MARY ROY V. STATE OF KERALA

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There have been numerous alterations in the Succession laws which apply to the Christian community residing in the Travancore/ Cochin area. The laws which have been applied ranged from the Classical law as laid down by Moses to the laws framed by the Emperor of Travancore, then came British laws and finally Indian law after independence. Alongside the codification of the law by the legislature, we have the courts applying their reasoning to cases of intestate succession. The Landmark and conclusive case in this regard was the matter of Mary Roy v. State of Kerala. The judgement is marked as a defining moment in the constant struggle for gender equality in Indian Family Law.

Introduction

The judgment prompted a repeal of the Cochin and Travancore Succession Acts and upheld the contents of Part-B states act, whose objective was to extend the application of the Indian Succession Act to the area which was governed by the discriminatory Travancore and Cochin Succession Acts. The judgement had its fair share of criticism too, an aspect which will be analysed further by the researcher. Leaving that aside, the holding by the Supreme Court offered Christian ladies much needed assistance in obtaining their rights pertaining to intestate succession.

This "paper has been divided in three parts. *Part I*, the introductory part, contains the events before the Mary Roy Judgement and explains the evolution of various legislation and how they impacted intestate succession. *Part II,* contains a bare description of the judgement and contextualizes the judgement with help of the various arguments and the relevant sections*, Part III,* assess the larger significance of the judgement and concludes" the paper.

1. Intestate Succession Laws Among Cochin/ Travancore Christians: Prior to the Events of *Mary Roy*

A Historical Background

Prior to 1949, the Christian community of Kerala was governed by the Travancore and Cochin Succession Acts. Apropos the aforementioned law, it is pertinent to note that it essentially was applicable to the Syrian Christian community which constituted the major chunk of the relevant population.

This act was enforced with a motive to outline and delineate the succession law in Kerala which prior to the enactment changed with change in the section of the Christian community. The enactment basically codified the rules and regulations laid down by the king regarding the situation of intestate succession, which in turn fuelled a debate regarding

the discriminatory nature, the antediluvian provisions, and the non-inclusion of numerous practices.[1]

The discriminatory nature of this law led to the calls for introspection of the provisions of law, with questions arising regarding the unjust nature of the law and the need of such laws with a very narrow interpretation. The debate was further aggravated by the judgment of the Mary Roy case.[2]

The researcher believes that in order to aptly study the rationale of such laws, it is imperative to study the historical and cultural backgrounds of the Christians or more particularly the Syrian Christians, who are directly impacted by the provisions of the law.

It is pertinent to note that Christianity came to India during the earlier times of the Christian era. Moses laid down some laws, supposedly for the Christians of the regions of Cochin and Travancore. This implied that there were no uniform laws and almost all the decisions were taken on the case to case basis implying a reliance on the wisdom of the judges.[3] There were certainly some common features between the Laws of Moses and the Travancore Succession Act, 1912 like the right of inheritance was solely restricted to men and unmarried women were barred from holding any type of property. Surprisingly, the daughters, at the time of their marriage were given *stridhanam*, which invariably took the form of ornaments, property etc. With the regards to the Travancore Christian Succession Act, which has been often criticized for its inability to solve the issues posed by the earlier law and in turn have in one sense constricted the options of numerous progressive societies which existed within Kerala.

2. Discriminatory Nature of the Old Succession Acts

Under the Travancore and Cochin Christians Succession Acts, any daughter whose father died intestate would be entitled to obtain or have a stake in only one-fourth of the property. This sum in any case, was limited to just five thousand rupees, regardless of the value of the father's total property. Pragmatically, this share that the women got was a mere pittance which was also denied a lot of times as the daughter was instructed to be satisfied with the '*Stridhanam*'.[4] Section 16, 17, 18 and 19 of the act, set out the guidelines identifying with the intestate succession in TCS. These sections were biased in nature as they in effect denied equal rights in the property to women and took away entitlement of widows and mothers from the property of the intestate. Section 28 was another discriminatory provision which laid down the draconian '*Stridhanam*' or 5000 rupees limit on the women's right to

[1] Markas Vellapaly, *Repealing of the Travancore Christian Succession Act, 1916 and the Aftermath*, INDIAN INTERNATIONAL CENTER QUARTERLY, 21(2/3), 181,183 (1994).

[2] Mary Roy v. State of Kerala 1986 2. S.C.C 209

[3] Thomas John, Succession Law in India And Obstacle in the Road to Gender Equality: The Experience of Mary Roy v. State of Kerala, *Student Bar Review*, 17(2), 37 (2006).

