CHAPTER 1

INTRODUCTION

The prominent ways of men and women acquiring land are through inheritance, dowry, gifts, purchase and other kinds of transfers. However, the patriarchal ideologies which are deeprooted in the Indian society have constructed a gender dichotomy and have marginalised women from acquiring landed property through inheritance or dowry. Traditionally, dowry has been called as *streedhan*\(^1\). In ancient Hindu custom, *streedhan*, connoted the property of bride conferred on her by her natal group such as parents and brothers as a token of their love (Caplan 1993). *Streedhan*, a voluntary practice, was considered part of the Vedic concept of *kanyadan*\(^2\) and was the only wealth a woman could acquire from her parental home. According to Goody and Tambiah (1973), the notion of *streedhan* corresponded to the pre-mortem inheritance, which presupposed compensatory wealth for inheritance. Though it represented a certain amount of economic security to a woman, the value of *streedhan* could not be compared with that of the inheritance share of a son. Moreover, over the years, there has been a transition of *streedhan* to dowry which is demanded by the groom’s family with the social objectives of achieving ‘quick money’ to satisfy material greed. This practice has become a real threat to the very existence of women in the matrimonial front. The Dowry Prohibition Act of 1961, and the further amendments of the same in 1981 and then in 1986, seem to have lost their effect.

The primary objective of introducing the practice of *streedhan* has been to pass on the property, especially landed property to male heirs (patriliny). This practice has been shaped to a considerable degree by patriarchal norms such as *patrilocality*\(^3\), which is

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\(^1\) Wealth of a woman  
\(^2\) *kanyā* (virgin daughter) being given as *dana* (sacred gift) to a boy.  
\(^3\) Shifting residence to husband’s house after marriage or residing at marital home.
socially acceptable and reinforced by the ideology that a girl is ‘a bird of passage’, ‘another’s property’, and so on (Mukund 1999; Kodoth 2004, and Government of India 1974). The clear cut distinction maintained between the two genders in terms of inheritance of property has promoted gender-discriminatory devolution of land in all the communities barring a few matrilineal communities (Menon 1981). Matriliny\(^4\) is not a new phenomenon, but has prevailed in different countries in the world at different points of time. In India, it was quite predominant among certain communities in the North-East and Southern states. In Kerala, the matrilineal system was practised by some Hindu castes like Nairs, Thiyas, a section of Muslim and a few other communities. However, changes have been taking place in conventionally matrilineal communities in the South and North-East, and the indications of changes are not quite clearly in favour of gender equity practices (Kodoth 2001).

Matriliny had privileged women belonging to matrilineal communities to inherit property as compared to women of other communities who practised patriliny. However, matriliny did not mean that women of matrilineal communities exercised complete authority over their inherited property since the control and decision making power rested with men.

1.1. Personal Laws of Inheritance and Women’s Inheritance Rights

Across virtually all the communities, women are discriminated in the area of inheritance, since they are heavily shaped by the assumptions of patriliny and patrilocaity (Kapur and Cossman 1996). Though there have been legal provisions for inheritance laid out among different personal laws for Hindu, Muslim, Christian and Parsi communities and some of the legal obstacles have been removed, these assumptions continue to operate and undermine women’s ability to claim their property rights and reinforce women’s economic dependency on men across different regions and religions.

\(^4\) Succession of property through the female line
According to the **Hindu Succession Act (1956)**, the intestate property\(^5\) of the deceased man is divided among the class 1 heirs. The deceased person’s widow or if there are more widows than one, then all the widows together shall take one share. The surviving sons and daughters and the mother of the deceased person shall each take one share. Though this Act tried to ensure the rights of Hindu women, it has its share of patriarchal interest retained in the law. The Act promised an absolute right to a woman over her share of the property. However, a man can create a will for his wife to use the property only for her lifetime, and not for transfer or sale (Diwan 1998). This law continued to retain the Mitakshara Coparcenary\(^6\) without including the rights of women. This means that each coparcener gets double share, while the women get only the father’s share. In 2004, the Union Cabinet cleared the Law Commission proposal to amend the Hindu Succession Act, 1956 where the daughters will also have the same co-parcenary rights in the ancestral property (Times of India 2004). The Hindu Succession Act (1925) is applicable to any person belonging to Buddhist, Jaina and Sikh communities.

**Islamic law** has been unique compare to other personal laws in the sense that, the Koran acknowledged the succession right of Muslim women. According to the Koran, Islam gave women the right to property like that of men (Engineer 1987). Under Muslim law, all properties devolved by succession. However, the primary principle of Muslim law is that, if there are male heirs and female heirs of the same degree, the share of a female member is half of that of the male, but the woman had the absolute ownership over her share. The Muslim community falls into two schools of thought, namely, the Sunni or the Hanafi school and the Shiah school. As per the Sunni law, when a Muslim male dies leaving behind a widow and children, then the widow takes the share of one-eighth of the estate, and the residue, that is seven-eighth goes to the children. By virtue of the double portion, the son will take seven-twelfths and the daughter will take seven-twenty-fourths. Only in the absence of a son, will a daughter be taken as a sharer in estate (Diwan 1998).

