

## **CHAPTER 3**

### **CHRISTIANITY AND PRACTICE OF INHERITANCE AMONG CHRISTIANS IN KERALA**

As the present study focuses on Syrian Christian community, which is a dominant segment of the Christians in Kerala, it is essential to have an understanding about this particular community. This chapter is therefore devoted for this purpose. There are two sections in this chapter, the first section discusses the origin of Christianity, formation of the Syrian Christian community and emergence of different Syrian Christian denominations in Kerala. It also takes note of the offshoots of other Christian groups and highlights the social identity and customs of the Syrian Christians. The second section, reviews inheritance practices among Christians in Kerala. This includes customary, canonical and state laws for inheritance followed by the application of the Indian Succession Act (1925) in Kerala and changes therein.

#### **3.1. CHRISTIANITY IN KERALA**

##### **3.1.1. Origin of Christianity and Formation of the Syrian Christian Community in Kerala**

The origin of Kerala Christians dates back to AD 52, when St. Thomas, one of the disciples of Jesus Christ is believed to have landed at Kodungalloor in Trissur district, in the northern part of Kerala. Through his ministry, many local inhabitants including those from the upper sect known as Namboodiri Brahmins were ushered into the Christian faith (Pothen 1963). The conversion of Brahmins is attributed to a miracle performed by the Apostle. The Brahmins of Palayur near Trissur, so goes the story, were having their ceremonial bath in the morning at the temple tank when the Apostle passed by. As they were performing their vedic incantation and sprinkling water upwards by the cup of their palm, the inquisitive Apostle was told that the practice symbolised an offering to gods. On hearing this, the Apostle remarked that, if that was the case, the offering did not seem to be acceptable to the power above, or it would not have fallen back. This naturally elicited a retort and the Brahmins asked the *sadhu* from the west (as he was known among the local inhabitants) whether he

could suspend the water in mid air. He promised to do so provided they accepted his master, Jesus, as their saviour. The Brahmins agreed and the apostle sprinkled water upwards and made the drops remain suspended in mid air glistening in the rays of morning sun. Most of the leading Brahmins of Palayur were believed to be baptized into the Christian faith. According to Pothen (1963), the better classes of Malabar Christians claim to have their origin from these Palayur Brahmins. The converted Christians were called the St. Thomas Christians who are also referred as Nazranis<sup>10</sup> even now. St. Thomas visited different parts of Kerala and established seven Churches and a chapel (half church-or in Malayalam *Arappalli* (John 2008).

In the fourth century, there was an immigration of a large group of Christians from Syria into Malabar, the leader of the group was called Thomas of Kana. Some of the descendents of this group maintained a separate identity and have been called as Knananites. However, the rest of the emigrated Syrian Christians and the local St. Thomas Christians entered into matrimonial alliances and also organised themselves into a Church community. This relationship also brought in East Syrian Church rites or Chaldean rites into Church services (The Syro Malabar Catholic Church 2008). Malayalam became the medium of worship. Easo (2008) has recorded that, the Christians in Kerala came to be called **Malankara Syrian Christians**, commonly known as the **Syrian Christians**, as a consequence of this alliance. The Syrian Christians now residing in different parts of Kerala had mostly migrated from North Kerala at different points of time in the past.

Syrian Christians came under the authority of Syrian Patriarch of Antioch<sup>11</sup> who had the ecclesiastical jurisdiction over all the Eastern Churches and thus began using the liturgies of the Syrian Orthodox Church of Antioch (Malankara Jacobite Syrian Christian Network 2008). Aramiac was the language of Jesus Christ and his disciples and Syriac is a dialect of Aramiac. Pothen (1963) has stated in his work that, the Syrian Christians are called so, not because they claim Syrian heredity but because they follow Syrian liturgy in the worship

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<sup>10</sup> followers of Jesus of Nazareene.

<sup>11</sup> Antioch is a place in Syria. In AD 325 on the request of the Church fathers, the Roman Emperor 'Constantine' convened a Synod of the entire Christian community at 'Nicea' and a general norm for the administration of the whole of Christianity was formulated. Accordingly, the entire Christian Community all over the world formed as three distinct groups and each group came under the authority of the three Patriarchates then in existence, namely Rome, Alexandria and Antioch. As per the decision of the Synod, the Eastern hemisphere, which included the Indian sub-continent, continued to be under the jurisdiction of the Patriarchate of Antioch.

services. Syrian Christians also follow certain rituals like child baptism and sprinkling of water in the name of the Triune God<sup>12</sup>, *Kayyasuri*<sup>13</sup> and use of several accessories such as the bells, the veil, the altar, the cross, the coverings candles, and incense in services. (John 2008; Syro-Malabar Church 2008). Other important religious practices are celebration of Christmas, commemoration of Christ's crucifixion (Good Friday) and resurrection on the third day (Easter). The more orthodox people maintain Lent for twenty four days prior to Christmas and fifty days prior to Easter. During this time, those who observe lent eat only vegetarian meals and refrain from consuming alcoholic beverages. Easter week, often referred as 'passion week', is very important and special services are held over the week starting with *Hosana* (Palm Sunday) then *Pesaha* (Maundy Thursday), which is followed by *Dukha velliaghcha* (Good Friday) and culminates with Easter (Sunday which marks the resurrection of Christ) (John 2008).

