

# **EMPOWERMENT AND PROPERTY RIGHTS OF WOMEN**

**A COMPARATIVE STUDY OF SYRIAN CHRISTIANS AND  
NAYARS IN KERALA**

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### CERTIFICATE

This is to certify that the dissertation entitled **Empowerment and Property Rights of Women: A comparative study of Syrian Christians and Nayers in Kerala** submitted to the Jawaharlal Nehru University in partial fulfillment of the Degree of Master of Philosophy in Political Science is a record of bonafid<sup>de</sup> research carried out by Roy Jose V. No part of this work has been submitted for any other Degree before.

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## ABBREVIATIONS

A.I.R.	:	All India Report
C.C.R.	:	Christian Committee Report
C.L.R.	:	Cochin Law Review
C.M.S.	:	Church Missionary Society
C.U.P.	:	Cambridge University Press
E.P.W.	:	Economic and Political Weekly
I.L.J.	:	Indian Law Journal
K.L.R.	:	Kerala Law Review
K.L.T.	:	Kerala Law Times
O.U.P.	:	oxford University Press
S.C.C.	:	Supreme Court Cases
U.N.D.P.	:	United Nations Develop Programme

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## **CHAPTER-I**

### **INTRODUCTION**

In recent years the term "empowerment" has gained wide currency among scholars, policy makers and social activists attempting to reinvent the idea of development in not merely economic but also political terms. Since the 1970's, the preoccupation of development policies with 'growth' was questioned and the political content of development came to be emphasized.<sup>1</sup> Concepts like 'equality', 'freedom', 'awareness' and 'justice' were brought to a central position in the discussion on development. The upsurge of new social movements, especially the women's movement and a role to play in this new outlook on development.

'Empowerment' in general and 'women's empowerment' in particular is defined differently by different people in different contexts. Contemporary social theory has not been able to give a conceptually sound definition of the term "empowerment". Notwithstanding this, there are certain aspects of empowerment which are commonly accepted by most people who deal with the subject. For example, almost everybody accepts that empowerment is about giving "power" to certain sections of the society which are recognized to be

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<sup>1</sup> Manoranjan Mohanty, on the Concept of Empowerment, *EPW*, June 17, 1995.

marginalized. About the nature of this “power” and the context in which it is sought to be distributed, people may disagree. The emphasis on capacity building, conscientisation and ‘participation’ is only a manifestation of the above mentioned disagreement.

The economic dimension of power was greatly emphasized by people dealing with the concept of empowerment. The classical Marxian analysis gives the economic base a pre-eminent position over other superstructural aspects. The concept of empowerment itself emerged in the context of the marginalisation and oppression of certain social groups. Classical Marxism attributes this process of marginalisation and oppression to the inequality of resources at the economic level. In an agrarian society, land is considered to be the single most important factor that controls the process of production. Empowerment in an agrarian context would naturally imply equal ownership and control over land by the marginalized sections of society. In addition to this, land, in a third world society (which is predominantly agrarian in nature) is also a source of political power and social status.<sup>2</sup>

Hence for the empowerment of women a third world society, land rights seem to be essential. In line with this argument some

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<sup>2</sup> Bina Agarwal, *A Field of Ones Own: Gender and Land Rights in South Asia*, Cambridge: CUP, 1994, p. 17



scholars contend that the single most important factor that determines the empowerment status of women is the right to own and control land.<sup>3</sup> So the subordinate position of women in South Asia can be attributed to the lack of ownership and control over landed property. Thus property rights appears to be an essential part of women's empowerment.

In India research on women's property rights and its relationship to their empowerment takes one into a realm where the past merges with the present and straddles, the disciplines of politics, law, sociology and Economics within the framework of gender studies. Women's rights to inherit, own and control property are determined primarily by the values and norms which are socially acceptable and to a lesser extent on institutionalized legal prescription Societal attitudes have a greater role to play in determining the status of women. Though there is an inextricable relationship between the empowerment status of women and the property rights enjoyed by them, the statement that land rights are the single most important factor that affect the empowerment status of women in any third world agrarian society may be disputed, for many reasons.

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<sup>3</sup> *Ibid.*, p.5

'Private Property' itself is considered to be a 'politically immoral concept by many socio-political systems. There are also social theorists who argue that the fundamental reason for the oppression and marginalisation of women is the origin of private property.<sup>4</sup> There are others who hold that the basis of inequality and marginalisation is not property but power.<sup>5</sup> Power is a broader concept than mere economic capability. Economic capability need not be the most important factor in all power relationships. Hence a broad generalisation for all societies with respect to the significance of various aspects of power need not always work. Likewise, land rights need not be the single most important factor that decides the empowerment status of women in all societies. Empowerment as it is used currently implies freedom, equality and power to take decisions.<sup>6</sup> Other factors like literacy, education, employment indices, demographic features, etc can also play an important role in deciding the empowerment status of women in society. Sometimes factors other than land rights may have a more significant role in emancipating women. In Kerala, women of the Syrian Christian and Nayar communities are recognized to be better placed in terms of empowerment indicators such as education, literacy, employment, demographic indicators, health indicators etc, in

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<sup>4</sup> Frederik Engels, as quoted in Bina Agarwal, *op. cit.*, p. 27.

<sup>5</sup> Vilfredo Pareto, as quoted in Andre Beteille, *op. cit.*, p.592

<sup>6</sup> Andre Beteille, Empowerment, *EPW*, March 6-13, 1999.

comparison to women of other communities. Ironically, women in the Syrian Christian community have traditionally enjoyed no rights over land whether in-terms of ownership or control. With regard to land rights, women in all other communities seem to be better placed than Syrian Christian women. Yet, Syrian Christian women are considered to be comparatively better empowered (in terms of other indicators).

This forms the point of departure of this research. The impact of property rights (especially land rights) on the empowerment status of women is sought to be examined in the largely agrarian background of a third world country. The study has relevance in many respects. The question of granting equal property rights to women in relation to their socio-political empowerment is currently being discussed. The Supreme Court's Verdict in the Mary Roy case by which women in Christian community are to be given equal property rights with those of their male counterparts has created a controversy in Kerala. This has implications for women in other communities too; because, the court has practically nullified the customs and practices of the Syrian Christian Community which was reluctant to give property rights to females. The question of the personal law of a community vis-à-vis the uniform civil code also assumes significance here. The empowerment of women is considered to be a vital issue in the development of a society as a whole. When the empowerment of women (which is

arguably the largest marginalized group in society) is posed against the rights of minorities to adhere to their cultural norms, the dynamics generated can be very complex. The opposition of the church and Syrian Christian community to the Verdict of the Supreme Court, citing the interest of the community reveal this clash of interests. There are some who argue that the decline of Nayar community vis-à-vis Syrian Christians and 'Ezhavas' was because of the family organization of the Nayers, especially matrilineal joint family system.<sup>7</sup> It is no secret that leaders of the Nayar community in the second quarter of the 20th century openly campaigned for the abolition of the matrilineal mode of inheritance and sought to introduce patrilineal system of inheritance and succession. Another thing to be noted is that the Nayar community has been slowly shedding its matrilineal characteristics for many reasons including those mentioned above. Hence this study attempts to throw light on many issues including the empowerment of women in relation to property rights for them, and the interest of the community in relation to granting property rights for women etc.

