever reforms be brought about in legislations, it should be accepted by the Community as part of their lives and should be ready to give up the age-old traditions and norms solidified among them through generations. But on the other side, if the women are well organised and are aware of their rights, the true intention of these legislations can be put into practice to a certain extent.