
MARY ROY V. STATE OF KERALA AND ITS SOCIO-LEGAL IMPACT

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ABSTRACT

Before the period of 1949, the state of Travancore was a former princely state, which had its own laws for governing the succession of the Christian community through, the Travancore Succession act, an act for an intestate succession of property among the Christian community of the state. However, In July 1949, the state of Travancore was merged with the state of Cochin, and the Government of India extended the Indian succession act, of 1925, to the state of Travancore and Cochin. Although the applicability of the Travancore succession act was a matter of question after the extension of the Indian succession act and was raised in the landmark case of Mary Roy v. the State of Kerala. This paper attempts to elucidate on this landmark case and attempts to understand the judgment laid by the judges and further attempts to understand the socio-legal impact of the case on the community.

Historical Background

Before 1949, the state of Travancore was a princely state, and it had its law, and the succession to the property for the Christian community, was governed through the Travancore Christian succession act, a law regarding intestate succession of property of an intestate, as the customary practice in the state. Further, Around July 1949, the state of Travancore and the state of cochin were merged and such princely states were considered as part B, and for these states, part B states [laws] act, passed in 1951, and through this act, the central government laws were extended to these states, and through this act, Indian succession act was extended to the states of Travancore and Cochin.

Facts-

1. Mary Roy was a widow and was staying in Ooty at her parent's cottage.
2. Her father passed away without leaving a will
3. She was harassed, threatened by the goons for physical harm, humiliated and insulted by them, and forced to vacate the cottage by her brothers
4. As she didn't have any other place to reside, she refused to vacate it.
5. But still, her brothers pressurized her stating that she has no right in the cottage and is illegally residing there, as they legally inherit the cottage under the Travancore Succession Act of 1916.
6. She decided to file a writ petition against the Constitutional validity of Section-24, 28, and 29 of the Travancore Christian Succession Act, 1902¹.

Issues-

1. Whether the enforcement of the Indian Succession Act, 1925 repeal the Travancore Christian Succession Act 1902, relating to intestate succession in Travancore and Cochin by, Part-B State (laws) Act, 1951?
2. Whether the Section-24, 28, and 29 of the Travancore Christian Succession Act, 1902 in consonance with the Constitution of India?

¹ Mary Roy v. State of Kerala 1986 AIR 1011

Rules-

1. Section-24, 28, 29, 21, and 22 of the Travancore Christian Succession Act, 1902².
2. Section-3 of Part B States (Laws) Act 1951³
3. Section- 6 of the Part B States (Laws) Act 1951⁴
4. Section-29, sub-section(ii)- Indian Succession Act,1925⁵

Arguments presented and Analysis-

The court observed the first issue, where the question of enforcement was considered, and the question raised in the court was whether, after the enforcement of the Indian succession act, will Travancore Christian succession act, 1092, will be repealed, which is relating to intestate succession in state of Travancore, and Cochin? To which the court relied on its provision in section 3 of part B states [laws] act, 1951, as per which Indian succession act, will be extended to part- B state of Travancore and Cochin by section 3 of part B [states] law act, [1951], and if there was a law in force in part B of the states of Travancore and Cochin any law corresponding to the Indian succession act, 1925, immediately before 1st April 1951, such law will stand wholly repealed. The petitioner in this issue stated that the Travancore Christian succession act, was a law corresponding to chapter II of part V. of the Indian succession act, and to which the respondents presented a counter-argument that the Travancore succession act, was not a law corresponding to the law of Indian succession act, 1925, as the latter act has much wider coverage as it not only dealt with rules relating to intestate succession in Parsis but also involves rules relating to testate succession, whereas Travancore Christian succession act, 1092, was restricted to rules relating to intestate succession among Indian Christians. The court in this issue observed that part B state [Laws] act, 1951, does not explicitly repeal the Travancore Christian succession act, but was implied as per the legislature's intention, to have uniform law over the territories [including state of Travancore] and applying few of central laws, to which court rejected the contention on the grounds of being fallacious in itself.