### **Universe of the Study**

The universe of this study comprises of the women in the Syrian Christian and Nayar community in Kerala from the early to late 20<sup>th</sup>

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<sup>7</sup> Ramachandran Nair, *Nayar Samudayathinte Ithihasam* (Mal) Sahitiya Vedi, Trivandrum 1987, p. 107.

century. The Syrian Christian community is considered to be a dominant community in Kerala on the basis of their population, control over economic resources, social prestige and political power. They consist of nearly 10% of Kerala's population and own the largest share of land in Kerala in comparison to other communities.<sup>8</sup> On other indicators also, they are considered to be better off than other communities.

The Nayar community is a community considered to be in par with the Syrian Christians. They consist of 11% of Kerala population<sup>9</sup> and are only second to Syrian Christians with regard to the ownership of land. Traditionally Nayars were non cultivating landlords who had great power, prestige and economic potential in Kerala society. On the whole there are many similarities between Nayars and Syrian Christians and in many ways they are comparable.

There are also certain dissimilarities between these communities. From the beginning, the Nayar community had followed the matrilineal mode of inheritance and succession. But Syrian Christians, from the first century A.D. onwards were a highly patriarchal community and had followed the partilineal mode of inheritance. The Nayar community is considered to be a community in

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<sup>8</sup> K.C. Zachariah, Kerala Migration Study, (1998), Trivandrum: CDS, 1998, p. 144.

<sup>9</sup> *Ibid.*, p.157

which women enjoy a substantial degree of property rights. But the Syrian Christian community is generally considered to be one which does not give property rights especially land rights to women. Women in both these communities are considered to be more empowered than women in other communities. The specific features of these two communities make them suitable for studying the problem. Hence these two communities were taken as reference points in understanding the impact of property rights on the empowerment status of women.

### **Objectives of the Study**

1. To assess the property rights (especially land rights) for women in Syrian Christian community as contained in the customs and traditions of the community, as well as in institutionalized legal enactments made by the state.
2. To assess property rights for women in the Nayar community, with special reference to land rights, in terms of both customs and laws pertaining to the community.
3. To compare women in the above mentioned communities with regard to the property rights enjoyed by them.

4. To compare the empowerment status of women in these communities on the basis of certain selected indicators, that are related to empowerment.
5. To arrive at a conclusion as to the impact of property rights on empowerment, on the basis of comparison between these two communities.

The study revolves around three major hypotheses:

- 1) Women in the Nayar community enjoy more property rights (especially land rights) than women in Syrian Christian community.
- 2) Correspondingly, the empowerment status of women in Nayar community is higher than that of women in the Syrian Christian community.
- 3) There is an inextricable relationship between property rights and empowerment status as manifested in the cases of above mentioned communities.

### **Methodology**

The methodology adopted in this study is historical, analytical and empirical. Both primary and secondary data has been used for

analyzing the problem. Primary data includes census report and other government documents and the data collected by the researcher by conducting a field survey. A survey of nurses in 10 reputed hospitals in Delhi was conducted by the researcher. The data collected was analysed by using the appropriate statistical tools. The secondary data used includes books, journals, working papers etc.

### **Plan of Work**

The first, introductory chapter introduces the problem, its significance and the universe of the study. It also identifies the objectives and methodology of the study.

In the second chapter a conceptual analysis of empowerment is attempted. In the third and fourth chapters, a detailed assessment of property rights for women in the Syrian Christian and Nayar community respectively is carried out.

In the fifth chapter a comparison is made between property rights for women in the above-mentioned communities. This chapter also assesses the empowerment status of women in the Syrian Christian and Nayar community by means of select indicators such as literacy, education, higher education, employment mobility and migration.



The sixth chapter evaluates the impact of property rights on the empowerment status of women in the above mentioned communities. The findings and conclusions of the study are detailed in this chapter.

### **Limitation of the Study**

The comparison of empowerment status of women in the two communities is not an easy task. In this study many important empowerment indicators have been considered, but certain indicators have been omitted because of the non availability of data. The absence of data on political participation deserves special mention. The only option before the researcher was to consider other data which have a bearing on political participation.

## Chapter-II

### EMPOWERMENT: A CONCEPTUAL ANALYSIS

The term 'empowerment' has gained wide currency in political, academic and legal circles for quite sometime now. Since mid 1960s the idea of putting 'politics in command' attained much popularity.<sup>1</sup> Accordingly, growth models and development strategies were re-assessed. Even in the absence of a consensus as to the political criteria for evaluating development policies, still certain values like freedom and equality were unanimously promoted. The preoccupation of development policies with growth was questioned and the 'political essence of progress' was emphasised.<sup>2</sup> With the upsurge of women's movement and other social movements the pursuit of freedom and justice was put in more concrete terms and the development process was scrutinized on the basis of such political parameters.<sup>3</sup> It is in this process that the term 'empowerment' came to be used. Empowerment is seen by politicians, publicists, social activists and growing section of intelligentsia as an effective tool to counter oppression exploitation, deprivation and other problems of society.<sup>4</sup> Yet a definition of 'empowerment' is absent in the current social science dictionaries or encyclopaedias. This points to the fact that existing social theory

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<sup>1</sup> Manoranjan Mohanty, "On the Concept of Empowerment", *EPW*, June 17, 1995.

<sup>2</sup> Manoranjan Mohanty, "Changing Terms of Discourse," *EPW*, Vol. XXIV, No. 7, (Sept. 2, 1989).

<sup>3</sup> Gail Omvedt, *Reinventing Revolution*, ME Sharpe: New York, 1998, p. 11.

<sup>4</sup> Andre Beteille, Empowerment, *EPW*, March 6-13, 1999.

does not provide us with a clear understanding of the concept of empowerment and its current usage in public discussion.

