EQUAL INHERITANCE RIGHTS TO INDIAN CHRISTIAN WOMEN OF KERALA

I

THE INDIAN Christians of the former princely State of Travancore now forming part of the State of Kerala were governed in matters of succession and inheritance by the Travancore Christian Succession Act 1916 (1092 of Malayalam era). The Indian Christians of Travancore consist[1] of the following groups :

(*i*) The Syrian Christians.
(*ii*) The Latin Christians of North Travancore (Kottayam).
(*iii*) The South Travancore Christians, that is to say converts and descendants of converts of various castes that follow the Mitakshara law.
(*iv*) The Latin Christians of Central Travancore.
(*v*) The Arasars.
(*vi*) The Bharathars.
(*vii*) The Caste Christians.
(*viii*) The Protestant Christians of Central Travancore.
(*xi*) The Marumakkathyam Christians.

These groups had varied customs and usages governing their rights to succession and inheritance. Many a time these customs and usages were uncertain and indefinite giving rise to unnecessary litigation. The then prevalent situation has been graphically described by the Christian Committee set up by the *Maharaja* of Travancore as follows :

> [W]henever disputes concerning customary law arose, the Judges who had, from time to time, to administer the law felt quite perplexed ; that again and again they lamented the absence of statutory law and the hopelessly contradictory evidence of customary law placed before them ; that they repeatedly recommended to the legislature to pass a succession law as the only remedy for the removal of their difficulties and that in their utter despair, they rebuked the community (Syrian Christians) for its "masterly inactivity"....[2]

Under the customary law the female heirs were not on par with the male ones. For example, among the Syrian Christians a daughter to whom *streedhanam* or dowry was paid by her father was, according to customary law, considered to have received her share in his estate. In the majority of cases, the dowry was equal to or more than a half of the value of a

---

1. *Report of the Christian Committee* 5 (1912).
2. *Id.* at 14.

son's share and only in very rich families, the dowry was below a third or fourth of the value of a son's share. In the case of widows, it was a common practice to grant her rights to maintenance and not a definite share in her husband's property. This resulted in leaving her at the mercy of her sons and husband's brothers.

To remedy the situation, the Christian Committee was set up to examine the customs, usages and practices on succession and inheritance of the Christians in Travancore. It went into great detail and examined the representatives of the various Christian groups, ecclesiastical heads and priests. It did not accept the plea for adoption of the Indian Succession Act 1865 (predecessor to the 1925 Act) under which the sons and daughters of a deceased person were entitled to equal share of his property. The reasons adduced were that the Syrian Christians and the south Travancore Christians were agricultural communities, most of them owning only small holdings, and entitlement of equal share to daughters along with sons would accelerate the dismemberment of those into still smaller holdings. Further, daughters married to persons in places distant from the parental homes would find it difficult to cultivate small bits of land away from their matrimonial homes. Further, it was felt that the Indian Succession Act 1865 was unsuitable for joint family settings which were then prevalent among the Christians of Travancore. The main reason was the hostile public opinion among the Christians against the introduction of that Act. In the words of the committee

> In social matters, legislation, to be effective, must not be greatly in advance of the public sentiment at least so far as a conservative people like the Travancoreans, are concerned. Even if the introduction of the Indian Succession Act is the best thing for the Christians of Travancore... it is better to bring about the second thing with the intelligent approval of the people as a whole rather than go against the sentiments of the community in the attainment of what one considers to be the best.[3]

Consequently, the committee recommended the adoption of a legislation the draft of which it had incorporated as part of the report. It had recommended, *inter alia*, that a widow on intestacy would be entitled to a share equal to that of a son or one-fourth of the deceased husband's property, whichever was less. A daughter would be entitled to one-third of the son's share, provided that a daughter to whom *streedhanam* was paid or promised by the intestate would not be entitled to have any further claim in his property. Any *streedhanam* promised but not paid would be a charge on his property. The above provisions were not to apply to the Latin Christians of central Travancore (Roman Catholic Christians of the Latin rite and also certain Protestant-Christians living in

3. *Id.* at 55.

