Overlooked and Undermined - A Critical Note on the Status of Christian Mothers under the Indian Succession Act

- *Adya Joshi*[2]

Introduction

One of the primary obstacles in achieving women's empowerment in India, is the entrenched patriarchy that underscores most personal laws in the country. While the Constitution guarantees equal protection to both sexes,[3] the unique nature of Indian secularism has often resulted in 'freedom of religion' prevailing over notions of gender justice – particularly in the spheres of marriage, divorce and succession.

No doubt, the in-built discrimination in personal laws has received significant government attention over the years, and several attempts have been made to ameliorate the situation through legislative amendments and judicial intervention. Issues such as a woman's right to receive maintenance irrespective of religion, the right of Hindu women to receive equal shares in ancestral property, and the outlawing of the customary Muslim practice of 'triple talaq', are just a few examples where the Parliament and Indian courts have interceded[4] in personal laws to combat gender inequality. Moreover, the enactment of a 'Uniform Civil Code' with gender-neutral provisions, is currently one of the most crucial political and policy issues that is being debated at the moment.

Notably, however, much of the spotlight remains on women belonging to the Hindu and Muslim communities, since there is a belief that Christian women are in a 'better' position as compared to their counterparts belonging to other religions in the country.[5] In fact, as per recent news reports, the Central government is allegedly planning to exclude Christians from the purview of the proposed Uniform Civil Code altogether.[6]

The reality however, starkly differs. While the primary legislation governing Christian succession,

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2 Associate, Shardul Amarchand Mangaldas & Co.

3 INDIA CONST. art. 14.

4 *See* Mohd. Ahmad Khan v. Shah Bano Begum, AIR 1985 SC 945; Vineeta Sharma v. Rakesh Sharma, (2020) 9 SCC 1; Shayara Bano v. Union of India, (2017) 9 SCC 1; Hindu Succession (Amendment) Act, 2005, No. 39, Acts of Parliament, 2005 (India); The Muslim Women (Protection of Rights on Marriage) Act, 2019, No. 20, Acts of Parliament, 2019 (India).

5 Sravasti Dasgupta, *BJP Equates UCC With Gender Justice. But Can It End Discrimination In-Built in Personal Laws?* THE WIRE (July 1, 2023, 8:17 PM), https://thewire.in/women/bjp-ucc-with-gender-justice-discrimination-personal-laws.

6 Devesh Kumar,'*Christians, tribals likely to be exempted from UCC': Centre assures Nagaland*, Mint (July 2, 2023, 9:35AM), https://www.livemint.com/news/india/christians-tribals-likely-to-be-exempted-from-ucc-centre-assures-nagaland-11688725777702.html.

i.e., the Indian Succession Act, 1925 ("**ISA**"/ "the **Act**")[7], broadly supports gender equality, it is not immune from discrimination. In particular, Christian mothers under the ISA have been relegated to an inferior status without any justifiable reason. However, the public discourse and engagement in this regard is conspicuously absent.

Accordingly, this paper seeks to shed light on the rights of Christian mothers under the ISA, who have been overlooked and undermined for far too long.

Overview of Christian Succession in India

Prior to the introduction of the ISA, succession rights for communities that were not Hindu or Muslim, were disparate. Christian inheritance in particular, varied considerably since the various sects and denominations all followed different rules and customs.[8] Moreover, the application of these rules was equally inconsistent. In general, English law was applied to the Jews, Christians, Armenians, Parsis and Ango-Indians in the Presidency towns, while 'justice, equity and good conscience' was utilized by the courts in the Moffusil areas.[9]

The indeterminate approach led to several recommendations for a unified legislation, and in 1865 the first version of the ISA was introduced by Sir Henry Maine.[10] The Act codified both testamentary and intestate succession for these communities, and was largely based on English law. Subsequently, various other legislations were consolidated within the Act, and the final version of the ISA came into force in 1925, which has been amended twice thereafter.[11]

Notably, the ISA did not extend to the erstwhile states of Travancore and Cochin at the time of enactment, despite the significant Christian population. Instead, up until 1916, the Christians in these states followed their own customs with respect to inheritance and succession. Unfortunately, these were influenced by the regressive practices of the orthodox Hindu Mitakshara customs.[12] To illustrate, daughters were denied any property rights, and were simply provided 'stridhana' at the

7 Indian Succession Act, 1925, No. 39, Acts of Parliament, 1925 (India).

8 Sindhu Thulaseedharan, *Christian Women and Property Rights in Kerela-Gender Equality in Practice*, PROJECT UNDER THE KERALA RESEARCH PROGRAM(KRPLLD), CENTRE FOR DEVELOPMENT STUDIES (CDS), Trivandrum (July 5, 2023, 6:37PM), www.cds.ac.in/krpcds/report/sindhu.pdf.

