CHAPTER- V

GENDER DISCRIMINATION IN THE LAWS OF SUCCESSION AMONG CHRISTIANS

It has been the general impression that Christian law of succession is discriminatory to women as the Christian Divorce Law has been. In fact the Indian Succession Act applicable to Christians in most parts of India contains a safety valve through which the customary laws which are contrary to the provisions of the Indian Succession Act can be retained as the law of succession in certain areas. However, the decision of the Supreme Court of India in Mary Roy¹ overturned this position in the case of Kerala Christians. And so far as those Christians are concerned, there is urgent need for a fresh look.

Since 31.60 per cent of the total Christian population of India is in Kerala and as it is on the Kerala Christians that the impact of extention of the Indian Succession Act, 1925 by virtue of the provisions of the Part B States (Laws) Act, 1951, is felt more, it is proposed to examine the issue in the Kerala context to identify the discrimination prevalent in the law of succession, as the law relating to other areas has already been discussed in Chapter II.

It is generally believed that by virtue of the decision in Mary Roy's Case, the Supreme Court has made the Indian

Succession Act, 1925, applicable to Christians all over India. But this is not so. Even in Kerala, the Vaniya Christians of Chittoor Taluk of erstwhile Cochin State are still governed by their customary law, viz, the Hindu Mitakshara Law. The members of the Anglo-Indian and Parangi communities of Cochin are also not affected by the decision in Mary Roy as they were exempted from the operation of the Cochin Christian Succession Act, 1921.

In Travancore, by virtue of the exemption granted under Section 3 of the Travancore Christian Succession Act, 1916, and the exemption granted under Section 29(2) of the Indian Succession Act, 1925, the Marumakkathayam Christians (Latin Catholics) of Neyyattinkara Taluk are also not governed by the provisions of the Indian Succession Act, 1925 and hence they still continue to be governed by the Marumakkathayam law in matters of succession. When such a diverse system of law of succession among Christians prevails in various parts of India, it is interesting to examine as to how the Indian Succession Act, 1925 is made to apply to Christians of

2. See supra Chapter II, n.86, 87, 94-96, 106, 120-125, 154, 158 and the accompanying text.
5. See Section 3 of the Travancore Christian Succession Act, 1916 (Act No.II of 1092 M.E). For the reasons of such exemption see The Christian Committee Report, 1912 at 50. Also see the reasoning in supra n.3.
Travancore by the decision in *Mary Roy*. Further, an examination of the provisions of this Act in the constitutional context would be necessary to comprehend the impact of the law on Christians in India. With the decision in *Mary Roy*, the Indian Succession Act, 1925 has become the law of succession applicable to the greatest majority of Christians in India. But its immediate impact has been felt only in Travancore and Cochin areas of the State of Kerala. Hence, an examination of the development of the law of succession in Travancore and Cochin would be appropriate at this juncture.

In the early centuries the Syrian Christians of Travancore, Cochin and certain areas of Malabar were said to have followed the Biblical law as laid down by Moses for the guidance of the ancient Jews, but with the passage of time those laws were no longer observed by them, as the community evolved certain customary usages following the Hindu law, with certain modifications. Such customary usages varied among the different sections of the Christian community and the Courts had to determine the customary law on evidence from case to case.  

6. L.K. Ananthakrishna Ayyar, "Anthropology of the Syrian Christians*. (1926) Ernakulam at 119-121. The adherence of the early Syrian Christians to the Biblical law as laid down by Moses points towards the probability of the early converts being Jews who settled down on the Malabar Coasts. The gradual adoption of the customary usages of the Hindus might have been the result of conversion of the Hindus to the fold of Christianity. And the different customary usages for different sects might point to the possibility of the converts from different sects of Hindus carrying with them, their customary usages.
usages, Christian women whether married or not were excluded from inheritance, even if they had no brothers and the property devolved on male collaterals of the intestate. This system of inheritance was disapproved by the Synod of Diamper in 1599 A.D. The Synod decreed:

"DEGREE-XX:- FEMALES TO INHERIT IN DEFAULT OF MALE ISSUE:- Whereas an unreasonable custom has obtained in this diocese, viz that males only inherit their father's goods, the females having no share at all thereof; and that not only when there are sons, but when there are daughters only, and they unmarried, and many times infants, by which means great numbers of them perish, and others ruin themselves for want of necessaries, the father's good falling to the males that are next in blood, though never so remote or collateral, there being no regard had to daughters any more than if their parents were under no obligation to provide for them; all which being very unreasonable, and contrary to the natural right that sons and daughters have to succeed, to the good of their parents; the kindred who have thus possessed themselves of such good, are bound to restore them to the daughters as the lawful heiresses to them; wherefore the Synod doth decree and declare this custom to be unjust, and that the next akin

7. Ibid. at 120-122. Also see supra Chapter I n. 41.
can have no right when there are daughters to inherit their father's estate; and being possessed of such estate, are bound in conscience to restore them; neither is it lawful for the males to divide the estate among them, without giving an equal portion to the females; or if they have not done it already, they stand indebted for their portions; or if the father has disposed of the third part of his estate by will, the remaining two parts shall be equally divided betwixt the sons and the daughters, the portions that have been received by those that are married being discounted; all which the Synod doth command to be observed, intreating and commanding all the Christians of the diocese to receive this decree as a law, and observe it entirely, it being laid as a duty upon their consciences; and if any shall act otherwise, and being a kinsman, shall seize upon the goods belonging to daughters; or being a son, shall deny to give portions to his sisters, or being in possession of the said goods, shall refuse to make restitution; the prelate, if it cannot be done otherwise, shall compel them to it by penalties and censures, declaring them excommunicate, without any hope of absolution, until such time as they shall pay an effectual obedience, and shall make restitution. 8

The Synod tried to change the customs, but the community refused to observe the decrees of the Synod relating to the customary law on succession and they continued to follow their own customs in the matter of succession. With the split in the Syrian Christian Community, for the Jacobites the 'Nomo Canon' also known as the 'Hudaya Canon' became the highest authority in ecclesiastical matters.

The practice of bequeathing one's property by means of a will, to a certain extent was in existence among the Syrian Christians of Travancore, for centuries. These and other practices seem to have been borrowed from the Nomo Canons. The right of Christians to make wills has always been recognised by the Courts in Travancore, and their wills, no matter how made, have always been given effect to. They were guided by no rules and were not required to conform to any. While so, the Travancore Wills Regulation was enacted on the 30th May, 1899. The Regulation did not profess to repeal any part of the personal law, it only sought to supplement the personal law of those who did not possess testamentary power, by empowering them to devise their property.

10. See supra n.6 at 120. Also see supra n.37 of Chapter III.
subject to certain limitations suggested by the general scheme and policy of their personal law, and to lay down rules for general observance in the execution of Wills. 13 While enacting the Travancore Wills Regulation, the desirability of incorporating the provisions of the Indian Succession Act, 1865 on probate and administration was considered and rejected by the Legislative Council. Probate was allowed as an alternative to registration or deposit of a will. No will could take effect unless it was registered, deposited or proved in a Probate Court. It was believed that the cheapness of registration or deposit would be preferred by the natives to the comparatively heavy cost of obtaining a probate. 14 Therefore, Section 16 of the Regulation provides:

"Every will or codicil made in Travancore shall be either registered in the manner provided in Part IX of Regulation I of 1070, or deposited under Part X of the said Regulation, or proved in the manner and within the time prescribed in the law, if any, for the time being in force relating to probate". 15

And the period of limitation was fixed as 12 years under

13. See Ibid. at para 3.
15. This was applicable to other communities as well.
Article 101 of the Limitation Regulation. Therefore, it can be seen that the testamentary disposition of property by the Christians in Travancore was regulated not only by their personal law but also by the provisions of the Travancore Wills Regulation of 1899.