According to Zachariah (2001), until the arrival of missionaries in Kerala in the 16<sup>th</sup> century from other parts of the world, and conversion to Christianity thus took place, all Christians in Kerala came under the label '**Syrian Christians**'. It is believed that between 4<sup>th</sup> and 15<sup>th</sup> centuries the Malankara Syrian Church remained as part of the Syrian Orthodox Church of Antioch (Easo 2008).

### **3.1.2. Division in Malankara Syrian Church and Emergence of Principal Syrian Christian Denominations**

The Malankara Syrian Church remained the single largest body in Kerala for years together. However, due to the influence of external as well as internal forces, the Church started to disintegrate leading to subsequent groups or denominations. The divisions and establishment of principal Syrian Christian denominations will be touched upon next.

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<sup>12</sup> Triune God means Father, Son and the Holy Spirit as one God in three manifestations.

<sup>13</sup> Malayalam expression for an oriental custom meaning kiss of peace. This involves two people standing on either side holding each other's hand in a particular way at a certain point during the Church service as a symbol of passing on peace.

### ***(1) The Initial Faction in the Malankara Syrian Church***

By the 16<sup>th</sup> century, the Catholic missionaries from Portugal started to arrive in the South West coast of India, and gradually began to establish their base and made an effort to convert local inhabitants into the Roman Catholic faith with Latin rites<sup>14</sup> which are western. They also tried to bring some of the existing members of the Syrian Christian Churches in Kerala into the fold of the Roman Catholic Church. The Roman Pope, through the Portuguese, for the first time, started appointing Bishops in Malabar from Rome. Roman Catholic Bishop Alexis De Menezes succeeded in establishing the Roman Catholic Church as the dominant Church of Malabar (Easo 2008; Malankara Jacobite Syrian Christian Network 2008). Thereby any attempt made by the Syrian Christians to get bishops from Syria and neighbouring countries in the Middle East, where Christianity had taken its roots, was completely blocked. In their place, Roman Catholic Bishops started administering the Syrian Christians under the patronage of the Portuguese.

According to Easo (2008), the last such attempt made by the Syrian Christians to bring a Bishop from Antioch or Babylon ended up with the solemn protest '*Koonan Kurisu*'<sup>15</sup> oath held at Mattancherry in 1653 splitting the Syrian Christians into two groups such as *Pazhayakoor*<sup>16</sup> and *Puthenkoor*<sup>17</sup>. The *Pazhayakoor* Syrian Christians wanted to remain in communion with Rome under the Pope constituted by Syro-Malabar Catholics, who kept the Syrian liturgy but the same went through some Latinisation. The Church furnishings, the place of certain prayer formula in the mass, the administration of the sacraments were thoroughly Latinised. In 1962, the vernacular, Malayalam, was introduced for Church masses (Syro-Malabar Church 2008).

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<sup>14</sup> refers to one or more forms of sacred liturgy used in Latin Churches Code of Canon laws of Latin Churches are also different from that of the Eastern Churches (Syro-Malabar Church 2008)

<sup>15</sup> *Koonan* in Malayalam means 'bent' and *kurisu* means cross. The historical event where those Syrian Christians who wanted to remain under the religious sovereignty of Bishops from Syria had to take an oath touching a big cross standing near a Church. Since it was not possible for everyone supporting the proposition to touch the cross, the alternative was to touch a rope tied to the cross. As a result of many people pulling the rope in one direction, the cross bent to one side. Hence the name *Koonunan Kurisu* or bent cross.

<sup>16</sup> *Pazhayakoor* in Malayalam means old acquaintance

<sup>17</sup> *Puthenkoor* means new acquaintance

Easo (2008), has further mentioned that the *Puthenkoor* Syrian Christians went back to the traditions existing prior to the arrival of the Portuguese. They started getting Bishops from Babylon and Antioch and followed the Malankara Syrian Christian tradition of worship, which was different from Latin rites imposed on them by the Portuguese. The link between Malankara and Antioch that was broken and had remained separated for about 150 years was re-established and once again **Malankara Syrian Church** became an integral part of the **Syrian Orthodox Church** (Malankara Jacobite Syrian Christian Network 2008).

## ***(2) The Second Faction in the Malankara Syrian Church***

Just as the Portuguese armed with political power tried to bring the Syrian Christians under the Roman Catholic fold, the British also tried to bring them under western influence. With the establishment of the British East India Company in 1660, missionaries from Britain started their work in India. These missionaries gradually tried to control the Syrian Church by introducing their reformed teachings. In spite of the interference of powerful agents of the British Government, the Syrian Church rejected the western influence and stuck to its connections with the Patriarch of Antioch. It was around that time, that Palakunnath Abraham Malpan, a prominent priest of the Syrian Church sided with the European missionaries and modified the liturgy to suit the western Protestant views. Around 1800, one of the Syrian Christian Bishops, Mathew Athanasius, influenced by Abraham Malpan made a move to the western Protestant view which marked the beginning of new denomination called the **Reformed Church** in Kerala namely the **Malankara Marthoma Syrian Church** in 1890. (Easo 2008; Malankara Jacobite Syrian Christian Network 2008).