9 M.P. JAIN, OUTLINES OF INDIAN LEGAL AND CONSTITUTIONAL HISTORY 470 (LEXISNEXIS, 2006).

10 Indian Succession Act, 1865, No. 10, Acts of Council of India, 1865 (India).

11 The Indian Succession (Amendment) Act, 1991 No. 51, Acts of Parliament, 1991 (India); The Indian Succession (Amendment) Act, 2002 No. 26, Acts of Parliament, 2002 (India).

12 Susan Vellapally and Markos Vellapally, *Repeal of the Travancore Christian Succession Act, 1916 and its Aftermath,* INDIA INTERNATIONAL CENTRE QUARTERLY VOL. 22, NO. 2/3, 182 (1995).

time of marriage, which was treated as their share of inheritance.[13] These customs were then codified by the Travancore Christian Succession Act, 1916 ("**Travancore Act**")[14] and the Cochin Christian Succession Act, 1921 ("**Cochin Act**")[15], without any attempts at reform. As a result, the aforementioned Acts were riddled with discriminatory provisions.

To illustrate, under Section 24 of the Travancore Act, a widow only had a life interest in her share of her deceased husband's property, and this too could be set aside by a son after 3 years of attaining majority.[16] In addition, this right was inalienable and she could not further will it off. Furthermore, daughters were given 1/4th of a son's share in the property, or Rs. 5000 whichever was lesser – and even this was not provided if she had been given stridhana.[17] The law was similar under the Cochin Act, where a daughter was only given 1/3rd of her brother's share and excluded if she had received stridhana at the time of marriage.[18] And even if the daughter had no brothers, the property did not go to her but instead devolved upon remote male descendants of any degree.[19] In fact, the discriminatory provisions in these Acts were upheld by the courts in *Mathoo Phillip vs Mathoo Ouseph*[20]and *Iyer Hariharasubramonia Iyer v. Mathu Thrasia,* [21] and an attempt to repeal the aforementioned acts through the Christian Succession Acts (Repeal) Bill[22] lapsed due to strong resistance.

Post- independence, the states of Travancore and Cochin were merged together to form the Part B State of Travancore-Cochin. Thereafter, in 1951, the Part B States (Laws) Act was introduced which extended the Central Acts and ordinances in its Schedule, including the ISA to the Part B States.[23] However when the Travancore Act was challenged for the first time in the case of *Kurien Augusty v. Devassy Aley,*[24] the High Court of Kerala upheld its validity on the ground that the ISA was not meant to interfere with personal laws. This was further endorsed by the Madras High

13 *Id.*

14 The Travancore Christian Succession Act, 1916 (India).

15 The Cochin Christian Succession Act, 1921 (India).

16 The Travancore Christian Succession Act, 1916, Section 24 (India).

17 The Travancore Christian Succession Act, 1916, Section 28 (India).

18 The Cochin Christian Succession Act, 1921 Section 20(b) (India).

19 Sebastian Champappilly, *Christian Law of Succession and Mary Roy's Case,* 4 SCC (JOUR) 9 (1994).

20 Mathoo Phillip vs Mathoo Ouseph AIR 1965 Ker 220.

21 Iyer Hariharasubramonia Iyer v. Mathu Thrasia, 13 Trav LJ 354 (FB).

22 The Christian Succession Acts (Repeal) Bill, 1958 (India).

23 The Part B States (Laws) Act, 1951, No. 3, Acts of Parliament, 1951 (India).

24 Kurien Augusty v. Devassy Aley, 1956 KLT 559.

Court in *D. Chelliah* v. *G. Lalitha Bai.*[25] Subsequently though, in *Solomon v. Muthiah*[26] a single judge of the Madras High Court upheld the ISA for Travancore and Cochin Christians stating that its provisions were of universal application. In this manner, the stance of the courts continued to fluctuate until the Supreme Court' of India's landmark decision in *Mrs. Mary Roy Etc. v. State Of Kerala & Ors ("***Mary Roy***").*[27]

