



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2024 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

Addressing the Patriarchal Themes in Christian Personal Law in India - A perspective

Angel Bhosale^a

^aUniversity of Mumbai Law Academy, Mumbai, India

Received 28 June 2024; Accepted 30 July 2024; Published 03 August 2024

India is a land of many religions that exist harmoniously and cohesively while maintaining their individuality. The differences occurring out of culture, traditions, and faith are governed by personal laws. However, these personal laws are not errorproof. Two humans with similar circumstances can be subjected to different laws solely based on the religion they were born into. Moreover, our systems have been made by men, for the benefit of men. There are five different personal laws for the different religious groups in India - Hindu personal law, Christian personal law, Muslim personal law, Parsis personal law, and Jewish personal law. The one thing common in these laws is the direct or indirect oppression of women. The Hindu and Muslim laws have been amended over the years to rule out signs of patriarchy through various landmark judgments by the Supreme Court however, the condition of Christian personal law still is primitive and stagnant. There is a significant need for corrections in the Christian laws as the status of Christian women concerning succession, marriage, adoption, and divorce remains neglected and unmentioned and there is a desperate need for amendment for it to be even with other personal laws. The 247th Law Commission Report in 1985¹ was the last significant piece of record that voiced that the Christian personal law is not in conformity with the current thinking and living standards. This was 35 years ago and there still hasn't been much done to reduce the inequalities. Despite this and the numerous appeals made by Christian organizations to the Government and the Ministry of Law and Justice, meaningful progress is yet to be made. The Ministry's response to these calls for reform is still pending. This research paper delves into the pressing need for

¹ Law Commission, Sections 41 to 48 of the Indian Succession Act, 1925: Proposed Repeal (Law Com Report No 247, 1985)

reform within the existing system and sheds light on the overlooked struggles of Christian women and the legal gap that Indian Christians face due to the lack of judicial intervention. It further focuses on understanding the miserable state of Christian women in matters of succession and marriage with the help of a comparative study with the leniency of more modern personal laws of Hindus and Parsis. This paper traces the history and evolution of Christian personal law with the object of highlighting the disparities and shortcomings of the law addressing the overall patriarchal theme of it.

Keywords: *succession, succession, patriarchy, personal laws, inequality.*

INTRODUCTION

In the recent judgment of *Kamla Neti v the Special Land Acquisition Officer*, the Supreme Court held that section 2 (2) of the Hindu Succession Act² which specifically excluded female members of scheduled tribes from the purview of the act be amended³. In another judgment of *Arunachala Gounder v Ponnusamy and Others 2022*⁴, the Supreme Court recognized the right of the daughter of a male Hindu to inherit his self-acquired property. In the famous *Shah Bano* case, the court upheld the right to alimony for the Muslim woman and the continuation of maintenance even after the period of Iddat⁵. The Hindu and Muslim personal laws have progressed significantly since independence to address the issue of patriarchy. Courts have played a vital role in keeping a check and balance over these laws to ensure that Hindu and Muslim women are not subjected to religious patriarchy. However, unlike Hindu and Muslim laws, Christian laws have not been subjected to the same judicial supervision for a long time.

There are 27.8 million Christians in the country making up for 2.3% population mainly concentrated in the southern states of Kerala, and Tamil Nadu, and the northeastern states bordering China and Burma.⁶ The prevalence of their traditions and heritage is quite evident, although these numbers may seem insignificant for a country with a population of 2 billion. The

² Hindu Succession Act 1956, s 2(2)

³ *Kamla Neti v The Special Land Acquisition Officer* Civ App No 6901/2022

⁴ *Arunachala Gounder v Ponnusamy & Ors* Civ App No 6659/2011

⁵ *Mohd. Ahmed Khan v Shah Bano Begum & Ors* (1985) AIR 945

⁶ 'India's population at 1.21 billion; Hindus 79.8%, Muslims 14.2%' *Business Standard* (India, 26 August 2015)