From then on, this Church came under the suzerainty of different heads, thus moving away from the authority of the parental Church in Antioch. This sect developed strong links with the western missionaries and emphasised evangelical renewal and Bible study (John 2008). According to Easo (2008), even after the break up, the **Marthoma Church** retained some of the elements of Syrian Orthodox Church specially the Syrian liturgy (a revised edition of the

St. James Liturgy of the Holy Qurbana<sup>18</sup>) and rituals such as child baptism, *kayasuri*, and accessories in the Church services

Another Christian denomination in Kerala also had its beginnings during the British period, mostly from Anglican missionaries who had converted the local population which later on united with the Basel Mission, Presbyterians and Baptists<sup>19</sup> and formed the group called the **Church of South India (CSI)**. The **Marthoma** and the **CSI churches** came into existence as **Reformed** or commonly referred as **Protestant Churches** during the British Rule. According to John (2008), though the **CSI** group largely follows the religious practices of their parent groups the all world over, linguistically, socially and culturally they have much in common with the Kerala Syrian Christian groups. The liturgy of the Church of South India combines elements from the liturgy of St. James (same as that of Syrian Christians) and that of the western liturgy of Protestant Churches. The sister concern of the CSI church in the North is called the Church of North India (**CNI**).

### ***(3) The Third Faction in the Malankara Syrian Church***

The schism in the Malankara Church reached a flash point and brought forth further division in the Syrian Church. In 1912, a visiting patriarch from Mardin elevated one of the local bishops, Wattessril Mor Dionysius, in the Syrian Church to Catholicos, a position that existed before in Tigris. This event subsequently led to dispute and litigation within the Syrian Church. While many from the three southern dioceses sided with Wattessril Mor Dionysius, almost the entire northerners continued to be the part of the Syrian Church under the Patriarch of Antioch. The group led by the Wattasseril Mor Dionysius came to be called as Catholicos owing their allegiance to the Catholicos of the East or commonly known as **Malankara Orthodox Syrians** and the those who continued to be faithful to the Holy throne of Antioch were mentioned as Patriarch's Party or **Malankara Jacobite Syrians** (Malankara Jacobite Syrian Christian Network 2008). It was noted by Easo (2008) that, though these two groups came under two headships of authority, the religious practices,

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<sup>18</sup> It is the Aramic word for Holy Communion which means 'offering' of bread and wine by the priest to the congregation as a symbolic representation of body and blood of Jesus Christ, an act of affirmation of Christian faith . A prayer of confession precedes partaking the communion.

<sup>19</sup> These are different Christian sects which organised and developed through the years.

beliefs, and rituals continue to be the same for both. They are identical and the the orthodox Syrians and Jacobite Syrians are sometimes referred to as same.

#### ***(4) The Fourth Faction in the Malankara Syrian Church***

A subsequent faction sprang up in the 1930s. One of the leading Bishops of the Syrian Christians, Mar Ivanios of Bethany, disillusioned by the split between the Catholicos group and the Patriarch group left the Church and moved to the Roman Catholic Church, forming a group called **Syro-Malankara Catholics (Reethu)**, which follows Syrian rites as opposed to Latin rites with the Pope as the head of the Church. The Syrian Christian tradition was accepted in toto by the Roman Catholic Pope while giving permission to the Bishop to form Malankara Reethu. The Malankara Reethu does not have any difference in belief with the Jacobite/Orthodox Church except that the former accepts the Roman Pope as head of the Church. Though the Reethu follows some of the religious practices of Roman Catholics the world over, and accepts papal authority, there is much in common with Syrian Christians such as the use of Syrian liturgy, and Malayalam as the medium for service, and follow certain rituals during weddings, births and funerals. One would observe that there is **no difference in beliefs and practices among the Roman Catholics, Orthodox, Jacobite and Syro-Malankara Catholics** (Easo 2008; The Syro-Malabar Catholic Church 2008). Thus the Malankara Syrian church, the oldest Church in Kerala had fragmented into five principal Churches to function as independent bodies but retaining some of the basic elements of Syrian traditions in the respective Church worship and other religious practices.

The basic belief which unites all the Christians is the belief in Christian doctrines and life after death. However, there are also other beliefs and practices which are not common to all. To list some, worship and adoration of Mother Mary (mother of Jesus Christ) pronouncement of sainthood, veneration of saints, celebration of feasts of Mother Mary and saints, praying for the departed souls are practised by Catholics, Orthodox and Jacobites but not by Protestant or Reformed Churches. Considering the proximity in order of worship, religious ideologies, outreach and evangelisation programmes, Marthoma, CSI and CNI have lately started organising combined worship services which is a sign of unity among these churches and the move has come to be called the Communion of Churches of India (CCI).