In *Mary Roy*, a Syrian Christian woman challenged Sections 24, 28, 29 of the Travancore Act for being discriminatory towards women and therefore violative of Article 14 of the Indian Constitution. In its judgment, the Supreme Court held that in view of the Part B States (Laws) Act, the Travancore and Cochin Acts stood wholly repealed and the ISA became uniformly applicable to the Christian communities in these states.[28] This decision was widely celebrated for ensuring equal rights to Christian women and is till date considered the most important judgment in relation to Christian succession. Interestingly, however, the Supreme Court did not go into the merits of the case and determine the aspect of gender inequality. Instead, it premised its decision on the technical aspects of the applicability of the Part B States (Laws) Act to the states of Travancore and Cochin.

Nonetheless, post *Mary Roy*, it is generally considered that Christian succession is primarily neutral since the scheme of the ISA promotes gender equality. However, the author believes that this is a misconception, given that glaring inequalities continue to exist, especially with respect to Christian mothers under the Act.

Status of Christian Mothers under the ISA

A primary illustration of the inferior status of Christian mothers under the ISA, is reflected in the scheme of intestate succession under Sections 31 to 49 of the Act. As per Section 42 of the Act, in a situation where there are no lineal descendants of the intestate 1/3rd of the property is reserved for the widow, while the rest of the property devolves *entirely* on the ***father*** of the intestate.[29] If the father of the intestate is deceased, but his siblings and mother are alive, the remaining property

25 D. Chelliah v. G. Lalitha Bai, AIR 1978 Mad 66.

26 Solomon v. Muthiah, (1974) 1MLJ 53.

27 Mrs. Mary Roy Etc. v. State of Kerala & Ors, 1986 AIR 1011.

28 *Id.*

29 Indian Succession Act, 1925, Section42, No. 39, Acts of Parliament, 1925 (India).

is distributed amongst them equally.[30] Further, if there are no living siblings of the intestate, but the children of the siblings are living, the remaining property is divided equally between the mother and nieces/ nephews of the intestate.[31] It is only when neither the father of the intestate nor his/her siblings or their children are living, does the mother of the intestate succeeds to the property.[32]

Historically, Section 42 derives its basis from the patriarchal principle in common law that the father takes the whole of the property of the mother as if arising *jure mariti.*[33] This principle gives the husband a universal interest in the movable property of the wife at the time of marriage, including the right of alienation.[34] Notably, however, even the English law in this regard was reformed almost a century ago, with Section 46 of the Administration of Estates Act, 1925 providing equal rights to the father and the mother of the intestate.[35] Yet, the ISA continues to endorse this archaic and misogynist principle even in the 21st century.

Unfortunately, the above is not the only illustration of the discrimination faced by Christian mothers under the ISA. Another example is Section 22 – which states the property of a minor may be settled in contemplation of marriage only by the ***father***, or in his absence by the court.[36] Once again, there is no justifiable reason for the exclusion of the minor's mother the provision, and it is merely an extension of a patriarchal set-up where the father is the head of a household and therefore, takes all decisions. The provision not only ignores the role and contribution of a mother in bringing up a child, [37] but also fails to consider situations where the parents are separated/ divorced and the mother is solely responsible for bringing up the child.[38] Moreover, even in scenarios where the father is dead or absent or under a disability, the mother has no right to approve of the settlement of the minor's property, and an appropriate application must be made to the ***court.*** Therefore, the provision not only renders an inferior status as compared to the father but also indicates that she is not capable of making a decision *at all.*

30 *Id.,* Section 43.

31 *Id.,* Section 44, 45.

32 *Id.,* Section 46.

33 B.B MITRA, THE INDIAN SUCCESSION ACT, 98 (S.A. Khader, 14th ed., 2006).

34 PETER HALKERSTON, A TRANSLATION AND EXPLANATION OF THE PRINCIPAL TECHNICAL TERMS AND PHRASES USED IN MR. ERSKINE'S INSTITUTE OF THE LAW OF SCOTLAND, 40, (1829).

35 Administration of Estates Act, 1925, 15 & 16 Geo. 5. c. 23 (United Kingdom).

36 Indian Succession Act, 1925, Section22, No. 39, Acts of Parliament, 1925 (India).

37 POONAM PRADHAN SAXENA, SUCCESSION LAWS & GENDER JUSTICE IN REDEFINING FAMILY LAW IN INDIA, (Archana Parasar, Amit Dhanda ed., 2008).