Karunagappally, Quilon, Chirayinkil, Trivandrum, Neyyattinkara and other *taluks*) wherein according to the customary usage the male and female heirs of an intestate were to share equally in his property.[4]

The committee's recommendations on giving the widow a share in the property of the intestate and the quantum of share for the daughter were not incorporated in the subsequent legislation namely, the Travancore Christian Succession Act promulgated by the *Maharaja* of Travancore. Under sections 16, 17, 21 and 22, a widow was entitled to have only a life interest terminable at death or on remarriage and a daughter would be entitled to one-fourth of the value of the share of sons or an amount of Rs. 5,000, whichever was less. She was not entitled to even this amount if *streedhanam* was provided or promised to her by the intestate. Presumably, the influential voice of the members of the Syrian Christian community must have pressurised the *Maharaja* into modifying the Christian Committee's recommendations thus reducing the interest of widows to one of life interest and that of the daughter to one-fourth of the share of sons.

II

The discriminatory provisions of the Travancore Act were challenged as violative of the equality provisions in article 14 of the Constitution in *Mary Roy* v. *State of Kerala*[5] by a writ petition under article 32. Besides challenging the constitutionality of the Act, it was contended on behalf of the petitioner that with the extension of the Indian Succession Act 1925 to the territories of the former State of Travancore by virtue of the Part-B States (Laws) Act 1951, the Travancore Succession Act was repealed. Under the Indian Succession Act the widow is entitled to a one-third share of the property of the intestate and sons and daughters share equally in the remainder.

The Supreme Court, speaking through Chief Justice P.N. Bhagwati on behalf of Justice R.S. Pathak and himself, did not examine the issue whether gender inequality in matters of succession and inheritance violated article 14. Instead the Chief Justice achieved gender equality by holding that the Travancore Act was repealed by the Indian Succession Act 1925 in 1951 when the latter Act was made applicable to that state by the Part-B States (Laws) Act. Section 3 of this Act extended to Part B states those parliamentary laws specified in its schedule which were prevailing in the other parts of India. Further, section 6 significantly provided that those laws in force in any Part B state corresponding to any of the Acts extended to that state would stand repealed. The Indian Succession Act was one such legislation extended by the 1951 Act.

The relevant issue considered by the Supreme Court was whether the introduction of the Indian Succession Act 1925 had the effect of repealing

4. *Id.* at 73, cl. 31 of the draft Bill.
5. A.I.R. 1986 S.C. 1011.

the Travancore Act from and after 1 April 1951 so that intestate succession among the Indian Christian community of the former State of Travancore was governed by the Indian Succession Act. What was the effect of the saving provision of section 29(2) ? The Supreme Court noted the divergence of judicial opinion between a single judge of the Madras High Court in *Solomon* v. *Muthiah*[6] on the one hand and a division bench of the Madras High Court in *D. Chelliah* v. *G. Lalita Bai*[7] as well as a judgment of the Travancore Cochin High Court in *Kurian Augusty* v. *Devassy Aley*[8] on the other. Justice Ismail had held in *Solomon* that the Travancore Act was a law corresponding to the provisions on intestacy contained in part V of the Indian Succession Act. Consequently, the Travancore Act was repealed by virtue of section 6 of the 1951 Act and it could not be held to be saved by section 29(2) of the Indian Succession Act. *Solomon* was overruled by *Chelliah* holding that though the Travancore Act was a corresponding law in terms of the Indian Succession Act, yet the latter had saved the operation of the former by virtue of section 29(2). Chief Justice Bhagwati upheld the view of Justice Ismail in *Solomon* and overruled *Chelliah* by the following observations :

> [I]t would be nothing short of subversion of the legislative intent to hold that the Travancore Christian Succession Act, 1092 did not stand repealed but was saved by S.29, sub-sec (2) of the Indian Succession Act, 1925.[9]