The Syrian Christians in Cochin, like their counterparts in Travancore, followed their customary law in matters of succession in earlier times. But the absence of a settled law of inheritance was a fertile source of litigation among Syrian Christians. In these circumstances, there were several instances when the Chief Court of Cochin applied the Indian Succession Act, 1865 to the Syrian Christians in the years 1879 and 1880. But there were also occasions when the Court refused to follow the principles of the Indian Succession Act. Thus, 'the state of affairs' in Cochin, as far as Christian Succession was concerned, remained most unsatisfactory. At any rate custom could be proved from case to case and the Court held that in the absence of proof of special custom, the rules under the Indian Succession Act applied to the Syrian Christians of Cochin State. And there was no statutory law applicable to Christians in the matter of testamentary succession.

16. See 13 T.L.R 187. (Even now the period of limitation under Article 106 of the Schedule to the Limitation Act, 1963, is 12 years).
17. See supra n.6 at 121.
18. See A.S.No.132 of 1054 M.E and A.S.No.59 of 1055 M.E of the Cochin Chief Court.
by execution of wills in Cochin.\textsuperscript{21} Yet that right was recognised by the Chief Court of Cochin.\textsuperscript{22}

Among the Syrian Christians, in matters relating to the execution and enforcement of wills and adoption deeds, the Bishop and Prelates exercised powers. The authority of the Syrian Bishop extended to all temporal and spiritual matters and they were the judges in all civil and ecclesiastical matters among Syrian Christians.\textsuperscript{23} This is evident from the decrees of the Synod of Diamper. Session VIII, Decree XXXVIII laid down:

\textit{"DEGREE XXXVIII:- BISHOPS TO SEE TO THE EXECUTION OF WILLS:"}\textsuperscript{\textsuperscript{\textsuperscript{2}}}

The Synod doth declare, that the execution of last wills lawfully made by deceased Christians does by the canon law belong to prelates and bishops, who are to take care that they be observed; and that whatsoever Christian has made a will that is valid according to the custom of the place, if it is not complied with in a year after the death of the testator, the Bishop shall by

\textsuperscript{22} See Punnose v. Koruthu. 1951 K.L.T 223.
\textsuperscript{23} See supra Chapter I n.29-30 and the accompanying text.
censures, and other penalties, if found necessary, constrain the heirs or others, whose duty it is to fulfil the same".24

And further Decree XV of Session IX provided:-

"Decree XV:- THE DISPUTES OF CHRISTIANS TO BE DECIDED BY THE BISHOPS:- Whereas by the ancient custom consented to by the whole government of the Christians of this bishopric, not only in spirituals but, temporals also, is devolved to the church and the bishop thereof, who is to determine all differences that are among Christians, and that some, dreading the justice and judgment of the prelate in their controversies, do without any fear of God, carry them before infidel kings and their judges, who are easily bribed to do as they would have them, to the great prejudice of Christianity, the said kings taking occasion from thence to intrude themselves into the affairs of Christians; for by which means, besides that they do not understand such matters, being tyrants and idolaters, they become very grievous and vexatious to Christians; for the avoiding of which, and several other mischiefs arising from thence to Christianity, the Synod doth strictly command all the Christians of this diocese, not upon any pretence whatsoever, to presume to carry any of their causes before infidel kings or their

24. See supra n.8 at 200.
judges, without express licence from the prelate; which, whenever it shall be judged necessary, shall be granted to them as shall be first carried before the prelate, that he may judge or compose them according to reason and justice; and all that shall do otherwise, shall be severely punished for the same, at the pleasure of the prelate, and he thrown out of the church for so long time as he shall think fit". 25

During this time there was no properly organised system of administration of justice in these areas. For the proper administration of justice in Travancore, Zilla Courts were established in 1811 A.D., 26 and a general scheme of judicial administration was carried out only by 1834 A.D. 27 With the establishment of Courts in Travancore, matters relating to Christian Succession came to be adjudicated upon by the Courts. The earliest decision which laid down the order of succession among Syrian Christians of Travancore was made in 1868. The whole of the extract published in the Gazette is as follows:

"The order of succession among the native Syrian Christians of this coast is as follows:- first sons, failing these daughters, failing these,

25. Ibid. at 209.
brothers and their children and lastly, sisters
and their children". 28

This decision had been cited as an authority in subsequent
cases.

In the meanwhile a High Court was established in Travancore
by Regulation No. II dated 18th January, 1882. 29 In 1906, without
properly adverting to the earlier decisions, the Travancore
High Court considered the customary law of succession among
Christians and held in Geevarghese Maria 30 that there was no
specific rule to resolve the dispute and hence the Court
decided the matter by applying the provisions of the Indian
Succession Act, 1865. It may be pertinent to note that the
Indian Succession Act, 1865 was not a law in force at that time
in the State of Travancore. Further, the customary law of the
Syrian Christians was already recognised and enforced by the
Courts in Travancore. 28 Yet the precedent of Geevarghese Maria
was followed in yet another case in 1907. 31 By now the Court
had had enough occasions to consider the question of succession
relating to almost all Christian denominations and the final

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28. Judgment in A.S. No. 182 of 1039 M.E. Published in Govt
   Gazette dated 21st January 1868.

29. See supra n. 27 at 557. Also see supra n. 26 at 25.


position of law as established by precedent was that though there was no enacted legislation- as a matter of policy of applying the principles of justice, equity and good conscience- the principles embodied in the Indian Succession Act, 1865 would apply to the Travancore and Cochin Christians in matters of succession.

It was in these circumstances that the Christian community took the lead to get a Succession Act enacted for them. And the matter was taken up by prominent Christians in the Sri Mulam Popular Assembly. This was supported by all the Bishops (except five) exercising jurisdiction in the state. And His Highness's Government appointed a committee in 1911, consisting of six members belonging to different denominations of Christians to:

"enquire into the customs and practice now in vogue among the several denominations of the Indian Christian communities in Travancore in the matter of inheritance and succession to real and personal and report whether any legislation is necessary and, if so, on what lines it should be."

32. A Legislative Council was established in Travancore for the purpose of making laws and regulations, by Regulation dated 30th March, 1888. Also see supra n.27 at 548.