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5 Property for which there is no Will documented by the person regarding its devolution after his/her death among the surviving members of the family such as the spouse and children.

6 Under Mitakshara school of law, the law of succession was intimately connected with coparcenary properties. Coparcenary had the privilege of right by birth where all men like sons, grandsons and great grandsons had the same right in the joint family like that of the father. No woman had the coparcenary right (Singh 1989)
As per the *Shia* law, when a Muslim dies, the **wife receives half the share of a man**, that is, one-fourth of the estate if there are no children, and one-eighth if there are issues. A daughter is entitled to have **one-half** of the estate if there is no son. If a man has only daughters and no sons, then the daughters would inherit more than they would under the *Sunni* law. That is, they get two-thirds of the estate (Diwan 1998).

The British rule in India had a significant role in enacting the **Indian Succession Act, 1925 for Christians**. When the British settled down to govern India, they found that there was no ascertainable law in the matter of succession for communities other than Hindus and Muslims. This lacunae came to be noticed when a Hindu renouncing his religion got converted to Christianity could still choose to be governed by Hindu law in matters of succession. It was to fill this gap that the Indian Succession Act of 1865 was enacted. Later on the codification of the law was carried out and the Indian Succession Act, 1865 was repealed and the Indian Succession Act, 1925 was enacted, consolidating various other enactments in the matter of intestate and testamentary succession among the Indian Christians (Diwan 1998).

According to the Indian Succession Act (1925), when the husband dies without leaving a will, that is, intestate, then his property is distributed in the following manner. The share of the lineal descendants comprising the widow, children, the grandchildren and great-grandchildren is that, the **widow** gets **one-third** of the property and the remaining **two-thirds** will be divided **equally between the children**. If there is only one child, then he or she will take the whole of two-thirds. If there are grandchildren and no living children, then the grandchildren will divide the two-thirds equally among them. The same rule applies to great grandchildren also (Diwan 1998).

When the deceased husband has no children, then the widow gets half the property and the other half goes to his father excluding the mother. When the deceased husband is not survived by a widow or children, but only his parents, then his father inherits all the property. However, if the father is dead, then his mother has to share the property along
with his brothers and sisters. Thus, the father of the deceased husband inherits the property
in exclusion of all other kindred. If the deceased husband has no father and is survived by
the widow, his mother, brothers and sisters, the widow gets one-half of the estate and the
remaining one-half is shared equally among the mother, brothers and sisters. When the
deceased is not survived by the widow, children, his father, or siblings, then his mother
takes the whole of the estate. In the absence of any lineal descendants and parents, then the
property is shared equally between the brothers and sisters (Diwan 1998).

If only the deceased husband’s mother and children of any deceased brothers or sisters
are living, then they are entitled to the property in equal shares. When the intestate has not
left a lineal descendant, parents, and siblings, then his property is divided equally among
those of his relatives who are in the nearest degree of kindred to him. There is a special
provision where the intestate is left only the widow and no other lineal descendants. If the
net value of the deceased husband’s assets does not exceed Rs.5000, the widow is entitled
to the entire property. If the net value exceeds Rs.5000, the widow is entitled to Rs.5000,
thereof and shall have a charge upon the whole of such property for such sum of five
thousand rupees with interest at four per cent per annum, until paid. A husband surviving
his wife has the same rights in respect of her property, if she dies intestate, as a widow has
in respect of her husband’s property if he dies intestate (Diwan 1988).

The Indian Succession Act (1925), has thus privileges for the male members as in the
case of Hindu and Muslim Personal laws. The Act does not include any steps to check the
provisions made in the will of a person, mainly the succession rights of women. According
to this law, a person can make a will as he wishes and can disinherit anyone he likes. If the
daughters are disinherited this way, then they will be left with nothing, even in the father-
in-law’s property, if they are widowed (Kishwar and Vanita 1990). The Act should have
had some clause to make the will invalid if women are excluded from the will deliberately.
This law does not make provisions for a widow of a son or a grandson to inherit the father-
in-law’s property.

Though this Act was meant for all the native Christians in India, Christians in Kerala
did not come under the purview of this Act due to the administrative nature of the State
existing at that time and was governed by the State Laws such as Travancore and Cochin Christian Succession Acts of (1916) and (1921) respectively.