Scholarly discussions on empowerment have therefore been context driven rather than theory driven. In India the context that expresses the need for empowerment is the contradiction between a hierarchical social order and a democratic political system.<sup>5</sup> There is a deep-rooted form of inequality built into traditional Indian society based on caste and gender, and traditional disabilities due to caste and gender are social and not just economic. Deep rooted ideas of purity and pollution governed the social standings of different castes and sexes. Men and women were deemed to be of unequal moral worth as were the different varnas and the social hierarchy was perpetuated by a legal order in which privileges and disabilities were carefully modulated according to caste and gender.<sup>6</sup>

The law has changed considerably but societal attitude have not changed correspondingly. With the passage of time the realisation has grown that the transformation of social order cannot be effected through good laws alone, but that this kind of transformation calls for something else and it is in this context that the concept of empowerment emerges,<sup>7</sup> hence the importance of empowerment for social transformation.

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<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

Etymologically the concept of 'power' lies at the heart of the idea of empowerment. Social transformation will after all, necessarily imply the gaining of power by unprivileged sections of society. So the term 'empowerment' cannot be conceptualised without understanding the concept of 'power' in its varied dimensions. The concept of 'power' adapts differently to different situations. The ambivalence about power in the popular mind has permeated scholarly literature too. Such that 'Power' often is viewed as something evil or at least undesirable.

The sociological conception of power may be best understood by viewing in opposition to the anarchist and populist conception of it. In the anarchist conception, power itself can be abolished and human life can be reconstituted so as to make the exercise of power meaningless. The populist conception does not think about abolishing power but it does emphasise the radical redistribution of power among all sections of society. It envisages a situation where all members of each section of society participate equally in the exercise of power.

Vilfredo Pareto and Max Weber have greatly influenced the sociological discussion of power. Pareto's view is that the abolition of property would not lead to equality. According to him the real basis of inequity is not property but power. Weber has defined Power as "chance" of a man or a number of men to realize their own will in a social action, even against the resistance of others;

who are participating in the action.<sup>8</sup> This is a conception that includes coercion, manipulation and domination. As per this, power relationship by its very nature is an asymmetrical relationship.

The above mentioned conception of power is called the zero-sum approach to power. The power of one person or party can be enhanced only by reducing the power of other persons or parties. In other words empowerment and dis-empowerment go hand in hand; the empowerment of some sections of society has to be accompanied by dis-empowerment of some other sections.

But not everybody subscribes to the zero-sum concept of power. Alternate approaches to power do exist. One such approach has been put forward by Talcott Parsons. Parsons views power not simply as something that some people exercises over others, but as a resource of the community as a whole which the community may use more or less effectively in the attainment of its goals. Power in this sense may be compared to wealth and just as wealth of a nation may be augmented over a time, so may also be its power.<sup>9</sup> Thus power apart from being a source of evil can also be considered as the prime mover of a nation's progress.<sup>10</sup>

The idea of empowerment has a certain appeal when we consider that power, seen as a source of evil can be transformed

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<sup>8</sup> Max Weber, *Economy and Society*, University of California Press, Berkeley: 1988, p. 926.

<sup>9</sup> Talcott Parsons, 'On the Concept of Political Power', *Proceedings of the American Philosophical Society* 107(3).

<sup>10</sup> Andre Beteille, *op. cit.* p. 593.

into a source of everything that is good by being transferred from the wrong to the right hands.<sup>11</sup> Here, the distinction between power and authority has a relevance. It is for this reason that we cannot conceive of empowerment without taking into account the structures of a particular society.

The idea of empowerment can be invoked virtually in any developmental context. Empowerment is invoked when we speak about providing basic needs, capacity building, skill formation, or the conditions of dignified social existence. Empowerment is also seen as a way of addressing the problem of rights that are not enforced in practice. Empowerment can also be invoked in the context of economic weakness and insecurity, particularly of marginalised, unorganised and other disadvantaged groups. 'Empowerment' has provided a new focus on the building of economic and social capabilities among individuals, classes and communities.

The idea of empowerment implicitly contains a certain theory of social change, in particular a change from a hierarchical to an egalitarian type of society.<sup>12</sup> It can also be described as a change towards a more democratic society.

"To many persons empowerment appears as an attractive alternative to the slow and tortuous path of citizenship for

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<sup>11</sup> *Ibid.*, p. 593.

<sup>12</sup> Andre Beteille, *The Idea of Natural Inequality and Other Essays*, Delhi: OUP, 1983, p. 2.

dismantling the old social structure and putting a new one in it's place."<sup>13</sup>

In all the above mentioned contexts of empowerment either the zero-sum concept or the non zero-sum concept of power is invoked. It is the particular context of empowerment that decides the concept of power that is relevant to it. However in all the contexts of empowerment the concept of 'power' has vital importance.

### **Women's Empowerment: The Concept and its Context**

The concept of the empowerment of women begins by recognizing and acknowledging that women as a social group are both marginalised and disadvantaged. Both the dimensions of 'power' discussed above can be simultaneously applied in the case of empowerment of women. The context of women's empowerment is the unequal balance of decision making and control in the relations of men and women in the household, in the work place, in communities, in government and in the socio-cultural sphere.

This idea of empowerment is closely linked to participation of women in different spheres. "Participation means that people are closely involved in the economic, social, cultural and political processes that affect their lives. People may in some cases have complete and direct control over these processes, in other cases

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<sup>13</sup> Andre, Beteille, *op. cit.* p. 592.

control may be partial or indirect. The important thing is that people have constant access to decision-making and power. Participation in this sense is an essential element of human development."<sup>14</sup>

The United Nations Development Programme (UNDP) identifies four areas of participation:

- 1) household participation;
- 2) economic participation;
- 3) social and cultural participation;
- 4) political participation.

"Since participation can take place in the economic social, political and cultural areas, each person necessarily participates in many ways at many levels. In economic life as a producer or consumer, an entrepreneur or an employee; in social life as a member of a family or a community organisation or ethnic group; in political life as a voter or as a member of a political party or perhaps a pressure group. All these roles overlap and interact forming patterns of participation that interconnect with and often reinforce each other."<sup>15</sup>

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<sup>14</sup> UNDP, *Human Development Report (1993)*, UNDP, New York: 1993, p.1.

<sup>15</sup> *Ibid*, p.1.



The household participation of woman as an effective means of their empowerment has to be analysed in the context that though women are primarily responsible for the well being of the household, they do not have adequate power of decision making within the family. In a similar manner women's participation in the political economic, cultural and social Sphere is considerably low. Hence empowerment of women would automatically imply increased participation by women in all the above mentioned spheres. Empowerment is a process and therefore not something that can be given to people. The process of empowerment is both individual and collective because it is through the involvement in groups that people most often begin to develop their awareness and the ability to organise and take action. In this sense, empowerment can be defined as a process of awareness and capacity building leading to greater participation, greater decision making power and control and thereby to transformative action.<sup>16</sup>

Vanessa Griffin defines the empowerment of women as "adding to women's power."<sup>17</sup> She further defines power as:

"having control or gaining further control, having a say and being listened to, being able to create and define from a women's perspective, being able to influence social choices and decisions

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<sup>16</sup> Marielle Karl., *Women and Empowerment: Participation and Decision Making* . London: Zed books, 1995, p. 111.