This Committee was called "The Christian Committee". It probed into the customs and practices among various sections of the Christians in Travancore and even Cochin and Malabar and considered the feasibility of introducing the Indian Succession Act into Travancore and it came to the conclusion:

"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 introduction of the Indian Succession Act is the best thing for the Christians of Travancore— a proposition of whose correctness we are, by no means, quite sure— it is better to bring about the second best 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 considered to be the best". 34

The Committee, then, submitted its report on 13.6.1912, along with a draft of the proposed bill on the Christian Succession Regulation and it was enacted as "The Christian Succession Regulation" on 21.12.1916, 35 with very minor changes from the

35. Regulation No. II of 1092 M.E. It is otherwise called the Travancore Christian Succession Act, 1916.
draft bill. Therefore, intestate succession among Christians in Travancore was to be regulated by the Travancore Christian Succession Act, 1916. As regards testamentary succession, their customary law as modified by the Travancore Wills Regulation of 1899, was to prevail, and the applicability of the Indian Succession Act, 1865 was expressly ruled out by the Travancore Legislature.

In these circumstances it is interesting to note the rules of distribution applicable to women under the provisions of the Travancore Christian Succession Act. Under S.24 of the Act, a widowed mother has only a life interest terminable at death or remarriage, over any immovable property. Under S.28 female heirs who had already received their streedhanam were not to be given any share in the case of intestacy because the daughters have only a right to get streedhanam and it was computed as one fourth of the share of a son or Rs.5000/- whichever is less. Daughters, could get shares in the intestate's property only in the absence of male heirs. Even the unmarried daughters, had only a right to get streedhanam which was to be calculated as aforesaid. Thus, the Travancore Act contained several provisions which could be described as discriminatory to women though this could be satisfactorily explained otherwise by the protagonists of retention of the system. It can be argued that a daughter/sister is married away at the prime of her age and she toils and works for the benefit of her matrimonial home and would not contribute anything for the betterment of
her own (natural) family, while at the same time it is the son/brother and his wife and perhaps children who contribute to the family property and make accretions to it. Hence there may be no justification for the daughter/sister to claim an equal share with that of her brother when intestate succession opens up, perhaps, decades after her marriage. Therefore, if the deep rooted customary practices among the Christians is taken into consideration, the prescription of a $\frac{1}{4}$th share of a son to be given to the daughter may not be unjust. It is perhaps only the prescription of Rs.5000/- as the ceiling limit that causes hardships. But one may have to bear in mind that the amount of Rs.5000/- was fixed in the year 1916 and the failure to revise the ceiling limit is that of the Legislature. Even this line of argument cannot hold water in the case of an unmarried daughter, as she too remains in the family and toils for the benefit of the family, as in the case of a son. Her case has to be treated at par with the son.

As far as the position of law in this regard in British India was concerned, the Indian Succession Act, 1865 was later repealed and a comprehensive legislation on the subject, the Indian Succession Act, 1925, was enacted by the Legislature in India established under the Government of India Act, 1919. Though the British Crown had suzerainty over Travancore, the Indian Succession Act, 1925 was not made applicable to Travancore because power of legislation over Travancore had never been conceded to the British.
The position being so, the British Parliament enacted the Indian Independence Act, 1947 on 18th July, 1947 and by virtue of Section 7(1)(b) of the Act, the suzerainty of His Majesty over Indian States lapsed, with effect from 15th August, 1947. But Section 18 of the Act provided for continuance of the existing laws, with a provision for adaptation or amendment or repeal by competent authorities in the new Dominions of India and Pakistan. Independence of Travancore was declared by the Dewan, Sir C.P. Ramaswamy Aiyar but due to popular disapproval, he had to resign. This paved the way for an Interim Constitution in Travancore. Section 33(1) of the Travancore Interim Constitution provided:

"Subject to the provisions of this Act all the law in force in Travancore immediately before the commencement of this Act shall continue to be in force except in so far as the same are altered by competent authority".


Thus, the declaration of independence or the formation of the subsequent Interim Constitution in Travancore did not affect the continuance of the laws of Travancore and thus the law relating to marriage and succession among the Christians continued in force.

In the meanwhile, the process of unification of Indian States was under way. The Rulers of Travancore and Cochin, with the concurrence and guarantee of the Government of India, entered into a covenant for the merger and unification of these two states into the United State of Travancore and Cochin, in May, 1949. Formation of the United State of Travancore and Cochin was proclaimed by the Government of India on 8th June, 1949 and the appointed day was 1st July, 1949, and the Ruler of Travancore became the Ist Rajpramukh. Article 11 of the covenant authorised the Rajpramukh to promulgate Ordinances for the peace and good government of the United State or any part thereof. In exercise of the powers conferred by Article 11 of the covenant the Rajpramukh promulgated an Ordinance to make provision for the continuance of the laws in force in that

39. The covenant was signed by the Maha Raja of Travancore on 27th May, 1949 and by the Maha Raja of Cochin on 29th May, 1949. And shri. V.P. Menon, Adviser to the Government of India, Ministry of States signed it on behalf of the Govt of India.

40. See Articles 2 and 4 of the covenant.
portion of the territory of the United State, which immediately prior to the 1st day of July, were in force. Section 2(b) of the Ordinance defined the existing law of Travancore thus:

"Existing law of Travancore shall mean any proclamation, law, order, bye-law, rule or regulation in force in the State of Travancore immediately prior to the appointed day, except the Travancore Interim Constitution Act, 1123". 41

A similar definition of "existing law of Cochin" was made under Section 2(e) of the Ordinance. And Section 3 of the Ordinance provided for the existing laws of Travancore to continue in force in the territory of Travancore and Section 4 was to the same effect as regards Cochin. This ordinance was repealed by the Travancore-Cochin Administration and Application of Laws Act, 1125 (M.E) and the provisions regarding "existing laws" continued to be the same. And Section 9 of the Act provided:

41. See S.2(b) of the United State of Travancore and Cochin Administration and Application of Laws Ordinance, 1124. Ordinance No. 1 of 1124. (1949).

42. Section 3 provided:

"The existing laws of Travancore to continue in force in the territory of Travancore-(1) Subject to the provisions of the Ordinance, the existing laws of Travancore shall, until altered, amended or repealed by competent authority, continue to be in force mutatis mutandis in that portion of the territories of the United State which before the appointed day formed the territory of the State of Travancore."
"Power of Courts for removal of difficulties:-

In the application of the existing laws of Travancore or the existing laws of Cochin by virtue of the operation of Section 3 or Section 4, the Courts of the State of Travancore-Cochin shall have power for the removal of difficulties, if any, arising out of, or in connection with, such application, to interpret such laws as to effectuate the purpose intended by this Act".

In terms of this provision the decision rendered by the Travancore-Cochin High Court should have been accorded finality in cases involving succession among Christians.

As per the provisions of Article 9 of the covenant, the Rajpramukh executed a supplementary instrument on 14th July, 1949, by which he accepted the legislative powers of the Dominion Legislature, over matters enumerated in List I and List III of the 7th Schedule to the Government of India Act, 1935 (with the exception of taxation). And on 24th November, 1949 the Rajpramukh declared and directed:


44. See supra n.39.
"That the Constitution of India shortly to be adopted by the Constituent Assembly of India shall be the Constitution for the United State of Travancore and Cochin as for the other parts of India and shall be enforced as such in accordance with the tenor of its provisions. That the provisions of the said constitution shall as from the date of its commencement, supersede and abrogate all other constitutional provisions inconsistent therewith which are at present in force in this state."

Thus, all the laws in force in the territory of Travancore-Cochin became subject to the Constitution of India when it came into force, on 26th January, 1950. And the United State of Travancore and Cochin became a Part B State within the constitution of India on that day.