An important dimension which marks a difference among the Churches is the status of women in the churches. Both Marthoma Church and CSI are more progressive in terms of gender inclusive approaches in church activities and decision making bodies in comparison with other churches. Women are encouraged to preach or give sermons in churches. There are women representatives in Church committees, and decision making bodies. At least one or two women representatives are elected from every church to represent at the centre level or at the Church council which is based in Kerala. CSI had ordained two women as priests a few years ago in the South. However, that trend did not continue due to some ecclesiastical reasons.

#### ***(5) Neo-Christians and other Christian Groups***

Alexander (1971) has documented the formation of the *puthu* Christians (neo-Christians). According to him, *Cheramar* Christians and *Pulaya* Christians, were mostly converts from other lower castes mainly the Scheduled Castes. Earlier in Central Travancore, the *Pulaya* Christians were members of the Marthoma Syrian Church and the CSI Church. Even though there was no official segregation of the Syrian and *Pulaya* members in the Church, the separation was prevalent. The religious services and rituals were conducted differently at different buildings and the Syrian Christian priest did not conduct religious duties for *Pulaya* Christians but a separate person was entrusted for that. Within the Church organisation also they were not given any representation in decision-making bodies. Conversion to Christianity for many of the *pulyas* was merely a change of name and an adoption of a new name without any corresponding changes in their beliefs and rituals.

Many other Christian denominations have sprung up in Kerala over the years and to mention a few, the, Travancore-Cochin Anglican church which is a break away faction from CSI, Evangelical, a break away from Marthoma, Brother Mission, Assemblies of God, Church of God, Pentecostals, Salvation Army, Jehova's Witnesses, Lutheran Mission, the Miracle Crusaders of Potta, and Deiva Sabha. A large number of converts from fisher folk community have become part of Latin Catholics (John 2008).

Many of the above mentioned denominations owe their allegiance to the Syrian Christian Church, but according to Zachariah (2001), if one goes by the definition that the



Syrian Christians are those who follow the Syrian liturgy, rites and rituals in their religious practices even today, the **principal Syrian Christian denominations** are namely, the **Orthodox Syrian, Jacobite Syrian, Syro-Catholics (Reethu), Marthoma Syrian, and the Church of South India, (CSI)**. In that case, other denominations besides the principal Syrian Christian denominations may not strictly come under the group of Syrian Christians. As per the latest enumeration, as reported by John (2008), Catholics constitute 61.4 per cent, the Orthodox and Jacobite Syrians 21.4 per cent, the Marthoma Syrians 5.7 per cent, the Church of South India 5.2 per cent and others about 6.3 per cent of Christians in the state. All these groups mentioned constitute Kerala's Christian population.

### **3.1.3. Social Identity and Customary Practices among the Syrian Christians**

Being the oldest Christians in Kerala and claim to be the converts from high castes, Syrian Christians have created and preserved their social identity and customary practices. A brief note on that could be beneficial to have a better understanding about the community.

According to Alexander (1971), there existed a distinct social segregation between the *pazhaya* Christians (oldest Christians) and *puthu* Christians (neo-Christians) in their social identity, relationships and also in their customs and manners. In the presence of the Syrian Christians, the converts from the lower castes had to remove their head-dress and while speaking they had to cover their mouth with the hand. The *pulaya* Christians had to address the Syrian Christians with a title '*thampuram*' (Lord) and '*thampurati*' (Lady). While addressing the converts, Syrian Christians used to add the suffix to their names like Chacko *Pulayan*, Thomas *Pulayan*, Maria *Pulakkalli* (female version). The *Pulaya* Christians used to work as domestic help for Syrian Christians and were given food outside the houses in leaves or in old vessels. Syrian Christian names were unique: Chacko, Thomas, Mammen, Oommen, Paul, Peeli, Elizabeth, Eliamma and so on (John 2008).

The Syrian Christians were mainly traders, farmers and land owners and were equal to Nairs in the social hierarchy. According to Zachariah (2001), Syrian Christians lead other communities in terms of ownership of land. The rulers or the Maharajas gave the Syrian Christians some rights and privileges written on copper plates and inducted many into the

civic administration and entrusted duties relating to tax collection, accounts, administering justice for criminal offences in churches and so on (Easo 2008). In the sphere of education, Syrian Christians were one of the most educated communities and maintained a high standard of living. According to Alexander (1971) the institution of family assumed great importance for them. Husband and wife relationship was seen as a sacred one and therefore, polygamy, divorce and remarriages were prohibited. The husband was the head of the family and the wife and children had to obey him. The family name (*Kudumbam* or '*tarawad*') has been a prestigious issue among Syrian Christians and an important criterion for marriage alliances even today.