The court further continued to observe the second issue that whether sections 24, 28, and 29 of the Travancore Christian succession act, if applicable, is consonance with the constitution of India? and responded that since that on coming into the force of part B [state] laws act, 1951,

² Section 24, 28, 29, 21, and 22 of Travancore- cochin Christian succession act, 1092 [kollan era]

³ Section 3 of part B States [laws] act, 1951

⁴ Section 6 of Part B states [laws] act, 1951

⁵ Section 29, sub- section [ii] of Indian succession act, 1925

the Travancore Christian succession act, 1092, stood repealed and chapter II of part V. became applicable and intestate succession to the property of members of Christian community shall be governed by the provisions contained in chapter II part V. of Indian succession act, and therefore, It would be unnecessary to consider section 24, 28, and 29 of Travancore Christian succession act.

Court Judgment-

The supreme court of India ruled that the provision of the Indian Succession Act, will apply to the Christian community, and that it would apply to earlier property settlements as well and thereby gave the judgment in the favor of Mary Roy by nullifying the validity of Travancore-cochin Christian succession act.

This landmark case law protected the property rights of women to men and didn't away with gender-biased acts like the Travancore Christian succession act, The approach of judgment did not disregard the personal laws but applied the central laws [Indian succession act], to not hurt the sentiments of the Christian community in the diverse and democratic nation like India.

Conclusion-

It would be correct to say that on applying section-6, the Travancore Christian Succession Act, 1092 stands repealed by the enforcement of the Indian Succession Act,1925 by, Part-B State (laws) Act, 1951 and it would be absurd to say that it's saved by section-29, sub-section [ii] of the Indian succession act, as nothing in contrary was expressly mentioned.

Section-24, 28, and 29 of the Travancore Christian Succession Act 1902 stand void immediately after the repeal of the act, and hence the question of it aligning with the Constitution of India stands no ground. Henceforth, the court's approach and judgment shall be justified through the lenses of protection of property rights of women in the Christian community.

SOCIO-LEGAL ANALYSIS

In sociological terms, a society can be defined as a group of people living in a structured territory and sharing the same culture for better functioning of the society, the law of succession is of major importance for the continuation of society, and through legislation and judicial freedom, and such freedom continues to balance societal structure. For example- In a diverse

country like India, the laws of succession are given paramount importance based on the different religious communities, like the Hindu Succession Act, the Indian succession act, etc.

However, the case of *Mary Roy v. the State of Kerala* answered the nature of intestate succession in the Christian community through the former Travancore Christian succession act and elaborated on the gender biases that were prevalent in the Christian community through this act.

The former Travancore Christian succession act suppressed the rights of women within the Christian community, either in form of a widow, mother, or daughter, over the property of the intestate. Therefore, the Travancore Christian succession act was observed as a former gender-biased law, that favored men's interests more than woman's interests and saved their interest over the property therefore, this case law became one of the landmark cases for the rights of women over the property of the intestate dying.

The case of *Mary Roy v. the State of Kerala* referred to three historical landmark case laws like *Solomon v. Muthiah*⁶, where the rights of the widow were challenged over the property of her deceased husband. The fact of the case was that a widow by a deed transfers the property of her husband to a person to which the descendant of her husband contested. The court found that the Travancore Christian succession act gave women limited rights over property, only based on life interests. Therefore, this case law became one of the landmark cases for the rights of women in the Christian community over the property of an intestate, as it was one of the few case laws that highlighted the flawlessness of the Travancore Christian succession act. This case law answered the need for a new succession act, that gave the full right to the widow over the property, and therefore, this case answered the need for the Indian succession act, 1956, which provided equal rights to widows over the property.