38 Poonam Pardhan Sexana, *Property Rights of Women under the Indian Succession Act, 1925* in WOMEN LAW AND SOCIAL CHANGE 107, (Dr. Shamsuddin Shams ed., 1991).

Attempts at Reform

In 1985, the Law Commission of India published a report on the ISA proposing a number of amendments to the Act.[39] With respect to the rules governing intestate succession, the Law Commission specifically noted that Section 42 "*is not in conformity with current thinking as to the status of women. The law is in need of reform on this point.*"[40] This marked the first express acknowledgment of the discrimination towards Christian mothers since the enactment of the ISA. However, the Law Commission's noting in this regard was ignored, and for the next 30 years, no attempts were made to actually amend the Act.

Thereafter, in 2014, Law Commission of India revisited the issue and published a report specifically addressing the amendment of Sections 41 to 48 of the ISA.[41] In particular, the Law Commission proposed that Section 42 of the Act be amended to state that "*(w)here intestate's parents (father and mother) living. If the intestate's* ***parents*** *(****father and mother****) are living, they shall succeed the property* ***equally****.*[42] However, it has been approximately 9 years, and no efforts have been made to change these rules, which have discriminated against Christian mothers for almost a century.

Notably, the situation with respect to Section 22 of the Act is even more concerning. The Law Commission has only addressed the issue in its initial report in 1985, where it stated that "*Having regard to the present-day notions, we are of the view that the section should be amended, so as to provide that* ***if the father is dead or absent from India or under any disability, the mother can approve of the settlement of the minor's property.***" [43] However, despite expressly noticing the discrimination in the provision, the Law Commission only recommended the *inclusion* of the mother in Section 22, and shied away from stating that she should be *equal* to the father in this regard. Moreover, despite noting that a newspaper article had recently recommended that the word "*father"* in the provision be substituted with "*either parent*", the Law Commission opined that that would be going a step too far, since that would not be in consonance with the general law on guardianship.[44] In other words, rather than recommending that all the relevant provisions in this regard be amended

39 LAW COMMISSION OF INDIA, *Indian Succession Act, 1925*, Report No. 110, (February 1985).

40 *Id.,* 62.

41 LAW COMMISSION OF INDIA, *Sections 41 to 48 of the Indian Succession Act, 1925 – Proposed Reforms*, REPORT NO. 247, (SEPTEMBER 2014).

42 *Id.,*15.

43 LAW COMMISSION OF INDIA, *Indian Succession Act, 1925*, REPORT NO. 110, 48 (FEBRUARY 1985).

44 *Id.,* 49.

to ensure gender equality, the Law Commission put forward a toned-down sexist provision. In any case, the issue was not addressed by any subsequent reports and the provision remains unamended even in 2023.

Recommendations and Conclusion

As demonstrated through the course of this paper, the political and public apathy towards the rights of Christian women in India is writ large, particularly in respect of their rights under the ISA. As a result, the inferior status relegated to Christian mothers under the ISA remains unchanged in 2023, without there having been a single *attempt* by the legislature to amend the law. Moreover, as noted above, even the *recommendations* to amend the discrimination against Christian mothers by the Law Commission, fall short of proposing absolute gender equality.

The author believes that amendments to Sections 22 and 42 to reflect equality amongst Christian mothers and fathers is the need of the hour. A possible solution lies with the judiciary exercising its powers to 'read' up' the relevant provisions of the ISA, in order to bring the Act within the constitutional framework. To illustrate, both Sections 22 and 42 of the ISA can be read so as to declare that all references to the '*father*' be read as '*parent(s)'*. However, the author is cognizant of the fact that the Supreme Court may be reluctant to intervene in this regard at the current juncture, given the present government's intention to introduce a 'Uniform Civil Code' in the country.

At the same time, as per recent reports, the 'Uniform Civil Code' may not be extended to the Christian community. The author believes that irrespective of what the eventual provisions of a draft bill in this regard may contain, it is imperative to encompass the Christian community in its proposals in order to start a *discussion.* Otherwise, the status quo under the ISA may continue for time immemorial, considering the indifference shown by the legislature and the executive in this regard.

Ultimately, whether it is through legislative or judicial intervention, it is clear that action is required to end the discrimination against Christian mothers under the ISA, as they have been overlooked and undermined for far too long.