<sup>17</sup> Vanessa Griffin (ed.), *Women Development and Empowerment* ; Kulalampur: Asian and Pacific Development Centre, 1987, p. 117-18 .

affecting the whole society, being recognized and respected as equal citizens and human beings with a contribution to make."<sup>18</sup>

Hence the women's empowerment framework gives much emphasis to the value of equality. Women's development and empowerment can be viewed in terms of five levels of equality, the levels of welfare, access, conscientisation, participation, and control.<sup>19</sup>

The concept of 'power' implicitly underlies and informs all the contexts of empowerment it also enlightens all the approaches to empowerment. There are differences on the analysis of the nature, dimensions, approaches and contexts of the concept of power. Debate on the more essential aspects or levels of power also continues along with the debate on empowerment.

### **Relationship Between Property, Law and Gender**

The formation of contemporary inheritance laws has involved a complex process of interaction between colonial and post colonial state and different segments of the population. It also involved a synthesis of various ideologies, interests, religious norms and local customs. The state has characterised laws on inheritance and succession as personal laws applicable to members of particular communities.

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<sup>18</sup> *Ibid*, p. 118.

<sup>19</sup> Marielle Karl, *op. cit.* p. 109.

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This charactersation has continued in post-independent codification that have attempted to accommodate differences in religion and local cultural traditions, while also seeking to establish a degree of uniformity.<sup>20</sup> The Indian succession Act 1925 and the Hindu succession Act 1956 reflect the policies of the colonial and post independence state in this regard. Before British rule, local customs influenced in varying degrees by Scriptural texts like, Koran and Shastras formed the basis of the laws on property and inheritance. Notwithstanding the fact that many laws that exist today are crystallised customs, many of the customs got eroded when confronted with written laws (laws given in scriptural texts, enactments by the colonial and post colonial state etc.)

There are many resources for this. Custom being unwritten was difficult to establish in court. To prevail over a written law, custom had to be proved to be immemorial or ancient, uniform, continuous, certain, reasonable, obligatory and not immoral.<sup>21</sup> The law enforcement apparatus also underwent major changes with the establishment of western institutions and procedures including lower courts, District courts and High courts. These new legal institutions eroded local structures operating on caste, religious and regional basis. Every time a new regulation, interpretation or legislative enactment came into force the structure of social relations for the bulk of the population was affected usually, in ways

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<sup>20</sup> Bina Agarwal, *op cit.*, p. 99.

<sup>21</sup> P.V. Kane, *Hindu Customs and Modern Laws*, Bombay: University Press, 1956, p. 44

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not anticipated by the law makers.<sup>22</sup> Gradually written laws got precedence over local customs in matters of inheritance and succession. Thus legal enactments had a considerable role in determining property relations. Law by its very nature has both political and social sanction while custom only has social sanction. With the advent and evolution of the modern state, law has a pivotal role in determining property relations, just as the owners of property dictate the terms of legal enactment.

This dynamics between law, and property had an impact on women's rights in many ways. When customs gave way to scriptural versions of law it had some negative effects on women's rights in landed property at two levels.

- 1) within religion
- 2) within some communities.

Scriptures generally discriminated against women. Since the foundation of legal enactments were placed in scriptural texts it had an effect on women, sunder Shastric law a Hindu widow had to forfeit any interest in her husband's estate in case of unchastely, and widow remarriage was prohibited. But among lower castes and tribes widow remarriage was widely practiced and this did not always necessitate the forfeiture of the husband's estate. However,

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<sup>22</sup> Bina Agarwal *op.cit.*, p. 200.

customs which treated women comparatively better were region specific and community specific. The legal enactments made by the colonial and modern state were based on scriptural texts rather than on customs. Hindu Succession Act of 1956 is the best example of this. Hence law by its very nature came to have a gender bias.

### **Property and Power**

Property, especially landed property, assumes importance as a source of power because traditionally land was basis of political power and social status. It also created a sense of identity and rootedness within the village. Land also becomes important as it is a productive, wealth creating and livelihood sustaining asset. Ancestral land provides for the continuity of kinship ties and citizenship. Land rights change the relationship of women with other family members. Hence, on account of all the above mentioned reasons, property is a source of power especially for women.

However, it is not that easy to give a generalized prescription as to whether power at the 'base' or 'superstructure' is more important for empowering a social group. It varies across social groups, their environments and even in the particular historical period in which they exist.

It is rather difficult to measure and compare the empowerment statuses of different social groups. The only way to

compare and measure the levels of empowerment is to measure their level of participation in various spheres such as the political, social, economic and cultural. It is possible to compare certain indicators which reflect their level of participation for example, access to employment and the remuneration levels gives an indication about the level of economic participation of a social group. Indicators like literacy rate, index of education, employment rate etc. are both the result and cause of participation and empowerment.

To conclude, social science theory does not presently provide us with a clear conceptual and theoretical base for the term "empowerment". Hence one needs to construct a definition based on the particular context in which it is being studied. Whatever the context, the concept of 'power' is clearly vital to the idea of 'empowerment'. The definition and dimensions of 'power' may vary from context to context, but empowerment is all about the gaining of "power" by groups which lack capacity, control, awareness etc. If one has to progress towards a theoretically informed, conceptually sound and methodologically operational notion of empowerment, perhaps a descriptive account of many different processes, contexts and situations may be taken into consideration. It is with this premise that we examine property rights for women and its impact on their empowerment status. The property right for women in the Syrian Christian community which is discussed in the following chapter can enlighten our ideas about this process and context.

## CHAPTER-III

### PROPERTY RIGHTS FOR WOMEN IN THE SYRIAN CHRISTIAN COMMUNITY

Syrian Christians popularly believe that they are the descendants of high caste Brahmins converted by St. Thomas in A.D. 52. A dispersion of the early Christians seems to have taken place following the departure of St. Thomas. There was no organized church due to internal dissensions. Hence the Christian community was sustained and controlled by the churches of the Middle East, especially Syria.<sup>1</sup> Hence the appellation 'Syrian' is used for 'Native St. Thomas Christians' of Kerala. Consequently, there developed a crystallization of the relationship between the Syrian Christian community in Kerala and the church of the Middle East.

The arrival of Thomas of Cana in A.D. 345 with the permission of the 'Catholics' of the East (Ecclesiastical Head of the church of the Middle East) further strengthened the bonds between the church of Syria and the church of Kerala.<sup>2</sup> Thomas of Cana was a Christian merchant from Syria who came along with a member of Christians (both lay and ecclesiastical) to provide succour to the spiritually impoverished Christians of Kerala.