It was evident from the writings of Pothen (1963) that long association with cultural practices of Hindus led to the continuance of some of the Hindu cultural elements into the Syrian Christian community. Some Syrian Christians still believe in astrology and horoscopes. Tying of '*minnu*', which is similar to that of '*thali*' or '*mangalsutra*' among Hindus, is still followed in this community during marriage ceremonies and this holds greater importance than exchange of rings. The practice of *streedhan* also shows a cultural hangover, even though there has been a significant deviation in the form and value of *streedhan* over the years. It was customary earlier that one-tenth of the *streedhan* was to be donated to Church as *passaram*, a mark of evidence of the transaction of *streedhan* in connection with marriages. According to Thulaseedharan (2004), this was reportedly one of the proclamations of Synod of Diamper<sup>20</sup> that the records be used as concrete evidence for the daughters being left destitute without any wealth. In the later years, when the practice of dowry was declared a legal offence, this custom was stopped by the Churches and they started accepting any amount as donation from the marriage parties. This only serves as an additional source of income to the Churches. As far as inheritance was concerned, the custom expressed a dominant place of patriarch in the Syrian Christian households (Visvanathan 1989).

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<sup>20</sup> Convened on 20<sup>th</sup> June, 1599, at Udayamperoor in Kerala under the leadership of Aleixo de Menezes Archbishop of Goa, known as *Udayamperoor Sunahadoss*. It formally united the ancient Christian Church of the Malabar Coast with the Roman Catholic Church. Activities in connection with the Synod of Diamper brought drastic changes among the ancient Christians in Kerala. (Synod of Diamper 2009).

Thus it is quite evident that the Syrian Christians have kept a dominant social identity, maintained certain customary practices and at the same time preserved certain Hindu cultural aspects in marriages and economic transactions in connection with marriages.

### 3. 2. PRACTICE OF INHERITANCE AMONG CHRISTIANS IN KERALA

Christians in Kerala by and large follow the patrilineal mode of inheritance which has been the tradition as well as the cultural norm in India. In Kerala, particularly, the Christian women's rights to inheritance or succession have been curtailed by the patrilineal system and also due to various laws of the land which adversely effected women's right to own property. This section tries to bring out the practice of inheritance based on customary norms, canonical laws, and through different judicial systems over different periods of time. The purpose of this exposition is to throw light on the patriarchal forces entrenched in the inheritance practices among Christians and gender discrimination perpetuated through all this.

#### 3.2.1 Customary Practices of Inheritance among the Kerala Christians

Originally, the present state of Kerala consisted of three states: two princely states, namely, **Travancore and Cochin**, and the state of **Malabar**. The inheritance rights were conferred on Christians through customs prevailing in these states, which were the result of long-established usage. These customs or usage varied among different denominations of the community and also from region to region. The South Travancore Christians who were converts and descendants of converts to Christianity from various castes, followed the *Mitakshara*<sup>21</sup> law, some section of Christians followed the Hindu *Marumakkathayam*<sup>22</sup> Law and were called the *Marumakkathayam* Christians. Equal share concept was followed by less propertied Christians such as Latin Catholics, South-Travancore Protestants and Anglo Indians. Equal share concept denotes back to the various proclamations made at the Synod of

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<sup>21</sup> This was a major school of legal doctrine in Hinduism . The other school was *Dayabhaga* which was followed in Eastern India like Bengal an Assam As per the *Mitakshara* school, the son by birth was entitled to a share in the ancestral property and that even during the life time of his father the son had every right to demand his share in the ancestral property (Mukund, 1999; Thulaseedharan, 2004).

<sup>22</sup> descent through the female line.

Diamper which stood for equal shares in ancestral property to both men and women (Thulaseedharan 2004).

Practice of inheritance among the Syrian Christians was quite different from the above mentioned. Visvanathan (1989) has noted that among the **Syrian Christians**, the concept of **equal share** was not common and property was divided quite often as per the needs of the family members. One brother may receive more than the others as he may be financially poor compared to others. It was a practice that the youngest son inherited the *tarawad* and the parents resided with this son but, there was no fixed rule. Women did not come into picture as they did not have any formal importance in property settlements through inheritance and were entitled only to *streedhan*. It has to be noted that when daughters were the only sole inheritors, there existed a practice called *dethkeruka*<sup>23</sup>. In such cases, the older daughters would be married off while the youngest daughter continued to remain at *tarawad* along with her parents. Only such a groom would be sought for her who would be willing to stay with the in-laws. This implied that the son-in-law live with affines rather than with agnates, which was not a very comfortable position for Syrian Christian men. As there was no definite law regarding the inheritance rights of native Christians, there was considerable uncertainty regarding inheritance prevailed in all the three States (Thulaseedharan 2004).

Thus it is evident from the above discussion that inheritance through the customary prevailing practice among certain sections of Christians in Kerala which enabled Christian women to inherit the property. However, as far as the Syrian Christians were concerned patrilineal mode was the customary norm which deprived women from inheritance and women's wealth was just the *streedhan*, given at the time of marriage.