The Supreme Court also negatived the argument of the State of Kerala based on "adoption by reference". It was contended that by virtue of section 29(2), the Indian Succession Act must be deemed to have adopted by reference all laws in force relating to intestate succession including the Travancore Act. Support for this was found in *Kurian Augusty*. Chief Justice Bhagwati held that "adoption by reference" was a legislative device to avoid *verbatim* reproduction of the provisions of an earlier legislation in a later one and the language used therefor was distinctly different from the one used in section 29(2) which was a "qualificatory or excepting" provision and not one for adoption by reference.

The Supreme Court's decision in *Mary Roy* is a momentous one in the regime of Christian personal law on intestate succession ending the discriminatory inheritance provisions of the Christian women of Kerala. The Cochin Christian Inheritance Act 1921 which is in *pari materia* with the Travancore Christian Succession Act, also stood repealed by the *Mary Roy* decision. The decision is retrospective in that the Travancore Act was held to be repealed from 1 April 1951.

The retrospectivity of the judgment had led to the anticipation of a

---

6. (1974) 1 Mad. L.J. 53. (Per Ismail J.).
7. A.I.R. 1978 Mad. 66.
8. A.I.R. 1957 T.C.1
9. *Supra* note 5 at 1015

flood of litigation by female heirs to their fathers' property which has not so far come about. The churches and Christian men have voiced their opposition to the judgment advancing more or less the same reasons put forward before the Christian Committee namely, fragmentation of land holdings, protection of the economic and business interests of father and sons in the household and the instinct to pass on property to someone carrying the same family name, *etc.*[10] The Kerala Government had applied for a review of the judgment seeking the elimination of the retrospective nature of the ruling mainly on the basis of the administrative difficulties and social tensions likely to be generated by upsetting land transactions of the past. It was contended that properties had been purchased, sold or encumbered and partitioned and many strangers had acquired rights. Further, in the implementation of the Kerala Land Reforms Act, ceiling cases had been decided, excess lands had been surrendered or taken possession of from many families and distributed by the Kerala Government.[11]

The Supreme Court has, however dismissed the review petition on the basis that the grounds for review lacked substance.[12]

On merits, the Supreme Court's decision is undoubtedly a milestone in gender equality in matters of intestate succession. Any move by Parliament or state legislature to set at naught the effects of this long overdue decision needs to be thwarted. A great onus now lies particularly on the women's organisations to educate the Christian women of Kerala about their rights to a share in paternal property and provide legal aid and advice for those who cannot afford to take measures for proper implementation of the judgment

*Alice Jacob**

10. See "Churches Want New Personal Law" in *Indian Express*, 20 June 1986, p. 11 (Delhi). See also Indian Social Institute, *Legal News and Views*, vol. III, no. 6, pp. 1-2, June 1986; Thampan Thomas, M.P. from Mavelikara, Kerala had introduced a non-official Bill in the *Lok Sabha*, to consolidate and amend the law applicable to intestate succession of Indian Christians. The Bill seeks to provide equal shares to sons and daughters in intestate succession. It also provides that the daughter can get this share on her marriage if it is so desired. A companion Bill to amend the Dowry Prohibition Act 1961 was also introduced to enable this share to be given as dowry. See *Hindustan Times*, 14 Aug. 1986. P.J. Kurien, a Congress (I) M.P. from Kerala had also introduced a Bill in the *Lok Sabha* to do away with the retrospective effect of the Supreme Court decision. See, "Kurien's Bill Endangers SC Ruling," in *Indian Express*, 26 Feb. 1987, p. 3 (Delhi).

11. *State of Kerala* v. *Mary Roy*, review petition no. 292-301/1986.

12. *Id.*, dated 18.7.1986.

* LL. M. (Delhi), LL. M., J.S.D. (Yale), Director (Admn.), Indian Law Institute, New Delhi.