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<sup>1</sup> Susan Visvanathan, *The Christians of Kerala*, New Delhi: OUP. 1993. p.1

<sup>2</sup> *ibid.* p.3.

Immigrating Christians merged with the indigenous Christians both commercially and spiritually. But by tradition they remained separate and endogamous groups called *Thekkumbhagar* (Cannonites) and *Vadakkumbhagar* (indigenous upper-caste Christians).<sup>3</sup> When Thekkumbhagar mixed with the Vadakkumbhagar (by marriage) they were considered to belong to the Vadatkumbhagar group. However this link, reinforced by the arrival of Syrian prelates through the centuries had a variety of social and ecclesiastical consequences. Social organization and the status of women are an important part of these consequences. Syrians had a strong and respected position in Malayali society. The features of their social system make them recognizable as a unique cultural group in the comparative analysis of Christian communities of the world. They have been considered as part of Hindu caste system in many anthropological studies.<sup>4</sup> Both high castes and low castes accorded Syrians a status similar to Nayers.

Economically, Syrian Christians were a very prosperous community. They were traditionally traders and land-owners. Landowning was a function common to the dominant castes in Kerala but trading was typically a Syrian Christian profession.<sup>5</sup> Hindu kings pleased with the hardworking and prosperous Syrian

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<sup>3</sup> *ibid.* p.3

<sup>4</sup> L. K. Ananthakrishna Ayyar, *Anthropology of Syrian Christians*, Eranakulam: CG press, 1926.

<sup>5</sup> Susan Visvanathan. *Op.cit.* p.3



Christians gave them many privileges and honours.<sup>6</sup> Like the Nayers, Syrians trained their male heirs in the use of arms and it was said that "a native prince was respected and feared by his neighbours according to the number of Syrians under his dominion".<sup>7</sup> This reveals the influence and support they had with the ruling establishments.

Syrian families were patrilineal and patrilocal. In contrast to Nayers, Syrian marriage was monogamous and divorce almost impossible.<sup>8</sup> Syrian Christians are believed to have a highly patriarchally organized family and community structure.

This is reflected in the domestic and canonical rituals relating to every aspect of their social life. In marriage, the initiative in arranging a match was taken by the bride's family.<sup>9</sup> Denominational endogamy and a monogamous marriage relationship was given great emphasis. According to many sociologists a strict control of the sexuality of women was a characteristic feature of the Syrian Christian community. Patrilocal residence also places women under the control of her husband and his family. In marriage, the role of the woman is considered to be

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<sup>6</sup> A. M. Hocart, *Life giving myth and other Essays* London: Methuen 1952, p. 49

<sup>7</sup> L. K. Ananthakrishna Ayyar, *op.cit.* p.56

<sup>8</sup> Rohin Jeffrey, *op.cit.* p.16

<sup>9</sup> Susan Visvanathan *op.cit.* p.104

passive.<sup>10</sup> But women have also considerable rights along with the obligations that accompany the marriage.

During the marriage ceremony the instruction given by the church to the groom is that "even if you don't eat, you have to feed her; even if you don't wear any clothes, you have to clothe her".<sup>11</sup> But it is evident from the tone of this advice that the society depends very much on the benevolence of the groom in looking after the woman given to his care. Even after marriage a woman is entitled to many privileges from her own natal household. But on the whole, the control of the eldest male member of the family in every sphere is well accepted in the Syrian Christian community. To that extent, patriarchal tendencies are very dominant among Syrian Christians. This dominance is echoed even in the allocation of property (especially land).

### **Property rights for women in the community**

Women's rights to inherit and own and control property are determined not only by institutionalized legal prescriptions but also by the values and norms which are socially accepted. In any agrarian economy the most valued form of rural property is arable land.<sup>12</sup> But in the context of Kerala society, where the contribution

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<sup>10</sup> *ibid.* p. 105.

<sup>11</sup> From marriage ceremony rites of Syrian Christians

<sup>12</sup> Beena Agarwal, *A field of one's own Gender and land rights in South Asia*, Cambridge. CUP. 1994. p.3

of the primary sectors to the economy is fast declining, to look at property rights in terms of land alone would be a very narrow approach. However, in evaluating the evolution and existence of property rights for women, land rights and laws of inheritance on land rights assume a predominant position. For, effective land rights should not only exist in law but should exist in practice too. Again it is not only the right to own but also the right to control that is at stake.<sup>13</sup>

### **Laws Regarding Land Rights and Inheritance**

The prevailing concept of law in India in the past had been that it was a personal and religious institution. The concept of territorial law in that sense was alien to the people of India. There was no uniform 'Lex loci' controlling inheritance, succession and other matters.<sup>14</sup>

Upto 5<sup>th</sup> century A.D. the Syrian Christians of Travancore, Cochin and other areas of Malabar were said to have followed the biblical law as laid down by Moses.<sup>15</sup> According to customary usages a Christian woman, whether married or not was excluded from the estates of her father; even if she had no brothers and the property devolved on male collaterals of the intestate<sup>16</sup>. It was the

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<sup>13</sup> *Ibid*, p.24

<sup>14</sup> Sebastian Champappilly, *Christian Law of Succession in India*, Cochin; Southern Law Publishers, 1997, p.7.

<sup>15</sup> *Ibid*. p.8.

<sup>16</sup> L. K. Ananthakrishna Ayyar, *op.cit.* p. 120-22

Portuguese and later the English who tried to bring in western concept of law to be applied to the Christians of India. *Synod of Diamper*<sup>17</sup> convened under the leadership of Portuguese ecclesiastical hierarchy intervened in the issue of succession among Christians.

“Where as an unseasonable custom has prevailed in this diocese viz. that males only inherit their father’s goods, the females having no share there of, and not only when there are sons but when there are daughters only and they unmarried and many times infants by which means greater number of them perish.”<sup>18</sup>

The synod further ordered:

*All this being very unjust and contrary to the natural lights that sons and daughters have to succeed to the goods of their parents; the kindred who have possessed themselves of such goods are bound to restore them to the daughters and lawful heiresses to them; wherefore the Synod doth declare and decree this custom to be unjust and that the next a kin can*

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<sup>17</sup> The official assembly of church members to discuss and decide upon matters of church policy, administration, religious teaching etc held at Diamper in 1599 A.D.

<sup>18</sup> Scaria Zacharia, *The Acts and Decrees of the Synod of Diamper* (1899) Eclamatton: IICS, 1950, p.2

*have no right when there are daughters to inherit their father's estate and are bound to restore them*<sup>19</sup>

The decree of the Synod of Diamper headed by Portuguese ecclesiastical hierarchy can be viewed as an attempt by the Portuguese to intervene in the customs and practices of native Christians.