### **3.2.2. Inheritance through Jewish and Canon Laws**

Though patriliney was the customary norm among the Syrian Christians, they were said to have followed the Biblical or Jewish law for succession at the beginning. As per the law, if a man dies without a male heir, then his inheritance would be passed on to his daughter and in

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<sup>23</sup> Practice of affinal adoption of son-in-law to reside at in-law's house and to take charge like that of a son

the absence of a daughter, he should give his inheritance to his brothers. If he had no brothers, then he should give his inheritance to his father's brothers and if his father had no brothers, then he should give his inheritance unto his kinsman that is next to him of his family and he shall possess it. The law seems to exclude female heirs (other than daughters) and the mother's family (as cited in Radford nd). Later on, the *Hudaya canon* became the highest authority which flourished between AD1226 and 1286. According to this canon, female heirs of any degree (the daughter, the sister or her aunt, etc.) shall get the share of the male heirs of the corresponding degree (such as the son, the brother, the uncle etc.). A childless widow got about one-fourth of her deceased husband's estate and, if there were children, then a share equal to only one-eighth of that of a son. The sister of a deceased childless Christian succeeded to his property in the absence of his brothers, and a daughter took an absolute estate in whatever she got by way of inheritance from her father (Thulaseedharan 2004).

Visvanathan (1989) has pointed out that due to the absence of a defined law, the settlement of property continued to remain vague and ill-defined and many a time led to feud, among family members. Questions of manipulation and preference came up during settlements on family property. Absence of a definite succession law became the source of litigation among the landed Syrian Christians (Thulaseedharan 2004).

The canonical law was thus found to be patriarchal and gender discriminatory in nature. Hudaya canon was however observed to be gender equitable. But as patriliney prevailed and in the absence of gender inclusive inheritance laws, Christian women, particularly in the Syrian Christian community continued to remain in a state of disinheritance and had to be contented with the *streedhan*.

### **3.2.3. The Travancore Christian Succession Act of (1916) and the Cochin Christian Succession Act of (1921)**

It became crucial to implement a definite law for succession among Christians in the State. A recommendation for changes in the succession canon was placed before the then ruling Maharaja of Travancore by a noteworthy group in this region called Christian *Maha Jana Sabha* in 1880. Their main objectives were the adaptation of the internal customs of the Syrian Christian community in order to facilitate the mobility of the economic transfers necessary in a capitalistic monetary economy (Houtart and Lemercinier 1978). This was apparently on the plea that the ancestral property would get fragmented, generation after generation if the property was passed on to women, who mostly got married and settled down in far away places (patrilocality). Besides, there was the possibility that the daughter's husband might sell his wife's inherited landed property to strangers and thus diminish the family's status linked to the ancestral property. The group pleaded that the family status could very well be carried on by the sons provided they became the sole heirs of the property.

A commission was set up in 1911, which led to the formation of the first legislation guiding the rules of intestate succession among the native Christians which came into existence in **1916**, called the **Travancore Christian Succession Act**, and a similar Act was later introduced in Cochin in **1921**, namely the **Cochin Christian Succession Act**. Meanwhile, in the **Malabar** area, the native Christians were governed by the **Indian Succession Act, 1865**, introduced by the British for the Christians in India which was later amended by the Indian Succession Act, 1925 (Thulaseedharan 2004). The Latin Catholics, South-Travancore Protestants and Anglican Christians continued to follow the **equal share** concept under the purview of the Indian Succession Act (1925). So three different legislations prevailed in these states for succession among the native Christians.

Travancore and the Cochin Succession legislations were based on the former notion of the Hindu law of inheritance where the share of the daughter was only *streedhan*, which was one-fourth the value of the share of a son. The widow had only life interest in her share of the property (Lemercinier 1984). According to the Travancore Christian Succession Act

(1916), the *streedhan* meant and included any money or ornaments, or in lieu of money or ornaments, any property movable or immovable, given or promised to be given to a female or, on her behalf, to her husband or his parent or both of them, by anyone who claims under such father or mother, in satisfaction of her claim against the estate of the father or mother (Government of India 1974: 135). A daughter's share or *streedhan*, which was generally considered dowry, was restricted to Rs. 5,000/ or a quarter of the brother's, share whichever was less. Christian women, whether married or not, were excluded from inheritance, even if they had no brothers. Succession to share was given to daughters or females only if there were no male heirs or lineal descendants of male heirs. In that case daughters' shares were one-fourth the share of the property (Jacob 1986). As far as the right of inheritance of a widow was concerned, if the intestate died leaving the widow and the lineal descendants, the widow got an equal share as that of a son. The widow got half the share if there were no other lineal descendants but husband's father or mother (Jacob 1986). However, the right of the widow on her share was limited to life interest or only maintenance and she had no right to sell the property.

The **Cochin Christian Succession Act (1921)** defined *streedhan* as any property given to a woman or in trust for her or husband, his parent or guardian, in connection with her marriage, and in fulfillment of a term of the marriage treaty on that behalf (Government of India 1974: 133). Like the Travancore Christian Succession Act (1916), limitation was laid with regard to the daughter's share, she could receive only *streedhan*. The only difference was that, unlike the Travancore Christian Succession Act (1916), this Act did not specify a limit on the amount of *streedhan* but **one-third** of the value of the **share of a son**. This Act allowed the widow to take **two-thirds** of the share of the son, but again if there were only daughters, then her share was the same as that of the daughters. These laws entitled the women the right to inherit property, but this right was limited to life-estate or just maintenance and this too lapsed in case of remarriage (Government of India 1974).