The succession among the Parsi community was governed by the rules laid down according to Sections 50 to 56 of the Indian Succession Act 1925. Accordingly, the son got double of the daughter's share. As per the Amendment Act 1991, when a Parsi male dies without a will, leaving behind a widow and children, then each of them will get an equal share of the property. The daughter shares equally with the son. When the male dies leaving behind only children and no widow, then the children will divide the property equally among them. Other sections of this Act contains gender discriminatory provisions similar to the rules governing the Indian Christians (Diwan 1998).

The Indian Succession Act was also made applicable to two Muslims marrying under the Special Marriage Act and also for inter-community marriages under the Special Marriage Act (Sathe 1987).

1.2. State Laws and Christian Women’s Inheritance Rights in Kerala

Though matriliny existed among certain communities in Kerala, Christians in the State largely followed the patrilineal mode of succession. Two Succession Acts that governed native Christians in Kerala for matters relating to inheritance were, the Travancore Christian Succession Act of 1916, and the Cochin Christian Succession Act of 1921. Both 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 and no right in the parental property.

When the British enacted Indian Succession Act (1925) for native Christians in India, Christians belonging to Kerala were excluded from this Act. This was mainly due to the administrative nature prevailing in the State at that time. As a result, Christians residing in the State of Travancore were governed by the Travancore Christian Succession Act of 1916 and Christians residing in the State of Cochin were governed by the Cochin Christian Succession Act of 1921. Both Travancore and Cochin states became part of the Indian
Union known as **Part B States of Travancore-Cochin**. Thereafter, the Parliament enacted the **Part B States (Laws) Act, 1951** (Champappilly 1994). However, Christians in the State were ruled by both the state laws.

Gender discriminatory practice of inheritance sanctioned by the state laws like the Travancore Christian Succession Act (1916) and the Cochin Christian Succession Act (1921) definitely called for a revision since these laws deprived Christian women their inheritance rights. To bring an end to the gender discriminatory state laws, Mary Roy, who was denied her inheritance right, challenged the state laws on the basis of violation of Article 14 of the Indian Constitution which lays down equality for everyone without any gender discrimination. After a lengthy legal battle, *Mary Roy vs the State of Kerala, (1984)* case brought about a turning point in the inheritance practice in the Christian community. In 1986, the Apex Court struck down the state laws of Travancore Christian Succession Act (1916) and the Cochin Christian Succession Act (1921) and made the Indian Succession Act (1925) applicable to native Christians of Kerala with retrospective effect from April 1, 1951. This was done keeping in view the enactment of Part B States (Laws) Act, 1951. The Indian Succession Act (1925) entitled a Christian **widow one-third** as her share from the intestate property of the deceased husband, and an **equal share for both sons and daughters**.

After the Supreme Court’s verdict on the implementation of the Indian Succession Act (1925) in Kerala, there were pro and anti responses towards the verdict from various quarters like the Christian community, the Government, women’s right activists, judiciary and Churches. Though the verdict could be seen as a milestone as far as the Christian women of Kerala were concerned, the ground reality was quite different. The trends observed so far have only gone to prove that the change in legislation entitling daughters an equal share has not really served the purpose.

**1.3. Syrian Christians and Inheritance Rights**

Syrian Christians or St. Thomas Christians of Kerala are the oldest Christian community in India, and were originally converts from the Hindu faith through the ministry of St.
Thomas, one of the disciples of Jesus. Syrian Christians are so called, not because they claim Syrian heredity but because they follow Syrian liturgy\(^7\). Initially, the Syrian Christian Church remained part of the Syrian Orthodox Church of Antioch, but later on many factions within the Syrian Church sprang up leading to the formation of five principal Syrian Christian denominations. They are the **Orthodox Syrian, Jacobite Syrian, Syro-Malankara Catholics or (Reethu), Marthoma Syrian and Church of South India (CSI)**. Syrian Christians became a predominant community in Kerala because of their social standing, higher educational status and ownership of landed property (Alexander 1971).

As far as inheritance was concerned, the community followed the patrilineal mode of inheritance in toto. Legal provisions spelled out by Travancore and Cochin Christian Succession Acts, had only ensured the protection of patriarchal interests of the Syrian Christian community. Non-application of the Indian Succession Act (1925), for Christians in Kerala until 1986 had further consolidated the Syrian Christian community’s male domination in the area of inheritance.