<https://www.business-standard.com/article/current-affairs/india-s-population-at-1-21-billion-hindus-79-8-muslims-14-2-115082600038_1.html> accessed 12 June 2024

personal laws governing Hindus and Muslims find their roots in the sacred religious texts however the major sources from which Christian laws are derived are scriptures, traditions, reason, and experience which do not qualify as codified law, unlike the Muslim and Hindu sacred texts. What makes Christian personal laws different from other laws is the lack of a clear, textual basis.⁷ The Christian personal law in India, primarily governed by the Indian Christian Marriage Act of 1872⁸, the Indian Succession Act of 1925⁹, and the Divorce Act of 1869¹⁰, has undergone minimal changes since its inception.

The true number of Christians in India has been debated for a long. There is evidence of undercounting of Christians as many are identifying as Dalits or from scheduled castes. This is because members of scheduled castes are eligible for government benefits, inciting people to mark themselves as Hindu and also follow Christianity together.¹¹ In the 2015 National Family Health Survey -21% of Christians interviewed said that they belonged to Scheduled Castes. This makes it more important to provide an equal footing to Christian women in terms of succession and marriage as they have been already discriminated from long back. However, despite the efforts and uproar by NGOs and organizations for providing equal privileges to women, there still exists a faint unheard societal bias which can be seen in part V, chapter II of the Indian Succession Act 1925¹².

RESEARCH METHODOLOGY

The qualitative nature of the research paper is aligned with the doctrinal research methodology. The sources used for the collection of information are secondary like law commission reports, and articles focused on family laws and statutes. A fair number of judgments have also been included in the literature study to understand the stance of courts on the plights of Christian

⁷ Chandra Mallampalli, 'How Christian personal laws have grappled with equality' *Times of India* (25 September 2017) <<https://timesofindia.indiatimes.com/india/how-christian-personal-laws-have-grappled-with-equality/articleshow/60821440.cms>> accessed 13 June 2024

⁸ Indian Christian Marriage Act 1872

⁹ Indian Succession Act 1925

¹⁰ Indian Divorce Act 1869

¹¹ M.A. Kumar and Rowena Robinson, 'Legally Hindu: Dalit Lutheran Christians of Coastal Andhra Pradesh' in Rowena Robinson & Joseph Marianus Kujur (eds), *Margins of Faith: Dalit and Tribal Christianity in India* (SAGE Publications 2010)

¹² Indian Succession Act 1925, pt V ch II

women. The aim of this research paper is bi-fold. Firstly, it sheds light on the gender bias and patriarch personal laws governing Christians. Secondly, to contribute suggestions and recommendations by the author along the lines of the 247th Law Commission Report¹³ to improve and amend the legislation.

LITERATURE REVIEW

The author, Sona Khan, in the book titled 'Inheritance of Indian Women: A Perspective,' has successfully attempted to address the gender bias prevalent in Christian personal laws in light of the constitution. The social welfare and domestic well-being of women are directly correlated with their societal standing regarding succession.¹⁴ The book advocates the formation of a uniform civil code governing all religions equally under its umbrella as a solution to patriarchal personal laws. Although it provides insight into the complexities of personal laws, the book, while recommending the application of unified civil law, fails to take into account the diversity of religions and even within each religion and their customs and heritage.

M.J. Joseph has expressed stern views on the non-adherence to the judgment of the Supreme Court case of Mary Roy¹⁵ in his book 'Gendered Justice.'¹⁶ The author is critical of the government of Kerala favouring the Orthodox Christians, preserving their image, and maintaining the vote bank by not hurting their sensitive religious sentiments. The reluctance of the state government to provide equal rights to Christian women is referred as to giving them the status of second-class citizens who are inferior to men.