The Constitution of India provided for the continuity of the existing laws. This is evident from Article 372(1) which provides:

"372: Continuance in force of existing laws and their adaptation:— (1) Notwithstanding the repeal by this constitution of the enactments referred to in Article

46. Ibid. at 797 and 798.
395 but subject to the other provisions of this constitution, all the laws in force in the territory of India immediately before the commencement of the constitution shall continue in force therein until altered or repealed or amended by a competent legislature or other competent authority.

And the President of India was given the power to make such adaptations and modifications of such law by order under Article 372(2) of the Constitution within a period of "three years" from the commencement of the Constitution. The expression "law in force" was explained under Article 372(3) and Article 13(3)(b) and "existing law" has been defined under Article 366 (10). Obviously these constitutional provisions saved the Travancore Christian Succession Act, 1916 and the Cochin Christian Succession Act, 1921.

In exercise of the powers conferred under Article 372(2) of the Constitution, the President of India issued the Adaptation of Laws Order, 1950 dated 26th January 1950. By Section 2(1)(e) of the Adaptation of Laws Order, 1950, "existing law" was defined

47. Substituted by the Constitution (First Amendment) Act, 1951. S.12, for "two years".

to mean an existing central, provincial or state law. And Section 18 provides—

"As from the appointed day, all existing state laws shall, until repealed or altered or amended by a competent legislature or other competent authority be subject to the adaptations directed in the order".

It may be pertinent to point out that inspite of making adaptations and alterations in a number of central, provincial and state enactments, the Travancore and Cochin Christian Succession Acts were not touched by these orders and at the same time the Indian Divorce Act was extended to the whole of India except the Part B States.

This being so, in 1951, the Part B States (Laws) Act, was enacted by Parliament, whereby, certain enactments mentioned in the Schedule to that Act, including the Indian Succession Act, 1925, were amended and extended to the Part B States, by Section

49. The appointed day was defined under Section 2(1)(a) as 26th January, 1950.


3 of that Act.\textsuperscript{52} And Section 6 of the Act of 1951 provided for repealing the corresponding Acts and Ordinances then in force in the Part B States.

It may be noted that at the time of the re-organisation of the states\textsuperscript{53} specific provisions were made to save the "existing laws" and the "law in force" by Section 119 of the States Re-organisation Act, 1956. The State of Kerala was formed by including most of the territories of Travancore-Cochin and the major portion of Malabar District of the State of Madras and Kasargod Taluk of South Canara District.\textsuperscript{54} Section 120 of the Act provided for adaptation of laws and in exercise of such

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\item \textsuperscript{52} Section 31: "Extension and amendment of certain Acts and Ordinances. The Acts and Ordinances specified in the schedule shall be amended in the manner and to the extent therein specified, and the territorial extent of each of the said Acts and Ordinance shall, as from the appointed day and in so far as any of the said Acts or Ordinances or any of the provisions contained therein relates to matters with respect to which Parliament has power to make laws, be as stated in the extent clause thereof as so amended".
\item \textsuperscript{53} The States Re-organisation Act, 1956. (Act No. 37 of 1956).
\item \textsuperscript{54} See Ibid. (Section 5).
\end{itemize}
powers, the Government of Kerala made the Kerala Adaptation of Laws Order, 1956. Section 5(2) of the Kerala Adaptation of Laws Order provided:-

"Reference to Travancore in the laws in force in the Travancore-Cochin area of the State or in any portion thereof, where such references denote the territories of the former State of Travancore, shall be construed as references to such territories excluding the portion thereof which from the 1st day of November 1956 form part of the State of Madras by virtue of the provisions of Section 4 of the States Re-organisation Act, 1956".

And this Order or the subsequent orders did not effect any change in the law relating to Christian marriage, divorce or succession in Travancore, Cochin or Malabar.

While so, the "Christian Succession Acts (Repeal) Bill, 1958" was introduced in the Legislative Assembly of the State of Kerala to repeal the Travancore Christian Succession Act, 1916 and the Cochin Christian Succession Act, 1921. It may be relevant to quote from the Statement of Objects and Reasons for the Bill. It reads:-

55. Published in Kerala Gazette Extraordinary No.2 dated 1st day of November, 1956.

56. The subsequent orders are: (1) The Kerala Adaptation of Laws Amendment Order, 1957 and (2) The Kerala Adaptation of Laws (No.2) Order, 1957.
The Christian Succession Act (Travancore Act II of 1902) and the Cochin Christian Succession Act, VI of 1907, provide for intestate succession among Christians in the Travancore and Cochin areas of the State respectively, while Part V of the Indian Succession Act, 1925, dealing with intestate succession apply to Christians in the Malabar area.

"It is considered necessary to have a uniform law to govern the intestate succession among Christians for the whole of the State and for that purpose to repeal the Travancore Christian Succession Act and the Cochin Christian Succession Act. The Bill is intended for this purpose." 57

But this Bill was not enacted into law and it lapsed. 58 Thereafter the question of intestate succession among Christians in Kerala became a live topic of discussion among the members of the community and also in the press. 59 Then the Law Commission of Kerala decided to take up the subject for examination at its meeting held on 21st August, 1967. After collection of evidence

57. Law Commission of Kerala. Fourth Report, 1968. Page 55. (This Bill was introduced by Justice V.R. Krishna Iyer, when he was the Law Minister of Kerala).

58. See Ibid. at 7.

From the public by holding sittings at the District Centres and other places, the Commission submitted its report to the State Government on 15.2.1968 with a recommendation to have a new self-contained Bill modelled on the Central Act incorporating the necessary changes, the transitory provisions and provisions abolishing joint families among Tamil Christians.\(^\text{60}\) It also included a draft bill in the Report.\(^\text{61}\) But the Government did not act upon the recommendations of the Law Commission of Kerala.

Then the question of revision of the Indian Succession Act, 1925 and also the applicability of the Act to Travancore and Cochin area of the State of Kerala was taken up by the Law Commission of India on its own and submitted a Report,\(^\text{62}\) on 25th February, 1985, and recommended to the Central Government to take a decision, as a matter of social policy, to repeal or not to repeal the Travancore and Cochin Christian Succession Acts.\(^\text{63}\) It was in these circumstances that the Supreme Court came up with its epoch-making decision in Mary Roy.\(^1\) The Supreme Court of India entertained a batch of Writ Petitions under Article 32 of the Constitution of India, filed by Mary Roy and

\(^{60}\) See supra n.57 at 25.

\(^{61}\) See Ibid. at 41.


\(^{63}\) Ibid. at 276.
others and rendered its judgment on 24.2.1986, holding that by virtue of the provisions of the Part B States (Laws) Act, 1951, the Travancore Christian Succession Act, 1916 stood repealed with effect from 1.4.1951, which was the appointed day under the Act of 1951.

This decision witnessed many changes in the practice of the Supreme Court. At the outset itself it has to be pointed out that decision on issues such as those in *Mary Roy* have usually not been discussed by the Supreme Court in a case under Article 32 of the Constitution. But such issues became subject matter for discussion in *Mary Roy*.

