

## CONCLUSION

Indian society is following the path of modernization, Industrialisation, urbanization, literacy and reflects over all changes in social structure. At this juncture, we should not forget that woman is the central figure in our society, which inspires confidence, inculcates and prepares children to pursue their goals relentlessly. History bears testimony to the fact that heights of patriotism, selflessness, fearlessness and determination are imbibed in children only through the persistent efforts of mothers. But unless woman is provided with the prerequisites of education for developing her vision, proper health care and social security, specially proprietary rights, respect and status, her efforts are likely to fall short to accomplish the ultimate objective of a strong civilized and prosperous Nation. There is saying that “if you educate a man, you educate only an individual and if you educate the women, you educate a whole family, rather society”.

Laws reflect the face of society and its evolution over the time. To respond the needs of a dynamic social system, laws have to be changed and amended, at regular intervals. Despite the enactment of the Hindu Succession Act, 1956, establishing the inheritance right of women equally with men and abolishing life estate of female heirs, the retention of Mitakshara coparcenary (joint family) with its attendant inequality between female and male heirs continues (under this system property rights were given to male heirs only). That is, in the case of a joint family, a daughter gets only a smaller share than the son. While sharing of father’s property between brother and sister is equal, the brother—in addition—is entitled to a share in the coparcenary from which the sister is excluded. Further, if the family owned a dwelling house, the daughter’s right thereon is confined only to the right of residence.

A very progressive development in this context is the enactment of the Hindu Succession (Andhra Pradesh) Amendment Act, 1985. According to this

law, the rights of the daughter are absolutely equal to that of the son even in cases of application of Mitakshara system. The rationale of the law has been explained in terms of Mitakshara system being violative of the fundamental right of equality before law, apart from leading to the pernicious dowry system. Actually five States amended the Hindu Succession Act, 1956. First Kerala abolished joint family property altogether, making the inheritance of all property, including land, equal for sons and daughters. Tamil Nadu, Karnataka, Andhra Pradesh and Maharashtra followed, but they retained the Mitakshara coparcenary system, making only unmarried daughters coparceners. They left out married daughters and agricultural land. The Hindu Succession (Amendment) Act 2005 passed on 29<sup>th</sup> August 2005 as a Central Government Act will also benefit women in these four States in context of agricultural land and dwelling house. The major achievements of the Hindu Succession (Amendment) Act 2005 are at least two major changes and some smaller ones. First, by deleting section 4(2) of the 1956 Hindu Succession Act, the 2005 amendment has removed gender inequalities in the inheritance of agriculture land and made Hindu women's land rights legally equal to men's across States. Before this, the inheritance of agricultural land was subject to State-level tenorial laws, which were highly gender unequal in six States—Delhi, Haryana, Himachal Pradesh, Jammu and Kashmir, Punjab and Uttar Pradesh. These inequalities adversely affected millions of women. We tend to forget how many women are farmers, critically dependent on agriculture for survival. Second, making daughters, especially married daughters, coparcener in joint family property is of huge importance both economically and symbolically. Economically, it provides women security by giving them birthrights in joint family property that cannot be willed away by fathers. Symbolically, it signals that daughters and sons are equally important members of the parental family. It undercuts the notion that after marriage the daughter belongs only to her husband's family. It creates a permanent link with her parental family. This will enhance women's self-confidence and social worth.

However, it may be pointed out that giving property right to women might also have some negative effect in a patriarchal society. We are aware that the Dowry Prohibition Act could not eradicate dowry deaths. Therefore, the absolute right to have partition and property might provoke some greedy men to insist his wife to demand partition of the dwelling house of her father and bring her share to satisfy his wants.

Muslim jurists gave a great deal of importance to the law of inheritance, and they were never tired of repeating the saying of the Prophet: Learn the laws of inheritance, and teach them to the people; for they are one half of useful knowledge; and modern authors have admired the system for its utility and formal excellence. Taking a broad view, the Islamic scheme of inheritance discloses three peculiarities: (i) the Quran gives specific shares to certain individuals; (ii) the residue goes to agnatic heirs, and falling them to uterine heirs; (iii) bequests are limited to one-third of the estate.

The Sunni and Shia systems differ a lot in matters of succession. In pre-Islamic customary law of succession some changes were introduced by the Prophet and this super-imposition of the principles on the customary law of succession had led to divergence of opinions among the Sunnis and Shias, resulting into the emergence of two different systems of succession. There can be no doubt that the basic reason for the differences between the Shia and Sunni systems was political rather than juristic. This political tinge may be found in the special case where full uncle's son co-exists with a consanguine uncle. Shias give precedence to the full uncle's son, directly contrary to the general rule that preference of full blood over half blood is necessary only when the claimants are equal in degree. This solitary exception can be explained only in terms of their allegiance of Ali (the Prophet's full uncle's son) in preference to Abbas (his consanguine uncle). The basis of both the systems is the customary law of pre-Islamic Arabs. Both systems alter the customary law in accordance with the Quranic injunctions. But, whereas the Hanafis interpret the Quran strictly, keeping the substratum of the customary law intact, and super-imposing thereon the provisions of the Quran, the Shias