In the book 'Repeal of the Travancore Christians Succession Act 1916, and its Aftermath,' the author Susan Vellapally has analysed the effect of the judgment in Mary Roy v State of Kerala on the general Christians in the state, thereby describing the transitional effect it had on the rights of women in Kerala (then Travancore) by dispelling a part of rigid patriarchal norms

¹³ Law Commission, *Sections 41 to 48 of the Indian Succession Act, 1925: Proposed Repeal* (Law Com Report No 247, 1985)

¹⁴ Sona Khan, *Inheritance of Indian women: a perspective*, (India International Centre Quarterly 2000) 139–154

¹⁵ *Mary Roy v State of Kerala* (1986) SC 1011

¹⁶ M.J. Joesph, 'KERALA-Gendered Justice' (1993) 28(50) Economic and Political Weekly

<<https://www.epw.in/journal/1993/50/commentary/kerala-gendered-justice.html>> accessed 12 June 2024

prevailing at that point in the state.¹⁷ The book offers a valuable contribution to the fields of legal history and gender studies. It is an insightful and well-researched account of a significant legislative change and its far-reaching implications of judgment on the socio-legal aspects and family dynamics of the state of Kerala. While rich in historical context and provides an in-depth analysis of the cultural and social parts, the book fails to account for the judicial precedents and case laws, making it insufficient from a legal perspective.

HISTORICAL CONTEXT AND EVOLUTION

The most widely practised religion in the world is Christianity, with more than 2.38 billion followers. In 52 A.D., St. Thomas, one of the disciples of Jesus Christ came to Malabar to propagate Christianity. The original Christians in India, known as the Malankara Jacobite Syrian Christians, have deep roots in the region, tracing their origins back to the early days of Christianity. These communities are governed by the Hudaya Canon, a codified set of ecclesiastical laws and guidelines that shape their religious practices and organizational structure. Predominantly settled in Kerala and parts of Tamil Nadu, the Malankara Jacobite Syrian Christians have maintained their traditions and cultural heritage over centuries.

In contrast, the Roman Catholic Church's presence in India began in the 16th century when the Portuguese invaded the west coast of the country, specifically targeting regions such as Goa, Daman, and Diu. The Portuguese colonizers brought Roman Catholicism with them, establishing it as a significant religious force in these areas. This marked the beginning of a new chapter in the religious landscape of India, distinct from the ancient and indigenous Christian traditions represented by the Malankara Jacobite Syrian Christians.

They had conflicting ideas and thoughts with the Syrian Christian customs and therefore founded the Code of Canon Law. After the British invasion, these canon laws were legislated through two acts, namely the Indian Divorce Act of 1869¹⁸ and the Indian Christian Marriage Act 1872¹⁹. Before the enactment of these two acts, traditions and customary practices

¹⁷ Markos Vellapally and T. Christian, 'Repeal of the Travancore Christian Succession Act, 1916 and Its Aftermath' (1995) *India International Centre Quarterly* 181-190

¹⁸ Indian Divorce Act 1869

¹⁹ Indian Christian Marriage Act 1872

determined the religious identity of the person. And any person who believed to be Christian had to demonstrate the adoption of Western customs and lifestyle and identity more with the British.²⁰ Furthermore, this was a societal force that had its reasoning that by making someone follow a Western lifestyle, they would abandon the traditional Hindu or Muslim practices. It was done so that the subject falls beyond the purview of Hindu law.²¹

After the enactment of the Indian Succession Act²², the definition of Christian was set as anyone who did not follow the Hindu norms and was not Westernized.²³ The Indian Succession Act 1925²⁴ does not contain any provision for the extent of the act as it is pre constitutional act and therefore confusion remains regarding its jurisdiction.

EVIDENCE OF GENDER BIAS CONCERNING CHRISTIAN WOMEN

Educational Limitations: In the year when the Indian Succession Act of 1925²⁵ came into being, the number of literate women stood at a mere 2.9%. the situation did not improve even after 25 years as only 8% of Indian women were 'defined as' literate. With the scientific and educational efforts over the next two decades, the literacy rate stood at 21.97%.²⁶ Ideas such as submission to males in the family, reinforced patriarchy, and the weak social standing of women were very prevalent. Therefore, the silence of uprising against such unjust laws during that period was reasonable, since women had neither power nor education to understand their rights.