The challenge in *Mary Roy's Case* was against sections 24, 28 and 29 of the Travancore Christian Succession Act, 1916 on the ground that those provisions were violative of Articles 14 and 15(1) of the Constitution of India. The petitioner's father died intestate in November 1959. He was survived by his wife, two daughters and two sons. The petitioner filed the case against the State of Kerala (1st respondent), her mother, married sister and two brothers as respondents. There was no

64. Writ Petition (Civil) No.8260 of 1983.
65. See Ibid. paragraph 10 and 13 of the petition and ground II and prayer (a) and (b).
66. See Ibid. paragraph 4.
serious challenge to the Travancore Christian Succession Act, 1916 on the ground of extension of the Indian Succession Act, 1925, by virtue of the provisions of the Part B States (Laws) Act, 1951. While admitting the writ petition on 6.2.1984, the Supreme Court passed an order as follows:-

"Issue Rule NISI.

It will be open to the State Government to frame appropriate law on the question involved in this writ petition. Hearing of the writ petition expedited".67

It seems that the 1st respondent- State of Kerala—did not prosecute the case with the required enthusiasm. However, it filed a counter affidavit,68 and submitted before the Court—

"At the outset I say that the State of Kerala is not interested in the dispute raised by the petitioner and her brothers and unmarried sister and mother and hence it is not necessary to reply to the petition in

67. This is the order as conveyed to the 4th respondent in the writ petition, who is the brother of Mary Roy.

68. The affidavit was dated 10.1.1985 sworn to by the Secretary in the Department of Law in the Government of Kerala on behalf of the State of Kerala.
so far as the petition deals with the relationship between the parties". 69

But at the same time, the State of Kerala, went on to make averments that had no connection with the case. For example:-

"The petitioner has not given full facts in the petition as to whether she received any share in the property of her father during his life time and if so whether that share was equal to the shares which her brothers and unmarried sister are now able to enjoy after the death of their father". 70

And it further submitted:-

"The Government are also considering how to improve the interest of the unmarried daughter in the case of intestate succession......" 71

It is interesting to note that the State— the first respondent— brought into the discussion the plight of the unmarried daughters, while there was no unmarried daughter involved in the case.

It seems it was mentioned in the affidavit to draw the attention

69. See Ibid. paragraph 2.

70. See Id. paragraph 11.

71. See Id. paragraph 12.
of the Court, nay to deflect its attention from the real issues to the issue of discrimination which admittedly was there in the case of unmarried daughters/sisters. Mary Roy had no unmarried sister, nor has she made any mention of the plight of unmarried daughters in the case of intestate succession. It is interesting to note that in the reply affidavit filed by Mary Roy, no mention is made about any unmarried sister. And in the Counter Affidavit filed by the 4th respondent (Mary Roy's brother) prior to the counter affidavit of the 1st respondent, did not deal with the question of unmarried sister. It is therefore evident that the purpose of this mention was to make the Court to concentrate its attention to an issue which was not referred to it by either party. In any case it can be said that the Court was not informed of the correct factual position. And it decided the case on a ground that was not seriously raised in the Writ Petition, i.e., the impact of the Part B States (Laws) Act, 1951. This is not in conformity with the established precedent of the Supreme Court itself from the very beginning of the inauguration of the Constitution. For example, the Supreme Court in the year 1951 held thus:

74. There was no possibility to deal with the matter as the 1st respondent filed the Counter subsequently on 10.1.1985.
75. It is likely that these averments must have had a bearing on the decision in Mary Roy's Case.
"Article 32 is not directly concerned with the determination of constitutional validity of particular legislative enactments. What it aims at, is the enforcing of fundamental rights guaranteed by the Constitution, no matter whether the necessity for enforcement arises out of an action of the executive or of the legislature.........the sole object of the Article is the enforcement of fundamental rights guaranteed by the Constitution......A proceeding under this Article cannot really have any affinity to what is known as a declaratory suit". 76

The same view was reiterated by the Supreme Court in the Khyerbani Tea Company's Case, 77 wherein the Court opined:-

"In dealing with petition under Article 32, this Court naturally confine the petitioners to the provisions of the impugned Act by which their fundamental rights are either affected or threatened".


In *Ujjam Bai*, the Supreme Court opined that the remedy in a case where the petitioner challenges the constitutionality of an Act, otherwise than on grounds of infringement of fundamental rights is by way of a petition under Article 226 of the Constitution. The Supreme Court had taken this consistant stand in case after case. Thus a petition under Article 32 is maintainable only if there is any restriction on the enjoyment of fundamental rights. If a right infringed is not a fundamental right conferred by Part III of the Constitution, it is outside the purview of Article 32 of the Constitution. In other words, in such cases the petitioner cannot invoke Article 32. As Article 32 confers a fundamental right to enforce any other fundamental right or to avert a threat to a fundamental right, it cannot be pressed into service for determining the validity of an enactment unless that enactment infringes a fundamental right.

In *Mary Roy*, petitioners were allowed to advance a case outside their pleadings. And the decision of Supreme Court thereon is nothing but a declaratory decree, as the Court did not think it necessary to examine whether there was violation of fundamental rights of petitioners. It is felt that the judgment was rendered without bearing in mind the procedural and the jurisdictional limitations, which the Court had imposed.

on itself by a long line of decisions herein before noticed.\(^79\)

In the light of these time tested precedents the only course open to the Court was to examine the validity of the Travancore Christian Succession Act on the touchstone of the Constitution. Then the effect of the judgment would only have been prospective and many of the problems that arose would not have arisen.

The above arguments based on the invocation of Article 32 is only one of the grounds that undermine the legal foundation of the decision in Mary Roy. Yet another aspect was that the Court and also the concerned parties particularly the State of Kerala before the Court did not advert to the historical evolution of the law of succession in Travancore and the saving of the Travancore Act by a chain of legislative measures as detailed above. It can be seen that even in the midst of transformation of the State of Travancore and its accession to the Indian Union, the "existing law" and the "law in force" continued to be jealously guarded and carried into the Constitution, and the Constitution further protected it and saved it from extinction.\(^80\) The decision in Mary Roy


\(^80\) See supra n.36-50.
was therefore the result of an unfortunate foray made by the Court into an area insulated by the Constitution itself. In this view, *Mary Roy* decided without reference to the "law in force" could be described *per incuriam*.