It is true that the Synod of Diamper tried to change the customs and practices of Syrian Christians, the community refused to observe the decrees of the Synod of Diamper relating to the customary laws on succession and inheritance.<sup>20</sup> Later the Syrian Christian community was split in 1653 after the *coonen cross Revolt*<sup>21</sup> into Ramo Syrians and Jacobites. For Jacobites Hudaya canon became the highest authority in ecclesiastical matters.

Though the efforts of the Portuguese ecclesiastical hierarchy were unsuccessful in introducing western concepts of law into the customs and practices of Syrian Christians, the colonial administration headed by the British was relatively successful in its efforts to introduce western concepts into the customs and practices of Syrian Christians relating of inheritance and succession.

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<sup>19</sup> *Ibid.*, p.212

<sup>20</sup> Julian Saldhana, *Conversion and civil law Bangalore*: Oriental Publishers, 1981, p.109.

<sup>21</sup> Non-violent uprising of Syrian Christians against Portuguese ecclesiastical hierarchy is known as Cooner Cross revolt.

## **Evolution of Christian succession Laws and the role of the British**

By the Charter Act of 1661 the English East India Company was endowed with limited legislative powers to administer justice in the settlements. But this did not apply to the many categories of Christians who had their own customs. Oddly enough what law was to be applied to those persons was not specified.<sup>22</sup> The reason for the failure to prescribe any specific law for those classes was perhaps the ignorance of the early British administrators of the customs and practices of Syrian Christians. Gradually it was accepted in principle that English law would be applicable to the abovementioned communities.<sup>23</sup>

As per the Elphinstone Code of Bombay regulations a provision was made for applying the customs of the country which covered not only the prevailing customs among Hindus and Muslims but also people professing other faiths. On the basis of justice, equity and good conscience, the courts administered to everyone other than Hindus and Muslims, the substantive law of the country of such person or of his ancestors.<sup>24</sup>

First Law Commission appointed by the Government of India envisaged the preservation and protection of indigenous law but its proposals were not enacted. The Second Law Commission

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<sup>22</sup> Sebastian Champappilly *op.cit.* p.8

<sup>23</sup> M.P. Jain. *Outlines of Indian legal History*, New Delhi: OUP 1990; p.9

<sup>24</sup> Sebastian Champappilly. *Op.cit.* p.9

appointed in 1853 proposed the creation of a substantive civil law in preparing which the law of England should be used as a basis. But the revolt of 1857 gave a rude shock to the authorities and the administration was taken over by the Crown.

The Third Law Commission directed its attention to the preparation of draft of a law of succession and inheritance generally applicable to all classes of persons other than Hindus and Muslims. The draft Bill submitted by the commission was enacted into a law in India by the Governor General-in-Council with little variations under the title of Indian Succession Act of 1865. In 1925 this act was revised and came to be known as the Indian Succession Act of 1925. But it is pertinent to note that neither the Indian Succession Act of 1865 nor the subsequent Act of 1925 was to apply to all Christians in the whole of India.<sup>25</sup> Hence Syrian Christians of Kerala were following their customary law and separate statutory law which were considered to be saved by section 29 (2) of the Indian Succession Act 1925.

The practice of bequeathing one's property by means of a will to a certain extent was in existence among Syrian Christians of Travancore for centuries. These and other practices seem to have been borrowed from the 'Hudaya Canons' The right of Christians to make wills have always been recognized by the

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<sup>25</sup> *Ibid.* p.13

courts of Travancore. It was in this context that the *Travancore Wills Regulation* was enacted on 30<sup>th</sup> May, 1899. With this enactment testamentary disposition of property by Christians in Travancore was regulated not only by their personal law but also by the provisions of Travancore wills regulation of 1899.

Syrian Christians in Cochin followed their customary law in matters of succession in earlier times. But the absence of a settled law of inheritance was a fertile source of litigation among them. Traditionally the concept of equal share appears not to have been of much importance to Syrian Christians.<sup>26</sup> Property was quite often divided according to personal need. The settlement of property being vague and ill-defined it reflected the personal interpretation by the father of the conduct and need of his heirs. A will was necessary particularly when there was a chance that brothers may quarrel among themselves. Hence in Cochin there were many instances when the provisions of the *Indian Succession Act* were applied by the chief of court of Cochin to resolve disputes among brothers.<sup>27</sup> With the defeat of Tippu Sultan in 1799, Malabar became a part of Madras province of British India. Now, the disputes among Syrian Christians were adjudicated on the

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<sup>26</sup> Susan Visvanathan *op.cit.* p. 109.

<sup>27</sup> Narasimha Mallan v Marian, 10 C.L.R. 319 (F. B.) Ernakulam. Cochin Govt Press 1908. p.13



basis of the Indian succession act of 1865 and later by the Indian succession act 1925.

It is notable that in matters relating to enforcement and execution of wills and adoption of deeds the Bishops and prelates exercised powers over the Syrian Christians of Travancore and Cochin, The authority of Syrian Christian Bishops extended to all temporal and spiritual matters and they were judges in all civil and ecclesiastical matters among Syrian Christians.<sup>28</sup>

Upto 17<sup>th</sup> century there was no properly organized system of administration of justice in those areas. For proper administration of justice Travancore Zilla courts were established in 1811 AD.<sup>29</sup> A general scheme of judicial administration was carried out only by 1834. With the establishment of courts in Travancore, Matters relating to Christian succession came to be adjudicated upon by the courts. In 1906 without properly advertent to the early decisions, the Travancore High court considered the customary law of succession among Syrian Christians and held in Grevarghese Maria case that there was no specific rule to resolve the dispute regarding inheritance and succession among Syrian Christian in Travancore. Hence the court decided the matter by applying the provisions of the Indian

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<sup>28</sup> E.M. Philip, *The Indian Church of St. Thomas*, Nagarcoil: L. M. Press, 1950 p.21

<sup>29</sup> S.A. Azariah, *A judicial History of Travancore*, Kottayam: CMS Press, 1971: p.7

Succession Act 1865. Interestingly the Indian Succession Act was not a law in force at that time in the state of Travancore. Yet the precedents of Geevarghese Maria case was followed in another case in 1907.<sup>30</sup>

It was under these circumstances that the issue of enacting a succession act specifically for Christians was taken up by the prominent members of Sree Moolam popular assembly. All the Bishops of Travancore (five) except supported this move.