Given the restrictive societal conditions and the rarity of education, it was unrealistic to expect women to vigorously oppose unjust succession practices. It took decades for the judiciary to address this bias, largely due to the limited educational opportunities and awareness among women.

²⁰ *Abraham v Abraham* (1863) 9 MIA 105

²¹ *Ibid*

²² Indian Succession Act 1925

²³ *Dagree v Pacotti San Jao* (1970) ILR 19 Bom 783

²⁴ Indian Succession Act 1925

²⁵ *Ibid*

²⁶ Hemant Singh, 'Census 2011: Literacy Rate and Sex Ratio in India Since 1901 to 2011' *Jagran Josh* (17 October 2016) <<https://www.jagranjosh.com/general-knowledge/census-2011-literacy-rate-and-sex-ratio-in-india-since-1901-to-2011-1476359944>> accessed 12 June 2024

2. Archaic Laws that Demeaned Women: According to the customary rules for Syrian Christians, it was believed that the *streedhanam* paid by the girl's father was the share of the daughter in the property.²⁷ It was calculated in affluent families as slightly more than half of the son's portion, whereas in poorer families, it was esteemed as less than one-third or one-fourth of the son's share.²⁸ In addition to this, should a daughter be widowed widows were given merely maintenance rights but not a share in her husband's property.²⁹

The argument for denying daughters the right to inherit property was based on the practical challenges faced by mostly agricultural communities. It was believed that if daughters inherited land and then got married and moved away, it would be hard for them to effectively manage and cultivate the land. This reasoning was used to justify excluding daughters from property inheritance.

However, the introduction of the Travancore Act of 1916³⁰ represented a significant change. A life interest meant that the widow could use and benefit from the property for her lifetime, even though she did not have full ownership and could not sell or pass on the property. This change aimed to provide some financial security and stability to widows, acknowledging their rights to some extent, although it did not completely reform the inheritance system. The daughter of the deceased was to be given one-fourth of the son's share or sum of Rs. 5,000, whichever was lesser.³¹ The sum of 5,000 was put into the verbatim without any inflation-related considerations or the opinion of the Christian community.³²

The key takeaway from this analysis is that it undermines the principle of equality. The text implies that a daughter is worth only one-fourth of a son's share, and suggests that a sum of Rs. 5,000 is sufficient to value her life. By using the phrase 'whichever is less,' it highlights the deep-

²⁷ Alice Jacob, 'Equal Inheritance Rights to Indian Christian Women of Kerala' (1986) 28(2) Journal of the Indian Law Institute 241 <<https://www.jstor.org/stable/43951007>> accessed 12 June 2024

²⁸ *Ibid*

²⁹ Riju Mehta, 'Inheritance Rights of Women: How to Protect Them and How Succession Laws Vary' *The Economic Times* (02 May 2023) <www.economictimes.com/wealth/plan/inheritance-rights-of-women-how-to-protect-them-and-how-succession-laws-vary/articleshow/70407336.cms> accessed 12 June 2024

³⁰ Travancore Act 1916

³¹ *Ibid*

³² Sebastian Champappilly, *Christian Law of Succession in India* (Southern Law Publishers 1997) 22

rooted patriarchal bias in society. The act highlighted the clear violation of Article 4³³ of the constitution and thus was challenged in the famous *Mary Roy case*.³⁴

Today no law disqualifies a daughter from inheriting her parents on the ground that she was paid *streedhanam*. Under the law, no person has any estate or interest contingent or otherwise in the property of a living person to which he hopes to succeed as heir. Therefore, the daughter is not competent to surrender any interest in the expected share in exchange for *streedhanam*.³⁵

COMPARATIVE ANALYSIS WITH OTHER PERSONAL LAWS

Succession: The right to inheritance is not a choice but it is by birth, according to the Christians. Before the enactment of the Indian Succession Act in 1925³⁶, the situation for Christians in India who were originally Muslim or Hindu before converting was complex. They were unsure about which laws to follow, as they could not be governed by their previous personal laws. As a result, Christians living in rural areas adhered to their customary laws, while those residing in cities and major parts of India were subject to British laws³⁷. Therefore, the Cochin Christian Succession Act, of 1921³⁸ and the Travancore Christian Succession Act, of 1916³⁹ were revoked and as of today, the Christians in India follow the Indian Succession Act, of 1925⁴⁰.