Also, an analysis of the judgment in *Mary Roy* reveals a contradiction in thought. This is evident from the following aspects. The Court considered a possible argument that both Chapter II of Part V of the Indian Succession Act, 1925 and the Travancore Christian Succession Act, covered the same field and dealt with the same subject matter, namely intestate succession among Indian Christians and hence there was no implied repeal of the Travancore Christian Succession Act, by the extension of Chapter II of Part V of the Indian Succession Act, 1925 and that the continued operation of the Travancore Christian Succession Act, was saved by Section 29 sub-Section 2 of the Indian Succession Act, 1925. To this proposition the response of the Court was thus:

"We very much doubt whether such an argument would have been tenable but in any event, in the present case, there is no scope for such an argument, since the *Travancore Christian Succession Act, 1925* stood expressly repealed by virtue of Section 6 of Part B States (Laws) Act, 1951*.81

The finding of the Court that the Travancore Christian Succession Act, 1992 stood expressly repealed by virtue of Section 6 of the Part B States (Laws) Act, 1951 does not appear to be correct. It is contradictory to the stand taken by the Court which stated thus:

"When the Indian Succession Act, 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 Travancore Christian Succession Act, 1992 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". 83

That being so, Section 29(2) of the Indian Succession Act, 1925, was also extended to Travancore-Cochin at the very same time, which provides for saving of any other law for the time being in force. As the Travancore Christian Succession Act, 1992 (M.E) cannot be and ought not be deemed to be a corresponding law as envisaged under Section 6 of the Part B States (Laws) Act, 1951, the Travancore Act can very well be considered as within the scope of "any other law for the time being in force" as

82. See infra n.88.

83. Ibid. at 215, Paragraph 6. Also see infra n.90.
envisaged under Section 29(2) of the Indian Succession Act, 1925 and thus saved by Section 29(2) of the Act. 84

It is interesting to note that the petitioner (Mary Roy) did not even have a case on facts as is evident from the subsequent developments. On the strength of the declaration of the Supreme Court that the Travancore Christian Succession Act, 1902 (M.E) stood repealed with effect from 1.4.1951, Mary Roy filed O.S.No.323/1988 on the file of the Principal Subordinate Court, Kottayam for partition and separate possession of her share of property in accordance with the provisions of the Indian Succession Act, 1925. And the Court found that Mary Roy had no right to claim a share as she had already received her share even before filing the writ petition in the Supreme Court and the suit was dismissed on 13.1.1994. 85 These developments reinforce the argument that the Supreme Court made a declaration in 1986, when the petitioner (Mary Roy) had no case even on facts. In fact Mary Roy had no claim on the property at the time of institution of the case as in accordance with the settlement deed No.3184/59

84. It provides:

"Section 29: Application of Part I. This part shall not apply to any intestacy occurring before the first day of January, 1866, or to the property of any Hindu, Muhammadan, Buddhist, Sikh or Jaina.

2. Save as provided in sub-section (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".

85. Against the decision in O.S.No.323 of 1988, Appeal Suit No.648 of 1994 was filed in the High Court of Kerala and it is pending final adjudication.
executed by her father, her mother alone had life interest in the property. On her death only, could Mary Roy have got some interest in the property. Hence it is felt that the decision came to be rendered without appreciating the facts and also the historical background of the law of succession applicable to Christians in India, being placed before it.

In spite of Mary Roy, in 1987, a Division Bench of the High Court of Kerala held that the Tamil Vaniya Christians of Chittur Taluk are still governed by the Hindu Mitakshara Law. It is submitted that it is the correct reading of Section 29(2) of the Indian Succession Act, 1925, as a valid custom is also held to be a law in force within the context of the Constitution of India. Therefore, if the customary law prevalent in Travancore can still be held to be saved by Section 29(2) of the Indian Succession Act, 1925, there is no rhyme or reason to hold that the Travancore Christian Succession Act, 1092 (M.E) to be deemed to be repealed in so far as there is no express repeal of the Act by the Part B States (Laws) Act, 1951 and this is especially so when the Travancore Act was not


repealed by the Repealing and Amending Act of 1960. 88

Viewed from another angle, it can be found that Section 6 of the Part B States (Laws) Act, 1951 provided for repeal of corresponding Acts only. In other words, it provided for repeal of those Acts that corresponded to the Acts or Ordinances extended to the Part B States. 89 The Indian Succession Act, 1925 and the Travancore Christian Succession Act cannot be treated as corresponding Acts. 90 The Travancore Christian Succession Act

88. Central Act No. LVIII of 1960. By this enactment various Acts, including that of Travancore, were expressly repealed. But neither the Travancore Christian Succession Act, nor the Travancore Wills Regulation was expressly repealed by the Act of Parliament in 1960. As the decision in Kurian Augusthy v. Devassy Aley, (A.I.R 1957 T.C.1) was known to Parliament, then the Travancore Christian Succession Act would have been expressly repealed, if Parliament had that intention.

89. "Section 6—Repeals and Savings—If immediately before the appointed day, there is in force in any Part B State any law corresponding any of the Acts or Ordinances now extended to that State, that law shall, save as otherwise expressly provided in the Act, stand repealed".

is a special legislation that amended and codified the customary law of Christians in Travancore alone. Whereas the Indian Succession Act is a general legislation meant for general application irrespective of religion. Apart from this, The Indian Succession Act is a comprehensive one dealing with testamentary succession, administration and probate, whereas the Travancore Christian Succession Act deals with only intestate succession among Christians of Travancore. Therefore, the finding of the Supreme Court that the Travancore Act is a 'corresponding Act' does stand on quick sands.

In short, in Mary Roy, the Supreme Court treaded on slippery grounds to give relief to the petitioners bypassing the customary law of the Indian Christians of Travancore and that too without noticing the established precedent in these matters. Through the decision in Mary Roy, an alien law was forced upon the Christians of Travancore.

Following the decision of the Supreme Court in Mary Roy, the High Court of Kerala ruled that the Cochin Christian Succession Act, 1921 also stood repealed by the Part B States (Laws) Act, 1951.91 Though these Courts did not expressly give retrospective effect to these judgments, the mere declaration that the Travancore and Cochin Acts stood repealed on 1.4.1951,

gave these judgments retrospective effect overturning the then existing law and practice among the Christians of Travancore and Cochin.

It may be pertinent to mention that the Travancore and Cochin Christians conducted their property transactions in the belief that they were governed by the provisions of the 1916 and 1921 Acts of Travancore and Cochin respectively, in matters of intestate succession. The Travancore Wills Regulation of 1899 which allowed the customary law, was believed to govern testamentary succession among Christians of Travancore. This belief was instilled in them by the Travancore-Cochin High Court in 1956 and the Madras High Court in 1978. It was affirmed and reaffirmed by the aforesaid courts that the Travancore Act still remained in force, inspite of the Part B States (Laws) Act, 1951. When the Supreme Court declared in 1986 in Mary Roy that, that was not


the law, the property transactions of many a Christian, in both testamentary and intestate, happen to be illegal.94

These decisions have had another impact as well. As already discussed, under the Travancore and Cochin Acts, there were no provisions for probating of wills. However, in Travancore, there was a specific enactment called, the Travancore Wills Regulation of 1074 M.E (1899) which was in effect from 30.5.1899. Under this law, the personal law on wills, of various communities, including that of Christians was saved, and the regulation simply sought to supplement the personal law and to lay down rules for the general observance in the execution of wills.95 This Regulation was not repealed and it was not mandatory for the Travancore Christians to probate their wills. But now under Section 213 of the Indian Succession Act, 1925, it is mandatory for Christians to get their wills probated. Therefore, as a consequence of the decision in Mary Roy, 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 1.4.1951.96

95. See supra n.10-13 and the accompanying text.
In the case of intestate succession, partitions or family settlements made in accordance with the provisions of the Travancore Act also became invalid. Such documents now, cannot be used as securities for financial transactions, and further daughters of the deceased parents, who were excluded from the share, (under the provisions of the Travancore or Cochin Acts) can now cause the matter to be reopened. In short, many a title deed in the hands of Christians and those obtained from Christians and held by members of other communities remain defective and this would adversely affect the stability and progress of the Christian community in particular, as all the settled property relations may have to be unsettled and resettled.