From the provisions mentioned above, it is quite clear that the rights of inheritance of the Christian women in Kerala under these Acts were gender discriminatory in nature since they recognised the daughter's right only to *streedhan*. This practice definitely violated the

principle underlying the Dowry Prohibition Act (1961) (Centre for Social Development and Humanitarian Affairs, 1977). Even skimpy inheritance rights might be defeated as the testator<sup>24</sup> had the absolute power to Will<sup>25</sup> away one's entire property. Jacob (1986) has pointed out that giving a widow a better share in the property of the intestate and a quantum of share for a daughter were not incorporated in the Travancore Succession Act (1916) by the Maharaja of Travancore. He might have been pressurised by the Syrian Christian community to continue with the pattern of life interest for widows on their share of property and that of the daughter's share limited to **one-fourth** of the value of the share of a son.

When the British enacted the Indian Succession Act in 1925 for the native Christians of India, the Christians belonging in Travancore and Cochin states did not come under its purview as the British had no sovereignty or law-making authority over these two Princely States. Thus, neither did the Indian Succession Act (1925) apply directly to the Christians in these princely States nor was it specifically made applicable to them. When India became independent in 1947, the Travancore and Cochin States continued to remain princely States. These States became part of the Indian Union when the respective Maharajas signed the Instruments of Accession in 1949, making them **Part B State of Travancore-Cochin**. Thereafter, Parliament enacted the **Part B States (Laws) Act, 1951** (Champappilly 1994).

Following the national policy of integration in 1949, the States of Travancore and Cochin were merged into one State under a Rajpramukh. Later on, with the reorganisation of States on a linguistic basis in the light of the report of the States Reorganisation Commission, Malabar district and the Kasargod taluk of South Canara district were added to Travancore-Cochin State and the new State of Kerala was formally inaugurated on November 1, 1956. The Tamil-speaking southern region of old Travancore was separated from Travancore-Cochin for inclusion in Madras State (Emergence of Nationalism 2008)). Even after the formation of one state, the inheritance practice of Christians in Kerala continued to be governed by the Travancore and Cochin Christian Succession Acts.

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<sup>24</sup> A person making a Will and executing it.

<sup>25</sup> A Will is defined as "the legal declaration of the intention of the testator, with respect to his property, which he desires to be carried into effect after his death (legal service India.com 2009).



It is quite obvious that the two laws really called for a definite revision providing necessary measures to erase the blatant discrimination of Christian women of Kerala and to incorporate new clauses for equal division of property among both the sexes.

#### **3.2.4. Application of the Indian Succession Act (1925) in the State of Kerala.**

The discriminatory provisions of both the Travancore and the Cochin Christian Succession Acts (1916) and (1921) were challenged by Mary Roy as a violation of Article 14 of the Indian Constitution which lays down equality for everyone. She was provoked to move the court when she suffered harassment and humiliation at the hands of her own brothers who hired *goondas* to evacuate her from their father's cottage in Ooty along with her children. She refused to vacate as she did not have any other place to go. It was then that she came face to face with the gender discriminatory Travancore Christian Succession Act (1916) which tried to strip her of the inheritance right in the intestate property of her father and then there was no tuning back. Mary Roy was determined to give it a legal fight to restore her constitutional right to equality. Her petition, *Mary Roy vs the State of Kerala, (1984)*, contended that no religious groups, sect or denomination should be allowed to claim protection of its own personal law against the constitutional guarantee of sexual equality and that such discriminatory law should be declared invalid. The petition further stated that, the Indian Succession Act (1925) should be extended to the state of Kerala, so that a **widow will get one-third as her share** from the intestate property of the deceased husband, and the remaining property will be **equally divided among sons and daughters** (Jacob 1986).

As reported by Champappilly (1994), after a lengthy legal battle, the Supreme Court of India, in 1986, took the view that by virtue of **Section 6<sup>26</sup> of the Part B States (Laws) Act, 1951**, the Travancore Christian Succession Act (1916) stood repealed from the appointed day under the Part B States (Laws) Act, i.e., April 1, 1951. Hence, it reasoned, the law applicable to intestate succession among Christians of Travancore area of the State of Kerala was the Indian Succession Act, 1925, with **Retrospective Effect from April 1, 1951**. Following this decision, the High Court of Kerala ruled that the Cochin Christian Succession

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<sup>26</sup> Section 6 provided that any law in force in these States corresponding to any of the Acts extended to Part B States, would stand repealed and the inclusion of the Indian Succession Act, 1925 in the schedule to that Act

Act, 1921 also stood repealed by Part B States (Laws) Act, 1951. Though these courts did not expressly give retrospective effect to the judgments, the mere declaration that the Travancore and Cochin Acts stood repealed on April 1, 1951, gave these judgments retrospective effect overturning the then existing law and practice among the Travancore-Cochin Christians.