[4] Sebastain Champappilly, Christian Law of Succession in India, 12, (1997);

the intestate's property. Thus, the provisions were prima facie discriminatory on the basis of gender.[5] These provisions were so arbitrary that even by the standards of morality present in the 1920's, the committee which constituted to discuss and frame the 1916 bill reprimanded various provisions of the enactment on the basis that the daughter was being overtly discriminated against. The recommendations of the committee pointed towards a more progressive approach but their suggestions were ignored.[6]

The section which allowed for the limitation of 5000 rupees with respect to the intestate's property and the *Stridhanam*, irrespective of the total value of the property was actually added, surprisingly and absurdly, at the last moment. The rationale presented was that after entering into the matrimonial bond, the woman ceases to be a part of her former home and becomes a part of her husband's family, thus making the claim of the woman to her 'former' family's estate 'unnecessary' and 'unfair'. [7] It was based on the presumption that daughters would easily sustain from their 'new' households whereas the sons would have to work to sustain themselves. The reasoning behind this move is obviously flawed and bases itself upon gender stereotypes, patriarchy and vague generalisations. The number of women who were on the committee was also zero. [8]

3. Changes in Law and the Events Leading up to Mary Roy

Legislation's furthered gender equal norms in relation to intestate succession were passed by the British but these could not be applied to the Travancore region. The reason being that the affected regions were still under the title of a princely state and thus the enactment could not be applied to them.

In 1949, the State of Cochin and Travancore were combined to form one state and in furtherance of that in order to bring about a similarity of legislation throughout the entire country, the legislature enacted *Part-B States (Laws) Act, 1951*. The Act aimed at empowering certain Parliamentary legislations to govern over the Cochin- Travancore region. [9] The part of pragmatic operation of the act was s. 3 and s. 6 which says-

4. 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 Ordinances 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***

[5] Supra, Note 2, at 19.
[6] Report of the Christian Committee, 1912 at 55.
[7] *Id.*
[8] P. Kothod, *Re-examining the Status of Women in Kerala*, Indian Centre for Women Rights Publications, (2010).
[9] Mary Roy v. State of Kerala 1986 2. S.C.C 209

5. Repeals and savings

If immediately before the –appointed day, there is in force in any Part B State any law corresponding ***to any of the Acts or Ordinances now extended*** *to that State, that law shall,* ***save as otherwise expressly provided in the Act, stand repealed****:*

These provisions allowed for the bringing in of several other statutes too like the Caste Disabilities Act. The power to repeal all contradictory laws in force in the Part B states was also given by these sections.[10]

It would seem that the question of which law would apply to the Cochin and Travancore regions would be settled but serious discussion and conflict still continued and the judiciary had to step in. A single judge of the High Court ruled in favor of the TCS and held that Christians living in the conflicted state were bound by the state enactments but the High Court clearly held otherwise.[11] The words 'save as otherwise expressly provided' mandated the withdrawal of enactments corresponding to the laws sought to be made applicable to the states in the Part B by the Part B States (Laws) Act. This decision propagated and upheld patriarchy and gender discrimination, something which the Central Act wanted to cut down upon.

6. **The Decision in *Mary Roy:* A Brief Description**

The "Travancore Succession Act and the Cochin Succession Act remained till the 1980's until Mrs. Mary Roy challenged this position in the Supreme Court. Mary Roy was the youngest child of a Syrian Christian couple, who had four children.[12] Mary had already married out of the Syrian Christian community to a Bengali, and was not given *Stridhanam*.[13] Due to her marriage failing, Mrs. Roy had to leave her husband and settle in Ooty, where her family owned a cottage.

After her father's death, Mrs. Roy had been forced out of her Ooty home by her brother. Citing the TCS, they argued that since their father had died intestate, she wasn't entitled to any share of the property under section 28. After years of lobbying for the Indian Succession Act to be valid in the Travancore region, Mrs. Roy finally decided to go to court to fight the oppressive bill. Initially no lawyer was ready to accept the case. Indra Jaising however, decided to fight out in court, challenging sections 24, 28, 29 of the TCSA on the grounds that they were violative of Article 14 of the Indian Constitution.

The bench considered many questions with regard to the Christian intestate succession in the state of Travancore. Some of them were-

a. *What was the impact of the extension of the Indian Succession Act, 1925 to the territories of the State of Travancore-Cochin on the continuance of the Travancore*

[10] Supra, Note 6, at 55
[11] Supra, note 2 , at 192
[12] Mary Roy v. State of Kerala 1986 2. S.C.C 209
[13] *Id.*

Christian Succession Act, in the territories forming part of the erstwhile State of Travancore?

b. *Did the introduction of the Indian Succession Act, 1925 have the effect of repealing the Travancore Christian Succession Act?*

c. *Or did the Travancore Christian Succession Act continue to govern such intestate succession despite the introduction of the Indian Succession Act, 1925?*

d. *Is section 24, 28, 29 violative of the equality" doctrine?*

"In what is now a historic judgement, Justice P.N Bhagwathi along with his fellow judges held that" with the extension to "*Travancore of the provisions of the Indian Succession Act with effect from April 1,1951, the Travancore Succession Act stood repealed" and was no longer in existence*".[14]

This "meant that *D. Chelliah Nadar v. G Lalita Bai*[15], was overruled and the court firmly stood with the respondents by saying that TCS was not a corresponding to the Indian Succession Act, but a law that was corollary to the law set up by the Part B Laws Act. The court reasoned this out" remarking:

"When Section 6 of Part B States (Laws) Act, 1951 provided in clear and unequivocal terms that the Travancore Christian Succession Act, 1092 which was a law force in Part B States of Travancore-Cochin corresponding to Chapter II of Part V of the Indian Succession Act, 1925 shall stand repealed, it would be nothing short of subversion of the legislative intent to hold that the Travancore Christian Succession Act, 1092 did not stand repealed but was saved by Section 29 Sub-section (2) of the Indian Succession Act, 1925."[16]

The "court also based this claim on the fat there was nothing that expressly saved the TCS statue from being repealed. Another argument by the respondents was" that

"*… By reason of Section 29 Sub-section (2), the Indian Succession Act, 1925 must be deemed to have adopted by reference all laws for the time being in force relating to intestate succession including the Travancore Christian Succession Act, 1092 so far as Indian Christian in Travancore are concerned*".[17]

"Justice Bhagwathi rejected this argument and said that the case cited by the respondents in favors of the same was wrong its ratio. The case in particular was *Kurian Agusty v. Decassy Aley,*[18] which Justice Bhagawthi deemed" to be inadmissible.[19]

Concluding Analysis: The Impact of Mary Roy

[14] Mary Roy v. State of Kerala 1986 2. S.C.C 209
[15] D. Nadar v. G Lalita Boi, AIR 1978 Mad. 62.
[16] Mary Roy v. State of Kerala 1986 2. S.C.C 209
[17] *Id.*
[18] Kurian Agushty v. Decassi Alley, *, AIR 1956 T.C II*
[19] Mary Roy v. State of Kerala 1986 2. S.C.C 207

The implication "of this judgement reached far and wide, this made the powerful patriarchal systems insecure and defensive. Even the Majority of women were not happy with the decision of the court, albeit for a very different reason. How did a judgement that was hailed as land mark judgement invoke such sharp reactions and from such diverse groups? The answer to this will be discussed in the following part of the paper.

The decision in *Mary Roy v. State of Kerala* was one of many judgements which was criticised by the church and the local community for its affirmation of the retrospectively clause[20] The displeasure expressed was, due to the local community expecting a sharp increase in litigation challenging previous transaction and succession. The retrospectively clause was defended by Mrs Mary Roy herself, she argued that *'the taking away of the retrospectively clause would deny justice to the many poor Christian women whose fathers had died without leaving a will.'*[21] The argument of loss and increase litigation was proved false, as there had been only about 29 cases that turned up in court.[22]

The other criticism came from the women's rights activists, who criticised the judgement for not delving in the constitutional aspect of the case. The felt that both Justice Bhagawthi and Justice Pathak, took the easy way out, by deciding the case on the reasoning that TCS is in violation of Part B states (law) amendment act and totally ignored the gender justice aspect to it.[23] The other criticism of the judgement was that it totally blurred the distinction between '*stridhanam'* and *'Dowry'*. This meant that, it became extremely difficult to marry off the daughter without giving the in-laws a heavy chunk" of the property.

It must also be noted that the judgement was merely the beginning for Mary Roy. On the basis of that decision she filed a case in the Kottyam District Court in 1989 for the one-sixth property that she was now entitled to under the Indian Succession Act. However, the court ruled against her on the grounds that the partition would not be possible until the death of the mother, who held a life estate in the property. Recently, almost 25 years later, the final decree came and justice (symbolic) was done.[24] She had to face a lot of hardships from all the sides. The women in Travancore initially did not support her because of family pressure and conservatism. The church also attacked her, launching a 'pulpit campaign' to contain the 'damage' by means such as encouraging the drafting of wills to safeguard the son's share and attempting to gather support for a bill which would invalidate the retrospective effect of the judgement. Such a bill was actually introduced but it was refused presidential assent. The Government of Kerala also made an attempt with a similar motive but the petition was dismissed.[25]

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[20]Supra, Note 2, at 55
[21] Supra, Note 2, at 55
[22] Venu Menon, The Matricarch, The Real Mcroy, The Outlook, November 3, 1997
[23] Id, at 3
[24]*Final Decree in Mary Roy Case Executed*, THE HINDU, *available at* http://www.thehindu.com/todays-paper/final-decree-in-mary-roy-case-executed/article840061.ece (Last visited on January 2, 2016.)
[25] *Supra*, note 2.

To conclude, examining Mary Roy as a landmark case which took cognizance of the rights of women to inheritance is a false analysis to make and quite difficult as the case does not actually strike down the impugned act on the question of its constitutional validity, but rather on the operation of the Part B States(Law) Act. Although, in effect, it was definitely a step forward for the female Indian Christians covered under the Travancore and Cochin Succession Acts. The Legislature, who drafted the Indian Succession Act, should be the ones who should be lauded for promoting gender equality. The activism shown by Mary Roy was inspirational and such steps need to be lauded.

"Oh, *I was just very angry. I didn't have any other reason. I was just angry because I was told to leave my father's house because I did not have a share.*"

Mary Roy, when asked why she went to court.[26]

[26] *Supra*, note 2.