An argument has been advanced that there are not many cases arising in the matter of Christian intestate succession consequent on the decision of the Supreme Court, and that the law of limitation would put an end to all surviving claims and the matter is only to be ignored, as now the Christian community is not opposed to giving equal share to women in the matter of intestate succession. This impression arising from complacency would be short-lived as indicated by the case law.

97. See infra notes 102-106 and the accompanying text.

It can be found that the High Court of Kerala upheld the claim of a Christian woman for share in the property of her father, though she was married in the year 1950 and intestacy occurred in the year 1944. The case was brought before the High Court in 1988. In another case, the High Court allowed the woman to recover Streedhanam only. There seems to be apparent conflict in the views of the Court in these matters.

There are instances of misuse too. In a case, a brother who excluded his sister from sharing of property, pledged the title deed to the property as security for a loan. On default of payment, the Bank instituted a suit and the property was sold in execution. When delivery of the property was to be effected, the woman (sister) apparently at the instance of her brother, filed a suit claiming her rights in the property and moved for stay of delivery of the property and the High Court ordered stay of delivery of a part of the property and remanded the case to the trial Court.

Apart from all these problems, the decision in Mary Roy has certain other dimensions as well. Banking

99. Joseph v. Mary. 1988(2) K.L.T 27 (D.B). This case is a classic example as to how the settled property relations can be unsettled even after many years.

100. Sosa v. Varghese. 1993(2) K.L.T 798. (This is a case whether the petitioner could have claimed an equal share along with her brothers, by an amendment to her plaint. But the legal system miserably failed to deliver the goods inspite of the decision in Mary Roy).

Institutions have ever since been on the guard in their credit policy towards Christians on the strength of the title deeds of their property in the Travancore and Cochin areas. This is evident from the Circular issued by the State Bank of India in 1986. It states:

"In all cases where the Bank has obtained immovable property of Travancore Christians as security for the advances granted by the Bank, a review should be made by the Branches. This should be made on a top priority basis. The Title Deed Security Report obtained from the panel Advocate may be forwarded to the Advocates who had given the earlier opinion to re-examine the title of the property on the basis of the above decision of the Supreme Court". 102

The same course of action was taken by the State Bank of Travancore. 103 Further the Bank issued another circular which states:

"In future, the advocates may be advised to certify that the title of the intending mortgagor is not hit by the decision reported in A.I.R 1986 S.C 1011 and


1988(1) K.L.T 310, while giving title clear certificates.104

This was followed by individual letters in this regard to the Advocates on their Panel and a meeting of the Advocates was convened on 14th March, 1992.105 Similar was the response of other Banks in the State of Kerala. At any rate, the economic interests of Christians in particular and others who purchased properties from the Christians came to be adversely affected by the decision in Mary Roy. Now, therefore, the difficulties arising out of the decision in Mary Roy would demand solution and limitation may not be of any avail in many a case to avoid tampering with settled property relations.106

It is the general impression that the provisions of the Indian Succession Act are not discriminatory to women. This is not true. If one reads S.33 with S.42 it becomes


106. See supra n.98 and the accompanying text. In this context it is of interest to note that a sociological study conducted by Prof. B. Alwin Prakash, Department of Economics, University of Calicut, has also revealed that the Christian Community is facing a crisis due to the retrospective effect of the decision of the Supreme Court in Mary Roy. (The result of the study is yet to be published).
clear that if any child dies intestate without any lineal
descendant, leaving the mother and father alive, it is the
father rather than the mother who inherits the property. Under
S.47 of the Act, if the intestate has left no children, father
or mother, the wife is entitled to only half the property and
the remaining half may go to even distant relatives of the
intestate. Likewise, Section 42 read with Ss.35 and 33(b)
make it clear that when a Christian woman dies intestate leaving
no issues, it is her father who gets half of her property to
the exclusion of her mother. Under S.60 of the Act, father
is given absolute right to appoint a guardian for his minor
children by way of a will, but no such right is given to the
mother even in a case where the father is of unsound mind.
S.22 enables the father to make a premarital settlement of the
minor's property, but no such right is given to the mother.
A widow may not get a share of her husband's property if she
had made a premarriage contract to that effect. The benefit of
minimum guaranteed payment provided under S.33A is also denied
to Christian women. In short, one cannot boast of the
egalitarian nature of the Indian Succession Act. It still
contains discriminatory provisions.

Prior to the decision in Mary Roy, the Indian
Succession Act, 1925 applied only to 34% of India's Christian
population. But the decision in Mary Roy brought another 30% of India's Christian population within the ambit of the Indian Succession Act, 1925. In this context it would be of interest to know the response of the Christian community towards the provisions of the Indian Succession Act, 1925 in particular, and other related enactments in general. Their responses are varied. In response to a question

107. As has already been found, predominantly Christian areas like Travancore, Cochin, Goa, North East India, Pondicherry etc were not to be governed by the Indian Succession Act, 1925.

108. The present writer undertook an empirical study by distributing a questionnaire (Appendix II) among 1000 Christians mainly in Kerala and also in the States of Tamil Nadu, Karnataka, Goa, Meghalaya, and other places like Pondicherry, Bombay and Pune. Though the questionnaire were distributed among 1000 Christians, only 145 of them responded. But the respondents are a representative sample as they belong to different professions and life situations.

109. Question No.20. See Appendix-II.
whether the provisions of Section 33 read with Section 42 of the Indian Succession Act, 1925 are discriminatory to Christian women, which confer rights of succession only on the father of the intestate, even when the mother of the intestate is alive, 82% of the respondents consider it to be discriminatory

110. Section 33:- "WHERE INTESTATE HAS LEFT WIDOW AND LINEAL DESCENDANTS, OR WIDOW AND KINDRED ONLY, OR WIDOW AND NO KINDRED-- Where the intestate has left a widow:-

a) If he has also left any lineal descendants, one third of his property shall belong to his widow, and the remaining two-third of his property shall go to his lineal descendants, according to the rules hereinafter contained:

b) Save as provided by Section 33-A, if he has left no lineal descendants but has left persons who are of kindred to him, one-half of his property shall belong to his widow, and the other half shall go to those who are of kindred to him in the order and according to the rules hereinafter contained:

c) If he has left none who are of kindred to him, the whole of his property shall belong to his widow.

111. Section 42:- "WHERE INTESTATE'S FATHER LIVING:- If the intestate's father is living, he shall succeed to the property".
to women, while only 18% opined otherwise. The respondents have also stressed that this is an area which requires change in the provisions of law.

In response to the question whether Section 47 of the Indian Succession Act, 1925, which provides that if the intestate has left no children, father or mother, the wife is entitled only to \( \frac{1}{2} \) of the property (of her deceased husband) and that the rest should go to the intestate's other relatives, is unjust to Christian women, 56% of the respondents hold the view that this provision is discriminatory while 42% feel otherwise. Two percent of them have no response. And to the next question, whether in such a situation, the whole property must belong to the wife, 80% of the respondents answered in the affirmative, while only 20% replied in the negative. In this context it is worthwhile to mention that one of the respondents added that the whole property should devolve on the wife in

112. Question No.21 in Appendix-II.

113. Section 47: "WHERE INTESTATE HAS LEFT NEITHER LINEAL DESCENDANTS NOR FATHER, NOR MOTHER: Where the intestate has left neither lineal descendant, nor father, nor mother, the property shall be divided equally between his brothers and sisters and the child or children of such of them as may have died before him such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death".