Another case law referred to in the case was *D. Chelliah v. G. Lalita Bai*⁷, where the case dealt with the issue of sharing in property of a daughter, and where the sister filed the suit against the brother, and the court decided in favor of the brother by applying Travancore succession act. However, this judgment was overruled in *Mary Roy's* case. The third case, referred to in the case of *Mary Roy v. the State of Kerala*, was *Kurian Augsty v. Devassy Aley*⁸, which similarly dealt with disputes between brother and sister, but the court held that the Indian

⁶ *Solomon v. Muthiah* [1974] 1 MLJ 53

⁷ *D. Chelliah v. G. Lalita Bai* AIR 1978 Mad 66

⁸ *Kurian Augsty v. Devassy Aley* AIR 1957 T.C. 1

succession act will be applicable and further, citing these judgments court held that Indian succession act will apply to the Christian community but the judgment does not specify as to what all kind of Christians are included in the succession act, as most of the Christians have their law and therefore, this case continues to bring certain confusions among the Christian community.

Another noted approach that can be observed by the judgment of the court in this landmark case is that the court's approach to personal law could be observed from the fact that the court wanted to avoid interference in personal laws, and therefore, the judgment made for repealing of personal laws was in implied terms by not intervening in the personal laws of Christian community and applying the central laws[Indian succession act] over the personal law and therefore, this case can be seen as an approach of judiciary to personal laws of religious communities in India.

Women's property rights in other religious communities through lenses of international jurisdictions

As per Jewish law, Most property rights that a woman possessed arose in the context of marriage, as it was assured that she will continue to be in that state throughout her life. The ancient Mohar, which in historical times was used to be paid by the groom to the father of the bride, as a symbol. According to rabbis, the ancient practice of Mohar was the source of another major development in the Jewish law: the Ketubah. A ketubah is a form of a document that endows the woman with certain property rights. For example- A woman is allowed to sell the property if she wished, but the buyer obtains a life expectancy with a right to collect only if the marriage is terminated before her lifetime. However, In the contemporary period, the ketubah has become obsolete as laws of each country now protect the property rights of women but this still does not invalidate the applicability of Ketubah in Jewish law, as it is still used as a ceremonial document and religious remembrance of the past by the observant, yet it has lost its legal validity⁹.

The above example of property rights of women in Jewish law, answers that property rights of women are not evolving in the contemporary period like in India, rights of being a coparcenary were recognized by the supreme court in 2005, but are evolving since its colonization period, where women were given the property rights but not with complete independence. The

⁹ Alina Semo Kofsky, 'A comparative analysis of women's property rights in Jewish law and Anglo- American law, [1988], < <https://www.jstor.org/stable/1051155?seq=1> > accessed on 23rd April 2022

pronouncement of legally recognized documents for the Christian community in India was resolved till 1986, when all Christian succession was dealt with in the Indian succession act, through landmark cases like *Mary Roy v. the State of Kerala*.

This landmark case of *Mary Roy v. the State of Kerala* has made a significant impact on societal approach in the contemporary period, as this case law continues to be seen as a case law highlighting the evolution of property rights of women in the Christian community, and further answers the need of understanding the personal laws of Christian community.

Later Developments

The case law of *Mary Roy v. the State of Kerala* has proved to be a major judgment for the property rights of women in the Christian community and over some time by being referred to in several cases. Its precedent value is equivalent to the word of law. This case continues to be contested to date in cases like *Augustine v. Thankamma Thomas* [2005]¹⁰, and *C.J Joseph v. Mary Kutty*¹¹ [2009] to point a few, but the court flagrantly rejected the appeal by holding *Mary Roy* Judgment as good law. This case continues to provide precedent value to succession and matters where there is a conflict between personal law and central laws, or old law and re-amended statutes, as highlighted in *Parmar Prahladbhai Karshanbhai v. the State of Gujarat*¹².

Mary Roy's daughter and renowned writer, Arundhati Roy, wrote an article on the precedent value of the case after 25 years of Judgment and the article puts light on how advanced this judgment was in those times and how it's still an important precedent.

¹⁰ *Augustine v. Thankamma Thomas* [2005] 4 KLT 653

¹¹ *C.J Joseph v. Mary Kutty* [O.S. 295 /2005]

¹² *Parmar Prahladbhai Karshanbhai v. the State of Gujarat* 2015 SCC online Guj 5403