The Travancore government appointed a committee in 1911 consisting of six members belonging to different Christian denominations (most of them being Syrian Christians) to enquire into the customs and practices in force among several Christian denominations, of Travancore in matters of inheritance and succession and report whether any legislation was necessary and if so on what lines that should be. The committee was called the *Christian committee* and it probed into the customs and practices among various Christian denominations in Travancore. The committee was appointed under the pressure of the community itself. The committee came to the conclusion that the application of the provisions of *Indian Succession act* to the Christians in Travancore was not feasible.<sup>31</sup> And it proposed a draft bill on the

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<sup>30</sup> Sebastian Champappilly, *op.cit.* p.19.

<sup>31</sup> Christian committee, *C.C.R. 1912*. Trivandrum: T.G. Press, 1926. p.16

law of succession to be enacted for Christians of Travancore. The draft bill was enacted (with minor changes) as Christian succession regulation on 21<sup>st</sup> December 1916, which is popularly known as the *Travancore Christian succession act of 1916*.

In Cochin also there was much confusion arising out of Divergent views regarding the Indian succession act and the unwillingness of the community to abide by the Indian succession act. The Travancore Christian succession act encouraged the Christians of Cochin to demand legislation to put an end to the disorder in matters of succession and their efforts was successful with the enactment of *Cochin Christian succession Act of 1921* by the Maharaja of Cochin. The act was mainly directed at Syrian Christians as it specifically provided that European, Anglo Indian, Parangi, and Tamil Christian of Chittur Taluk are excluded from it.

In effect, the native Christians of Travancore and Cochin were to be guided by a composite code which defined their conduct on matters of inheritance and succession.

The bulk of the Syrian Christian population was confined to the Travancore and Cochin areas of Kerala. Until the supreme court verdict on Mary Roy case (1986), the Travancore and Cochin succession acts were considered to be the laws of succession of Syrian Christians residing in Travancore and Cochin respectively.

Hence to understand the property rights of Syrian Christian women it becomes necessary to examine these laws.

### **Travancore Christian Succession Act (1916)**

The act pertained to the matters covering succession to the immovable property situated in Travancore and belonging to a member of the Indian Christian community. Under the act dowry was a claim for money and not a claim for share in the property of the interstate as interpreted by the court in the Leone's versus Lilly case of 1966.<sup>32</sup> *Streedhanam* (Dowry) according to the act meant,

"Any money or ornaments or in lieu of the money or ornaments, any property movable or immovable, given or promised to be given to a female on behalf of her husband or to his parent or guardian by her father or mother, or after the death of either or both of them by anyone who claims under such father or mother in satisfaction of her claim against the estate of the father or mother."

It is to be noted that the act does not recognize any distinction between self-acquired property and ancestral property or between man's property and women's property for that matter. Co-parcenary rights in property is not recognized under Christian

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<sup>32</sup> *Leones versus Lilly, 1966 K.L.T. 636*, Cochin: M.M. Publications, 1966, p.11

law of succession. The right by birth and the right by survivorship were also not recognized by Christians and rights were acquired only by means of inheritance.<sup>33</sup>

The most controversial clause in the Travancore Christian succession act comes in section 28 of the act which provides that the *streedhanam* (dowry) due to a daughter shall be fixed at one fourth the value of the share of a son or Rs. 5000 which ever is less. In addition the act also provides:

"Any female heir of an intestate to whom *streedhanam* was paid or promised to be paid by the intestate or in the intestate's lifetime either by such intestate's wife or husband or after the death of such wife or husband by her or his heirs shall not be entitled to have any further claim in the property of the intestate when any of her brothers (whether of the full blood or of the half blood by the same father) or the lineal descendants of any such deceased brother shall survive the intestate"

Section 27 of the act provides that there is no distinction among the male heirs as regards their share in the property. In a similar manner, the act also makes no distinction between females in matters of succession. But there is a clear distinction between

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<sup>33</sup> Sebastian champappilly *op.cit.*, p.208

male and female heirs as regards the share of property to be inherited.

However, the act exempts certain classes of Roman Catholic and protestant Christians in Travancore from the provisions detailed above. Succession to property for *Marumakkathayam* Christians and certain other intestacies were exempted under this law.

It is to be remembered that Travancore High court was of the opinion that *streedhanam*' (dowry) was an equivalent of the share in patrimony. Among Syrian Christians and Ramo-Syrian Christians *Streedhanam* (dowry) was treated as a substitute for a share in the patrimony.<sup>34</sup> A daughter was entitled to a share in it, but not so when she had already received her dowry or marriage portion.

Lastly section 33 of the act specifies that 'Streedhanam' paid to a female shall be taken into account in estimating her share but not so as to compel her to refund anything already received as Streedhanam.

In Travancore Christian succession act remained the law in practice among Syrian Christians until the Supreme court verdict of 1986.

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<sup>34</sup> *Ibid.*, p.218.

## **Cochin Christian Succession Act (1921)**

Cochin Christian succession act resembles the Travancore Christian succession act in many respects. In both the Travancore Christian succession act and Cochin succession act the word *streedhanam* has more or less similar meaning.<sup>35</sup> Again the Cochin Christian succession act like the Travancore act provides that females who have received their lawfully computed 'Streedhanam' have no share in the property of the intestate if there are lawful male heirs.<sup>36</sup> Again, it is to be noted that had neither the Travancore Act nor the Cochin act differentiate between self acquired property and ancestral property or the property of the male and that of a female.

In certain respects the Cochin succession act also differs from the Travancore Act. In the Cochin Act the share allotted to a daughter is one third of the share allotted to the son.<sup>37</sup> The act provides for the division of shares between male heirs equally. Among female heirs also the shares are divided equally, but in case of division of shares among males and females, the females are discriminated unjustly. Another specialty of the Cochin act is the specific provision provided in it for illegitimate children by which they are entitled to inherit the property of their mother

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<sup>35</sup> Govt of Cochin, (*Cochin Christian succession Act*) *Cochin Government Gazette*, Cochin: Govt., Press. 1921. p.33

<sup>36</sup> *Ibid.*, p.42.

<sup>37</sup> *Ibid.*, p.40

subject to the share which devolves on her husband if they were legitimate.<sup>38</sup>

On the whole the Christian succession act of Cochin was more lenient to female heirs in comparison to Travancore succession act.