114. Question No.22 in Appendix-II.
such situations, provided the situation is not created by her own deeds.\textsuperscript{115} It emerges from the study that the great majority of the respondents (80\%) feel that the provisions of Section 47 needs revision as it is discriminatory to women.

The great majority of respondents (83\%) feel that the provisions of Section 60 of the Indian Succession Act, 1925 which enables only the father to appoint a guardian for his minor children, while denying any such right to the mother, is discriminatory to women.\textsuperscript{116} Therefore, it appears that Section 60 of the Act also needs a fresh look to bring it in conformity with the present concept of equality, especially after the inauguration of the Constitution.

Under Sections 33(b) and 42 read with Section 43 of the Indian Succession Act, 1925,\textsuperscript{117} when a Christian woman dies intestate leaving no issues, her father gets \(\frac{1}{2}\) of the property,\textsuperscript{118} but her mother does not inherit any property. If the father is

\textsuperscript{115} It may be mentioned that the same view was taken by the Kerala Law Commission in its 4th Report, 1968, at 12.

\textsuperscript{116} In response to Question No. 23 given in the Appendix-II only 17\% thought that the provision is not discriminatory.

\textsuperscript{117} See supra notes 110 & 111. Further Section 43, provides: "WHERE INTESTATE'S FATHER DEAD BUT HIS MOTHER, BROTHER AND SISTER LIVING: If the intestate's father is dead but the mother is living and there are also brothers or sisters of the intestate living and there is no child living of any deceased brother or sister, the mother and each living brother or sister shall succeed to the property in equal shares."

\textsuperscript{118} The father gets \(\frac{1}{2}\) of the property if her husband is alive. Otherwise, the father inherits the whole of the estate.
dead, the mother gets only one share,\textsuperscript{119} sharing equally with the brothers and sisters of the intestate. The great majority of respondents (82\%) are of the opinion that these provisions are discriminatory to women.\textsuperscript{120}

"Streedhanom" has been a bone of contention among various interest groups within the Christian community. Though Section 28\textsuperscript{121} of the Travancore Christian Succession Act dealing with "Streedhanom" was challenged in Mary Roy, unfortunately, 

\textsuperscript{119}. The position is the same even when the intestate is her son.

\textsuperscript{120}. In answer to Question No. 24 in Appendix-II, only 18\% of the respondents gave a negative answer.

\textsuperscript{121}. Section 28:- The share of son in group (1) of Section 25:- Without prejudice to the provisions of Section 16, the male heirs mentioned in group (1) of Section 25, shall be entitled to have the whole of the intestate's property divided equally among themselves, subject to the claims of the daughter for Streedhanom.

The Streedhanom 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.

DAUGHTER'S STREEDEHANOM AND ITS VALUE:

Female heirs who were paid Streedhanom to be ordinarily left out of consideration:- Provided that any female heir of an intestate to whom Streedhanom was paid or promised by the intestate, or in the intestate's life-time either by such intestate's 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 brother or the lineal descendants of any such deceased brother shall survive the intestate".
the Supreme Court did not consider the constitutional validity of this Section. In this context, specific questions were raised in the course of research, on "Streedhanam" which is commonly considered as "dowry". A few of the respondents (24%) have opined that the Dowry Prohibition Act should not be made applicable to Christians in this area as some of them explained that "Streedhanam" as is understood and practised here is different from the concept of "dowry" as envisaged under the Dowry Prohibition Act, 1961. At the same time, 70% of the respondents have answered that the amount usually given by the bride's parents or relatives to the bridegroom at the time of marriage be considered as the bride's share in her parent's property in the event of intestate succession. But 67% of the respondents felt that the Dowry Prohibition Act did more good than harm. According to them it was rather beneficial than harmful. But the greatest majority of respondents (85%) felt that in the event of a divorce or

122. This is in response to Question No.27 of Appendix-II. But 74% of the respondents favoured the present applicability of the Dowry Prohibition Act, while 2% did not have any response.

123. In answer to Question No.28, only 27% gave a negative reply while, 3% remained without giving any response. See also discussion in Report of Law Commission of Kerala (1968) at 21-24.

124. 33% of the respondents in answer to Question No.29 felt otherwise.
declaration of nullity of marriage, the amount given to the bridegroom at the time of marriage should be returned to the woman and that legislation to safeguard the interests of the woman in this matter is called for. To a specific question whether the decision in Mary Roy would adversely affect the cohesiveness of the Christian family/community in Travancore-Cochin area, the majority of the respondents from Travancore-Cochin area answered in the affirmative, but the response from the other areas was otherwise. But at the same time, 86% of the respondents considered it essential to have a thorough reform of the law relating to Christians in India.

Inspite of the decision in Mary Roy the law relating to succession is not uniform among Christians. Different sections of Christians in India are still governed by laws that are diverse and uncertain. The extension of the Indian Succession Act, 1925 to the Part B States has not made any significant change to the development of the law. But, the clamping of the Indian Succession Act, 1925 on a community which has always been resisting imposition of laws which it considered alien, all on a sudden,

125. In answer to Question No.30, only 15% gave a negative answer.
126. See Appendix-II, Question No.19.
127. In response to Question No.31 of Appendix-II, only 12% gave a negative answer, while 2% did not respond to the question.
128. See supra n.2-5 and the accompanying text.
by way of a judgment after the lapse of near about 34 years, overturning their interrelationships has left the community high and dry. The social impact has been so tremendous that it has an unsettling effect on what was regarded as settled and acted upon for a long time. It may be said that such social legislation are always enacted after careful study spanning over a period of time. Their impact is taken care of. No study worth the name has preceded the *Mary Roy's Case*. Nor was there a history that indicated the willingness of the community for the law's reception. In fact the Christian community in Kerala showed their unwillingness to accept the Indian Succession Act and went for a new legislation exclusively for it. In such circumstances, it was unfortunate that the Court came up with the decision in *Mary Roy*, which could in no way eliminate gender discrimination in the law of succession among Christians.

In Goa, Daman and Diu there does not appear to be any discrimination against women in these matters. Nor is there any in Pondicherry. But so far as the Christians in North East India are concerned, as we have already seen in Chapter II, there appears to be discrimination against men rather than women. There,

129. In *Mary Roy* the Reports of the Law Commission of Kerala and that of India were not even taken into consideration.
130. See supra notes 32-35 and the accompanying text.
succession to property revolves round the woman in the family. Modern legislation has not so far been allowed to make any crack into the steel frame of customary law that protects the Christian women in North East India.

Religious faith and religious practices may lead to uniformity but it is very difficult for a community to tackle the shackles of customs that united the society from time immemorial. It is hard and painful for them to disassociate themselves with the customs to achieve uniformity. What the law in such a situation should do is not to tamper with them. Or if it is considered essential to change them, it is better to adopt the policy of being slow and steady, winning the confidence of the community in the process by socio-legal measures.