Under the current Indian Succession Act, Christian women face several disadvantages under sections 42 to 46⁴¹. For instance, the laws concerning intestate succession favour male heirs, reflecting a patriarchal bias. Section 43 of the Indian Succession Act, of 1925⁴² states that even if the father of the intestate is dead, the mother is only entitled to inherit an equal share as his other brothers and sisters rather than getting the entire share of her husband that she is entitled too, and rightfully so if he has been alive. Moreover, the mother of the intestate is not entitled to even

³³ Constitution of India 1950, art 4

³⁴ Constitution of India 1950, art 14

³⁵ *E.V. George v Annie Thomas* (1991) KER 402

³⁶ Indian Succession Act 1925

³⁷ 'Everything a common man needs to know regarding succession of property across religions' (*iPleaders*, 09 June 2021) <<https://blog.ipleaders.in/sources-of-family-law/>> accessed 14 June 2024

³⁸ Cochin Christian Succession Act 1921

³⁹ Travancore Christian Succession Act 1916

⁴⁰ Indian Succession Act 1925

⁴¹ Indian Succession Act 1925, ss 42-46

⁴² Indian Succession Act 1925, s 43

inherit along with the father according to section 42⁴³. The amendments in Hindu personal law, particularly the Hindu Succession (Amendment) Act, 2005⁴⁴, have provided daughters with equal rights as sons in the share of ancestral property, promoting gender equality. Even the Parsi succession rules provide for an equal share to both parents. However, the property goes to the mother only when the father of the estate is dead without any of his acquaintances living, as per section 46⁴⁵.

This shows that over time, most religious communities have amended their laws to bring justice to women, except for Christianity, which is still archaic and discriminatory towards women. In cases where the deceased has left lineal descendants, such as one or more children or remote issues, the widow is entitled to a one-third share, with the remaining two-thirds devolving upon the lineal descendants.⁴⁶ Section 53 of the Indian Succession Act 1925⁴⁷, which governs Parsis, states that if the son of the intestate dies, his wife and children are entitled to a share. However, if the deceased child is a daughter, her share directly goes to her children and not her husband. The lawmakers considered the inferior position of women in Indian households and the risk of the daughter being mistreated by her husband, leading them to make a pro-feminist rule.

On the other hand, the same patriarchal wave continues in the Christian rules. According to Section 38 of the Indian Succession Act, 1925⁴⁸ (governing Christians and Jews), if the son is deceased, then his share of the property directly goes to his lineal descendants and not his wife. The same law applies in the case of a daughter's death, making it unfair and archaic.

These provisions do not apply to Goa, Daman and Diu, and Pondicherry where, due to the existence of Daman and Diu (Administration) Act, 1962⁴⁹, the Portuguese Civil Code and the

⁴³ Indian Succession Act 1925, s 42

⁴⁴ Hindu Succession (Amendment) Act 2005

⁴⁵ Indian Succession Act 1925, s 46

⁴⁶ Marylou Bilawala, 'Succession for Mohammedans, Parsis and Christians' (2018) 315(50-B) BCAJ <<https://www.bcasonline.org/BCAJ%20Golden%20Content%202018-19/Articles/Dec%202018/19%20-%2024%20Succecion%20Marylou%20Bilawala.pdf>> accessed 11 June 2024

⁴⁷ Indian Succession Act 1925, s 53

⁴⁸ Indian Succession Act 1925, s 38

⁴⁹ The Goa, Daman and Diu (Administration) Act 1962

French Civil Code, as per the provisions of the Treaty of Cession, 1956, still applies.⁵⁰ The Garo community of the Meghalaya state is also an exception to this act, where their customary matrilineal system of inheritance is followed.⁵¹