interpret the Quran in the wider sense: they interpret it as altering the old principles themselves, and as giving rise to a new set of principles. In the contemplation of Sunnis, where the Quran did not expressly reject a customary rule, it tacitly ratified it. The result of this approach was—that the Sunni law of succession gave pride of place to the tribal heirs of the deceased. The women to whom the Quran gave rights of inheritance for the first time are entitled, in appropriate circumstances, to the fractional portion of the estate, which the Quran allots to them. But where a male agnate relative of the deceased survives, this will be the limit of their entitlement. The male agnate, however distant a relative he might be, will step in and claim the residue of the estate; for the female, however close a relative she might be, she does not have the status to exclude him from succession. Hence, if a Sunni Muslim dies intestate, survived by a daughter and a distant male agnatic cousin, the daughter will be restricted to a portion of one-half of her father's estate, and the cousin will inherit the remaining one-half as residuary heir. Or where the female agnate and the male agnate are equally near to the deceased, then the male heir takes twice the share of the female heir. It is submitted that this principle applies not only to female agnates but also to male agnates (i.e., those heirs who are made heirs by the Quran), and it is wrong to generalize that the male heir as such always takes double share of a female heir. Thus, uterine brother and father as sharers do not take more than the uterine sister and mother respectively.

For the Shia, however, the Quranic legislation was far from being merely a series of piecemeal reforms. They maintained that the Quran laid down the basic elements of an entirely novel legal system, including a system of succession. It obliterated completely the pre-existing customary law. Any rule of the customary law, which was not expressly ratified by the Quran, was tacitly rejected. And, therefore, because the Quran nowhere expressly ratifies the pre-eminent claims of the male agnates, as such to inheritance, they have no privileged position in the Shia scheme of succession. The Shias changed the pre-Islamic law by altogether abolishing the difference between the

agnates and cognates as also males and females. The Shia system (unlike the Hanafi) shuffled all the heirs, cognates and agnates, males and females, and then classified them for order of succession based exclusively upon the nearness of their relationship with the deceased. Within this scheme any descendant of the deceased, male or female has absolute priority over any collateral; so that the daughter of a deceased Shia Muslim will totally exclude his brother, and a fortiori, any more distant male agnate such as a cousin, from succession and will inherit the whole of her father's estate. The Quranic provision that the daughter is entitled to succeed with the son is interpreted by the Shiites as applicable to all female heirs. The Shiite jurists take the provision of the Quran as not restricted to the individual instances of the daughter or sister, as establishing a new principle for the benefit of females.

The Indian Succession Act, 1925 governs the Parsi community in India, in matter of succession. This Act applies when a Parsi dies intestate, i.e., without leaving a will, and to all intestates occurring under a testamentary or non-testamentary document even where such document is executed before the passing of this Act, provided the intestacies under such document occur after the passing of the Act. Sections 50 to 56 of the Indian Succession Act, 1925 provide for the division of property of male and female Parsi intestates. In the female intestate's property, daughter and son get equal shares, whereas in the male intestate's property, son gets double the share of the daughter. The Law Commission of India in its One Hundred and Tenth Report have reviewed these provisions and recommended that the discrimination made between sons and daughters in the case of a male intestate's property should be removed. The Parsi community has come forward for making amendments in the law so as to do away with the discrimination between sons and daughters by providing that both will share equally in the male intestate's property also. These amendments are also made in keeping with the policy of the Government to confer rights for women in the parental property. Sections 50 to 56 were earlier substituted by Act 17 of 1939 in order to remove doubts, supply deficiencies, incorporate so far as possible the judicial decisions which

the community had then accepted. The amendments introduced by Act 51 of 1991 take the matter further keeping in view the Constitutional rights of equality among men and women.

The Indian Succession Act, 1925 governs the Christians in India, with regard to the matters of intestate and testamentary succession. But the Travancore Christian Succession Act and the Cochin Christian Succession Act, being the law for the time being in force, in the respective localities are saved by section 29 of the Indian Succession Act. Therefore, in the matter of intestate succession the Christians of Travancore and Cochin are governed by their own succession laws. As per sections 15 and 16 of the Indian Succession Act, 1925, by marriage a woman acquires the domicile of her husband if she had not the same domicile before and a wife's domicile during marriage follows the domicile of her husband. In section 20 it is clearly stated that no person shall, by marriage, acquire any interest in the property of the person whom he or she marries or becomes incapable of doing any act in respect of his or her own property which he or she could have done if unmarried. The provisions regarding the rights of a widow to inherit the property of her intestate husband is contained in section 33 of the Indian Succession Act. As per the relevant section, if the intestate has left the widow and lineal descendants,  $\frac{1}{3}$  of his property shall belong to his widow and the remaining  $\frac{2}{3}$  shall go to his lineal descendants. If the intestate has left his widow and has no lineal descendants but has left persons who are of kindred to him  $\frac{1}{2}$  of his property shall belong to his widow and the other half to his kindred. If he has left none but his widow, the whole property shall belong to his widow. Under the Indian Succession Act, 1925 there is no discrimination between sons and daughters with regard to the distribution of the intestate father's property. The intestate's property (after deducting the widow's share) is shared equally among his children. In case the intestate has no lineal descendants and if father is dead, his mother and sisters also are entitled to inherit his property as per section 44 of the Act.