These decisions had another impact. Under the Travancore-Cochin Acts, probating of Wills<sup>27</sup> was not mandatory applicable to the Travancore-Cochin Christians. But under Section 213 of the Indian Succession Act (1925), it became mandatory for the Christians to get their wills probated. Therefore, as a consequence of the decision, family settlement deeds based on wills that were not probated have suddenly become invalid in view of the application of Section 213 with effect from April 1, 1951. In the case of intestate succession, partitions or family settlements made in accordance with the provisions of the Travancore Act also became defective. Such documents, now, cannot be used as securities for financial transactions, and further, daughters (sisters) who were excluded from the share (under the provisions of the Travancore or Cochin Acts) can now reopen the matter both for genuine and mala fide reasons (Champappilly 1994).

The judgment in the case of *Mary Roy versus the State of Kerala (1986)* brought about a turning point in the inheritance rights of the Christian women of Kerala. According to the new law, a **widow receives one-third** of the total assets as her share of her husband's property, and the remaining **two-thirds are equally divided among the children** of the deceased with no sex difference. If a man dies without a wife and children, his property devolved on his father. In the absence of the father, his mother, brothers, and sisters receive an equal share (Jacob 1986).

Christians in Kerala, by and large, welcomed the decision of the Supreme Court with certain reservations. The Church, legislature and press created a hue and cry after the apex court's judgment, fearing that Courts all over the State would be swamped with litigations claiming women's inheritance rights with retrospective effect. They feared that this could

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<sup>27</sup> A probate means a copy of the Will, certified under the seal of a competent Court with a grant of administration of the estate to the executor of the testator. It is the official evidence of an executor's authority. Executor is the legal representative for all purposes of a deceased person (testator) and all the property of a testator vests in him (legal service India.com 2009)

eventually trigger off property disputes among the affluent Syrian Christian community and then the community will be in peril. The Catholic community was in a predicament about the reaction of the nuns who were not given any dowry but wedded to the Church who might turn around to claim their share. Moreover, since the judgment carried a **retrospective effect from 1 April 1951**, transaction in the form of *streedhan* could not disentitle women from demanding a share. Transactions involving sale of property, land mortgage and bank security were put under scanner due to the impending legal impediments. However, in the midst of all this, a faction of prominent Syrian Christian community had cashed in on the judgment to make gain. Some of the litigation prima facie indicated that they were filed in collusion between brothers and sisters so as to evade repayment of huge loans taken from banks by mortgaging landed-property (Thulaseedharan 2004).

Mr. Thampan Thomas, former member of Parliament from Kerala, was supportive towards the Supreme Court's decision and forwarded a non-official bill in the Lok Sabha to consolidate and to amend the law applicable to the intestate succession of the Indian Christians. The Bill sought to provide equal shares to both sons and daughters and also suggested that the daughter could get the share as dowry on her marriage, if it is so desired. However, there were some concern expressed with regard to the retrospective effect of the judgment. All Kerala Catholic Women's Organisation had called upon the Government to implement the Indian Succession Act from 1986 onwards only (as cited in Champappilly 1994). Mr. P.J. Kurian, a former cabinet minister from Kerala, had also proposed a bill in the Lok Sabha to do away with the retrospective effect of the Supreme Court's decision, which went unnoticed. The Kerala Government had applied for a review of the retrospective nature of the share of the property due to the administrative difficulties and social tensions likely to be generated by upsetting land transactions of the past. According to Jacob 1986, The Supreme Court, however, dismissed the petition on the basis that the ground for review lacked substance.

On the other end, the new piece of legislation could hardly create any dent in the inheritance rights of the Christian women. The members of the community seemed to be less concerned about the prosperity which the judgment had conferred on women. The few litigations which were filed in the subsequent years (after 1986), indicated the attitude of the

community. On the contrary, there was more vigilance among the male members while disposing off the intestate property. Very often, they obtained the consent of sisters/daughters and got their signature as a proof of relinquishing their right over the share so that the male could continue to be the custodian of the property. In addition, women's claim on the share is with regard to the intestate property where there is no written Will regarding the succession of the property. So the tendency now-a-days is to make a Will for the whole property and the problem of intestate succession seldom arises in Christian families. Thulaseedharan (2004) observed that women too prefer to get their assets in the form of cash at the time of marriage rather than wait for long years to get a share in the intestate property.

The Supreme Court's decision is undoubtedly a milestone in the matter of intestate succession as far as the Christian women of Kerala are concerned. However, the law alone will not bring about any effective change as the desire for reform should come from within the community. Supporting the view of Thulaseedharan (2004), researcher also feels that the Government, on its part, has never been keen to make any attempt to prepare the ground for such reforms. It has always preferred to avoid any controversial legislation which could prove to be politically inconvenient. The Church, the government and the judiciary were equally guilty of keeping silent in this matter before 1986 and 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. Are there Syrian Christian women like Mary Roy who would go forward to challenge the patriarchal system to ensure their inheritance right when they are meted out with injustice and gender discrimination?