Marriage and Divorce: The Christian Marriage Act of 1872⁵² applies to all Christians except those residing in the states of Travancore, Cochin, and Manipur. In 1995, the act was amended to include Christians residing in the Kanyakumari district and the Schencuttah taluk of the Tirunelveli-Kattabomman district of Tamil Nadu under its jurisdiction. According to this act, a marriage between two persons will be governed by it only if one of the persons is a Christian. The act defines 'Christians' as those who have professed Christianity. Indian Christians include descendants or natives of India as well as those who have converted⁵³. Both the Christian Marriage Act⁵⁴ and the Divorce Act⁵⁵ contain provisions that are particularly harsh on women.

Though divorce is not traditionally recognized in Christianity, the community has accepted divorce as a way to dissolve a marriage. However, patriarchal shades continue to persist even on the grounds on which a Christian man and woman can get divorced. For instance, adultery as a ground for divorce under Christian law requires proof of additional cruelty for women, whereas Hindu and Muslim laws have comparatively lenient provisions. The Special Marriage Act⁵⁶, which applies to all citizens irrespective of religion, offers more equitable terms, highlighting the disparity in Christian personal law.

Adoption: The right to adopt is another area where Christian personal law falls short. Unlike Hindu personal law, which permits and regulates adoption, Christian personal law does not recognise adoption, compelling Christians to resort to the Guardians and Wards Act, of 1890⁵⁷, for adopting a child by obtaining court permission which does not confer the same rights as

⁵⁰ Elgar Noronha, 'Portuguese Civil Code: The silent law that unites Goa, Daman and Diu' *FrontLine - The Hindu* (27 July 2023) <<https://frontline.thehindu.com/the-nation/portuguese-civil-code-the-silent-law-that-unites-goa-daman-and-diu/article67093492.ece>> accessed 13 June 2024

⁵¹ 'Khasi Inheritance of Property Bill, 2021' (*Drishti IAS*, 03 November 2021) <<https://www.drishtiiias.com/daily-updates/daily-news-analysis/khasi-inheritance-of-property-bill-2021>> accessed 12 June 2024

⁵² Christian Marriage Act 1872

⁵³ Indian Succession Act 1925, s 2(d)

⁵⁴ Indian Christian Marriage Act 1872

⁵⁵ Indian Divorce Act 1869

⁵⁶ Special Marriage Act 1954

⁵⁷ Guardians and Wards Act 1890

adoption. The process under the Guardians and Wards Act⁵⁸ is overcomplicated and rudimentary, discouraging Christian couples from adopting. This act, issued by various State Governments, provides relief by allowing Christians to adopt children.

However, the act still does not fully integrate Christian personal law with adoption rights. Children adopted under this act are considered wards, not legal children, and do not have the same rights as adopted children in Hindu law as they can only be regarded as foster children. Upon reaching adulthood, they can sever ties with the adoptive family. This act does not confer any legal right of inheritance on the adopted child, depriving them of benefits enjoyed by adopted children in Hindu families.

Though Christian law does not statutorily provide for adoption it has been held by the Kerala High Court, that Christian Law recognises adoption and that the adoptive child will have the same rights equal to those of a natural-born son.⁵⁹ The same view was followed in *Vasanthi v Pharaz John*.⁶⁰

The law does not take into account the various practices and diversity within the Christian community and falls short of accommodating their ancient customs. For example, Punjabi Christians have been practising adoption for ages. Section 2 of the Indian Succession Act, of 1865⁶¹ made an exception in the case of local law, and so far as the Punjab was concerned, Section 5, Punjab Laws Act⁶², did provide an exception. It is, therefore, open to a party to prove that according to the custom applicable to the parties, an Indian Christian in Punjab is entitled to make a valid adoption to change the succession rule specified in the Indian Succession Act.⁶³ Additionally, in the traditions of Syrian Christians in Kerala, it is customary to adopt a son-in-law. When a family only has daughters, then the husband of the youngest daughter is adopted by the family

⁵⁸ *Ibid*

⁵⁹ *Philips Alfred Malvin v Y.J. Gonsalvis* (1999) KER 187

⁶⁰ *Vasanthi v Pharaz John* (2007) Kant 122.