1.4. **Statement of the Research Problem**

The present research study has been developed from the above discussed backdrop that encompasses the social, cultural and legal ambiguities in matters relating to gender and succession among the Christians in Kerala. The inheritance rights of Christian women in Kerala have been embedded with patriarchal impediments, which repressed these women’s right to succession and have suffered much under the State Laws, namely the Travancore and Cochin Christian Succession Acts of (1916) and (1921) respectively. A legal transformation which took place in 1986 in the State as a result of the Supreme Court’s verdict based on *Mary Roy vs State of Kerala* case wrote a new script for the Christian community in Kerala as a whole and Christian woman per se with regard to the inheritance

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7 Liturgy is customary public worship in the form of a song, done by a specific religious group, according to their particular traditions. Syrian liturgy is based on the liturgy of St. James, a follower of Jesus who was later declared as a saint and patriarch among Jewish Christians. This is considered to be the oldest surviving liturgy developed for general use in the Church. (Syro- Malabar Church 2008)
rights. This was definitely a boon for Christian women who had no inheritance rights. But at the same time, the verdict also triggered off various counter actions and setting up of legal avenues to disinherit women from parental property within the Christian community itself. These included: abuse of testamentary power in the sense that parents documenting a Will excluding girls as heirs, pressure brought on women to relinquish their right over their share of the land to their brothers in the interest of good relations, offering a token amount to women in lieu of substantive property, or indefinitely delay the property division. There are instances where women do move courts to claim their shares, counter-claims would be hastily submitted in the courts by brothers, in a bid to stall the cases, under the pretext of expenses they incurred for the petitioners, i.e., their sisters’ weddings, dowry they paid etc., in order to retain the property to themselves. So the verdict of equal inheritance rights for both sons and daughters, sent out many implications.

From the research point of view, the judgment on equal inheritance rights as per the Indian Succession Act (1925) for Christian women in Kerala in the intestate property of parents has opened up scope for research on different dimensions pertaining to the area of inheritance rights among Christians in Kerala. This means, looking at the issue of inheritance rights in Christian women’s perspective, Christian men’s perspectives, community point of view, legal professionals’ point of view, and so on. However, the researcher’s whole interest has been, to understand the issue of inheritance rights through a gender lens i.e., to study the implications of the judgment of equal inheritance on Christian women, specifically Syrian Christian women. Therefore, the research study undertaken in this context aims at throwing light on Syrian Christian women’s understanding of inheritance rights on the basis of the Indian Succession Act (1925). The study has focused on the Syrian Christian community for being the oldest Christian community in Kerala, with dominant socio-cultural characteristics and the highest ownership of landed property.

A research study based on responses of Syrian Christian women across varied socio-economic and demographic backgrounds to equal inheritance rights, could be contributory towards the body of knowledge in understanding the empowerment aspect of Syrian Christian women. This would also help in legal awareness programmes and policy making.
For this purpose, the inputs of Syrian Christian women belonging to five principal Syrian Christian denominations, namely Orthodox, Jacobite, Syro-Malankara Catholics or (Reethu), Marthoma and Church of South India (CSI), were collected through a survey method. In addition, the study also focused on the utilisation aspect of the law by exploring the experiences of those Syrian Christian women who availed the inheritance provision as per the Indian Succession Act (1925), to claim their inheritance rights. The experiences were captured through the case study method in a qualitative manner which could further enhance the strength of the study.

This research work is organised and presented in 11 chapters. The first chapter introduces the research theme which includes inheritance rights according to different Personal Laws, State laws of inheritance for Christians in Kerala, Syrian Christians and inheritance practice, and statement of the research problem. The second chapter is about property rights of women which has two sections. The first section discusses theoretical perspectives and the second section brings out analysis of review of literature on inheritance and dowry and implications on women, which is followed by the rationale for the study. The third chapter provides an understanding on Christianity and inheritance practice among Christians in Kerala. This constitutes the origin of Christianity, development of different Syrian Christian denominations and other Christian groups and the legal aspects relating to the inheritance of Christians in Kerala.

The fourth chapter deals with the methodological considerations for the study. Chapter five describes the socio-economic and demographic characteristics of Syrian Christian women under study. In the sixth chapter, there is a critical analysis of gender empowerment in Kerala, followed by an assessment of Syrian Christian women’s responses to gender empowerment aspects which could be contributory towards their understanding of inheritance rights. The seventh chapter constitutes the analysis of core issues of the research, i.e., respondents’ awareness, knowledge and attitudes towards inheritance rights in the light of the Indian Succession Act (1925) and their views on dowry. The eighth chapter deals with the correlation between the socio-demographic and economic variables and the respondents’ level of knowledge and attitudes towards
inheritance rights analysed on the basis of two denominations i.e., the Orthodox Syrian and Reformed Syrian which have been retained as the controlled variable.

The **ninth chapter** brings out the results of logistic regression analysis that was carried out to identify whether there exist any determining effect of the socio-economic and demographic factors on the knowledge and attitude levels of the respondents belonging to the Syrian Christian denominations on issues relating to inheritance rights. In the **tenth chapter**, case studies based on personal experiences of a few women who had availed themselves of the provisions of the Indian Succession Act (1925), to claim their inheritance rights is reported. The thesis winds up with a summary and a conclusion while specifying the limitations of the study. It also has recommendations and suggests scope for further research in the **eleventh chapter**.