In the area of Travancore State, the Travancore Succession Act, 1916 governs the majority of the Christians in the State but this law is not applicable to the Christians in Neyyathinkara who follows the Marumakkathayam law. The Act is also not applicable in its entirety to certain Latin Catholic Christians and protestant Christians living in Trivandrum and Quilon Districts. Similarly, the Cochin Christian Succession Act, 1921 is applicable to the Christians in the former Cochin state except in the case of the Tamil Christians in Chittoor who follow the Hindu law and the Anglo-Indian and the Parrangi Communities. In other parts of the State of Kerala, the Indian Succession Act, 1925 is made applicable. In fact, there is no substantial difference between the provisions of the Travancore and Cochin Succession Acts. In both these enactments the status of women is inferior to that of men. There is evident and unjustifiable discrimination against women. This feature has in effect, degraded these enactments as the most outdated pieces of legislation, which needs thorough and drastic changes. Mere modification is not sufficient but a fundamental change is called for. First, let us take the case of a widow. The Travancore Act recognizes the widow as one of the heirs of her husband with a share equal to that of a son if there is a son or the lineal descendants of a son left by intestate, and equal to that of a daughter, when there are only daughters (section 16). She gets 1/2 of the estate when there are no lineal descendants of the intestate, who leaves only his father, mother, paternal grandfather or the lineal descendants of his father or paternal grandfather (section 17). If there are none of these kindred left by the intestate, the widow gets the whole of the estate (section 18). The widow's rights in the estate of her husband obtained under sections 16 and 17 (not under section 18) are only a life interest, terminable by death or remarriage (section 24). In the absence of father or lineal descendants the mother of the intestate is also entitled to a share equal to that of a brother. The most controversial feature of the Travancore and Cochin Christian Succession Acts relates to the rights of a daughter to the property of her intestate parents. Under section 28 of the Travancore Act the

sons and their lineal descendants shall be entitled to have the whole of the intestate's property subject to the claim of the daughter for "Streedhanam" fixed at one-fourth of the value of the share of a son or Rs 5000/- whichever is less. Any Streedhanam promised but not paid shall be a charge upon the intestate property. The Cochin Act gives the daughter a share along with the sons, subject to the limitation that her share shall be one-third in value of that of a son [section 20(b)]. It is high time for the Christians of Travancore and Cochin to see that immediate and necessary legislations are undertaken to provide equal shares to daughters along with sons in the property of their intestate parents. In fact it is for the Indian Christians to take initiative to make a move in this direction and to see that their personal law is amended in such a way as to meet the needs of the present day.

There is no uniformity in all- personal laws as they confer unequal rights depending on the religion and the gender. The Committee on the status of women in India, in its report entitled "Towards Equality" presented in 1974, evaluating the personal laws from the angle of the women, criticized the British policy towards these laws. According to the Committee, the policy had a crippling effect on women; the result of the policy was "to encourage the feeling of separateness and prevent the unity of the two communities"; the policy of non-intervention with family law resulted in stagnation with the result that "the two systems could neither absorb nor adjust to socio-economic changes. Social tensions inevitably arise in situations when law does not in fact answer the needs arising from major social change". With a view to achieve uniformity of law, India has set before itself the ideal of a secular society and in that context achievement of a Uniform Civil Code becomes all the more desirable. The Uniform Civil Code will contain uniform provisions applicable to everyone and based on social justice and gender equality in family matters. Its provisions will be fair and equitable so that every member of the society may have a feeling of equality of social status from major social change. But India being credited having a mosaic of various cultures, traditions, faith, practices and features, it would not be feasible to adopt an

Uniform Civil Code because the followers of different tribes, cultures and practices would not like to forgoe their own identity and well establish and a long chain of practices in their domestic relations. Another option may be to educate the people and eradicate discriminatory or oppressive system of practice if any in their community or groups. Looking into the facts of different culture, tradition, practice, belief, rituals and ceremonies prevalent and followed in India by various religious communities, sects, tribes as well as other people the Uniform Civil Code containing the uniform provision applicable and enforceable to the Indian citizens in the Indian society does not appeared to be a viable solution and perhaps not also possible to see like "Indian Uniform Civil Code". The law of succession too has variation on the lines of tradition, practice etc. All such tradition, practice and rules cannot be clubbed into to portrait Uniform succession law. It is, however, fairly possible to include and amend the laws for gender justice in succession matters in the respective laws without infringing the faith, practices and system of the different fractions of the society.