⁶¹ Indian Succession Act 1865, s 2

⁶² Punjab Laws Act 1872, s 5

⁶³ *Sohan Lal v A.Z. Makuin* [1929] Lahore 280

Many Christians in India do not strictly adhere to Christian laws, often following their previous religious laws or local customs. This phenomenon is observed among Christian converts in states like Jharkhand, Orissa, and the northeastern states, who continue to practice Hindu laws. In Coorg and Pondicherry, local customs also influence the practices of Christians. A Christian who formally converts to Hinduism and marries according to Hindu rites and customs ceases to be a Christian and is exempt from Christian personal law.⁶⁴

CASE STUDIES AND JUDICIAL INTERVENTION

Several landmark cases have underscored the need for reform in Christian personal law. The 'judicial precedents' relating to Christians are very important to understand. For instance, the case of *Mary Roy v State of Kerala*⁶⁵ challenged the discriminatory provisions of the Travancore Succession Act⁶⁶, which applied to Christians in Kerala and granted only a fourth of the share of the property that their brothers inherited to the women depriving them of the same financial aspects as of their male family members. It case holds a very significant position in the struggle of women who broke the shackles of oppression not just for her but many other Christian women in the state of Kerala. She was an educationalist and women's rights activist who argued that women deserve an equal share in property as men in Kerala.

The Supreme Court ruled in favour of her, granting Christian women equal inheritance rights. This case highlights the critical role of judicial intervention in addressing gender biases. Moreover, it acknowledged that the Act was discriminatory and deemed the one-fourth share for women unjust and unconstitutional. The court stressed the importance of gender-neutral laws in matters of inheritance.

In the case of *Abraham v Abraham*⁶⁷ the definition of 'Indian Christian' was clarified if a Hindu converts to Christianity, they will no longer be governed by Hindu laws of succession. Any attempt to enforce Hindu laws on them after the conversion will be considered invalid. However, the individual has the option to permit the old law to be applied to them, despite their

⁶⁴ *Ratansi v Administrator General* (1928) Mad 1279

⁶⁵ *Mary Roy v State of Kerala* (1986) SC 1011

⁶⁶ Travancore Christian Succession Act 1916

⁶⁷ *Abraham v Abraham* (1863) 9 MIA 105

religious conversion. A Tamil liquor vendor passed away without leaving a will, the judiciary had to determine whether his brother or his Anglo-Indian wife would inherit his property.

The globally accepted concept of gender equality, which includes the right of women to be equal to their male counterparts, has been acknowledged by the Supreme Court.⁶⁸ In the case of *C. Masilamani Mudaliar v Idol of Sri Swaminathaswami Thirukoil*,⁶⁹ the Supreme Court stated that personal laws that assign inferior status to women are incompatible with equality. Similarly, in the *Sarla Mudgal* case, the Court noted that religious practices that violate human rights and dignity, leading to the deprivation of civil and material freedoms, constitute oppression rather than autonomy.⁷⁰ Despite this, it is unjust that the provisions of the Indian Succession Act of 1925 remain unchanged.

In this context, the reforms and developments in Hindu and Muslim succession laws have been far more progressive compared to efforts to address the unequal status of Christian women. The amendment to Section 6 of the Hindu Succession Act, 1956, for example, challenged the traditional Mitakshara school of thought by granting daughters the same status as sons⁷¹. Similarly, the Muslim Women (Protection of Rights on Marriage) Act, 2019, was enacted to challenge conventional Muslim practices. Given that the legislature has shown the ability and willingness to move away from traditional social norms for Hindus and Muslims, there is no valid justification for its lack of intervention in the case of Christian succession laws.

THE VIEW OF 247TH LAW COMMISSION REPORT

In 2014, the 247th Law Commission Report⁷² reported in line with the 110th Law Commission Report⁷³, observing the lack of gender parity in the Indian Succession Act of 1925. It was based on an analysis of the Christian Succession Acts (Repeal) Bill of 1958, which ultimately failed to achieve uniformity in succession laws for Indian Christians. One key recommendation was to replace the word 'father' with 'parents' in Sections 42 through 48 of the Act. This change aimed

⁶⁸ *John Vallamattom and Ors. v Union of India* (2003) 6 SCC 611

⁶⁹ *C. Masilamani Mudaliar v Idol of Sri Swaminathaswami Thirukoil* (1996) AIR 1697

⁷⁰ *Sarla Mudgal v Union of India* (1995) 3 SCC 635

⁷¹ Hindu Succession Act, 1956 s 6

⁷² Law Commission, *Section 41 to 48 of the Indian Succession Act, 1925* (Law Com Report No 247, September 2014)

⁷³ Law Commission, *The Indian Succession Act, 1925* (Law Com Report No 110, February 2007)

to establish equality between parents and ensure that the surviving parent would inherit the deceased's remaining property. The report argued that this amendment would better reflect the rising social awareness within the Christian community and address the needs of changing times. It also recommended omitting Section 46 of the Act and suggested that the distribution in Section 48 be conducted per stirpes rather than per capita. Additionally, the Law Commission Report advocated for the welfare of widows and mothers. However, despite these recommendations, the suggested changes were not implemented, and the legislature has avoided pursuing gender justice for Christian women.

NEED FOR LEGAL REFORM AND SUGGESTIONS BY THE AUTHOR

Specific sections of the Indian Succession Act 1925 need judicial intervention where the interpretation of the text needs to be rectified to be inclusive of the rights of women. The necessary amendments need to be made in aspects of succession, marriage, and divorce on par with the internationality accepted standards for the act to be made gender neutral. If the legislature continues to neglect this issue, the judiciary may need to intervene to ensure social justice, applying principles of justice, equity, and good conscience. Judicial intervention in social justice, though unexpected, is not unprecedented.

The existing Christian personal laws in India present a paradox, particularly given the progressive stance on gender equality in Tamil Nadu and Kerala, where many Christians reside. Despite these states' efforts to promote gender-neutral societies, Christian personal laws remain discriminatory towards women, especially in matters of marriage, divorce, and inheritance. This discrepancy highlights the need for reform that balances respect for religious traditions with the advancement of gender justice. Addressing these disparities can help align personal laws with the broader societal values of equality and inclusivity that are prominent in these South Indian states. The findings of this research suggest that the Law Commission's recommendations are suitable for reforming Christian succession laws and should be followed

Feminist jurisprudence has improved the situation for women under Hindu and Muslim personal law, but Christian women have not received comparable attention. The ongoing

gender equality discourse highlights the embarrassing reality that women in India are deprived of equal treatment due to religious laws.

CONCLUSION

The conflict of proving equal rights to women is not that of fighting a patriarchal system. It is about challenging the traditional patriarchal norms within the church where the court has to strike a balance between religious rights and more importantly human rights. It must not be a contest between religion and liberalism but must shed light on the interpretation of religious texts in light of equality justice and radically changing societal norms.

The persistence of patriarchal elements in Christian personal law in India underscores a significant gap in the legal protection of women's rights. While other personal laws have evolved to promote gender equality, Christian personal law remains archaic and discriminatory. There is an urgent need for comprehensive reforms to ensure that Christian women receive the same legal protections as their counterparts in other religious communities. Addressing these disparities requires both legislative action and continued judicial intervention to align Christian personal law with the principles of equality and justice enshrined in the Indian Constitution.

In conclusion, this study advocates for urgent legal reforms to address the deep-rooted patriarchal elements within Christian personal law. It calls for an inclusive legal system that ensures equal rights and protections for all women, regardless of their religious affiliations. The findings aim to contribute to the ongoing discourse on personal law reforms in India, promoting a more just and equitable society.