### **Gender Implications of Travancore and Cochin Christian Succession Acts.**

Under section 24 of the Travancore Christian succession act a widowed wife has only a life interest terminable at death or remarriage over any immovable property. Under section 28 female heirs who had already received their '*Streedhanam*' were not to be given any share in case of intestacy because the daughters have only a right to get '*Streedhanam*' and it was computed as one fourth the share of a son a sum or Rs. 5000 which ever is lesser. In this context it should be mentioned that there was no ceiling limit of Rs. 5000 made in the draft Bill submitted by Christian committee.<sup>39</sup> Daughters who had received their lawful *Streedhanam* could get a share in the entestates property only in the absence of male heirs. Even the unmarried daughters had only the right to get *Streedhanam* which was calculated as aforesaid. On the whole *Travancore Christian succession* act contained

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<sup>38</sup> *Ibid.*, p.48

<sup>39</sup> Christian Committee, *op.cit.*, p. 34.



several provisions, which could be described as discriminatory towards women.

The protagonists of the system argue that a daughter/sister is married away at her prime age (Syrian Christians being a patrilocal community) and thereafter she toils and works for the benefit of her matrimonial home and would not contribute anything for the betterment of her own (natural) family while at the same time it is the son/brother and his wife and perhaps children who contribute to the family property and make accretions to it. Hence there is no justification for the daughter/sister to claim equal share with that of the male heirs when intestate succession opens up years after her marriage.<sup>40</sup> Thus they justify allocation of one fourth the share to the female heir, but the prescription of ceiling of Rs. 5000 cannot be seen other than as a deliberate attempt to discriminate against the female heirs. It is again pertinent to note that even an unmarried daughter who remains in her parental house and toils for the benefit of her family was to be given only one-fourth the share, which makes the act clearly discriminatory towards women.

In the *Cochin Christian succession act (1921)* 'Streedhanam' is to be understood as handing over of the daughter's share at the time of marriage and as such is not a

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<sup>40</sup> Sebastian Champappilly, *op.cit.* p.21

consideration for marriage.<sup>41</sup> The effect of section 21 is that *streedhanam* paid is also added to the estate of the intestate for the purpose of calculating the total divisible assets of the intestate. But the recipient (or descendents) of *Streedhanam* cannot be compelled to pay the same or any part of it to the other heirs of the intestate.

However, if *Streedhanam* has been paid to a woman by any of the relatives mentioned in section 22 of the act she would be excluded from inheritance of all the said four ancestors by her brother or the lineal descendents of the brother.<sup>42</sup> For recovery of the amount from the trustees, there is no period of limitation prescribed under the Limitation Act and hence the period starts from the time of the right to succession. The suit for recovering the amount is not hit by the *Dowry Prohibition Act (1961)*<sup>43</sup>. On the whole, Cochin Christian succession act is not much different from Travancore Act except for the fact that the share allotted to the female is slightly more than the former and also a ceiling is absent in it.

To conclude the *Travancore Christian succession act of 1916* and the *Cochin Christian succession act of 1921* discriminated against women being provided with immovable assets especially

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<sup>41</sup> *Mary versus Cherchi*, Cochin, 1980 *K.L.T.* 353, Cochin: M.M. Publishers, p.15.

<sup>42</sup> *Elizabeth v Susamma*, 1965 *K.L.T.*, Cochin: M.M. Publishers, 1965, p.18

<sup>43</sup> Sebastian Champappilly, *op. cit.*, p.22.

land. Most of the Syrian Christian population of Kerala were governed by the above mentioned laws in matters of inheritance and succession. Most of the other denominations of Christians were exempted from the purview of this legislation. Hence as per legal prescriptions, women in the Syrian Christian community had practically no land rights, if the male members of the community so desired.

### **Laws of Succession of Syrian Christian of Malabar**

Syrian Christians living in Malabar had to face difficulties similar to those confronted the Syrian Christians of Travancore and Cochin. Initially the British Indian courts exercising jurisdiction over Malabar applied the peculiar laws and customs of the community for the determination of disputes on a case to case basis. But when the *Indian succession act of 1865* was enacted, no exemption was granted to Syrian Christians in Malabar. Therefore, legally the Indian Succession Act of 1865 and later *Indian succession act of 1925* were considered to be the laws governing succession and inheritance for Syrian Christians in Malabar. But most of the Syrian Christians of Malabar were migrant populations from Travancore and Cochin. In practice they continued to follow the customs and practices of their ancestors. These customs and practices did not recognize land rights for women in Syrian Christian community. Only when the allocation of

share was questioned in the court, the court intervened. (The intervention being on the basis of Indian succession act of 1925). But cases like this were quite rare as there was a tacit understanding within the community regarding property rights of women. Syrian Christians being an endogamous community it was quite unlikely this consensus was broken.

One may conclude from the above facts that as per legal prescriptions, the Syrian Christian women enjoyed minimal rights over land. Land rights for Syrian Christian women were not altogether recognized by the aforesaid laws on the basis of which, inheritance and succession of Syrian Christians were carried out.

### **Impact of Mary Roy case on property rights of Syrian Christian women**

In a suit filed in Supreme Court in 1983, Mary Roy and others contented that the Travancore Christian succession Act of 1916 (the law in force regarding intestate succession among Christians in Travancore) was a blatant violation of Article 14 of the constitution (a fundamental right guaranteed by the constitution). The petitioners argued that these acts discriminated against women by providing interalia that so far as succession is the immovable property of intestate to concerned, a widow or mother becoming entitled under section 16, 17, 21 and 22 shall have only life interest terminable at death or on remarriage and

that a daughter shall not be entitled to succeed to the property of the intestate in the same manner as the son but that she will be entitled to only one fourth the value of the share of the sons or Rs. 5000 whichever is lesser and even to this amount she will not be entitled in intestacy if 'Streedhanam' was provided or promised to be paid to her by the intestate or in the lifetime of the intestate either by his wife or husband or after the death of such wife or husband or by his or her heirs. On account of such discrimination these rules were un-institutional and void as being violative of article 14 of the constitution.

But the verdict of the supreme court was that it was unnecessary to examine the constitutional validity of the *Tranvancore Christian succession Act of 1916* as the law of succession among Christians in Travancore was to be in accordance with the Indian succession act of 1925 from April 1st 1951 (the day on which part B states (laws) Act of 1951 came into being). The explanation for this verdict was given by the court in the following manner "with a view to bring about uniformity of legislation in India including part B states, parliament enacted Part B states (laws) Act of 1951 providing for extension of part B states of certain parliamentary statutes prevailing in rest of India. Two section of the act are material namely section 3 and section 6 and they provide interalia as follows.

"The acts and ordinances specified in the schedule shall be amended in the manner and to the extent there in 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 there in relates to matters with respect to which parliament has power to make laws, be as stated in the extent clause thereof, as so amended" (Section 3)

"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" (section 6)

The schedule of this act referred to several statutes and one of these status were *Indian succession act of 1925*. The expression of the states wherever occurring in the Indian succession act was substituted by the word 'India' and a new definition was introduced in the clause (C) of section 2 of that act, defining India to mean the territory of India excluding the state of Jammu and Kashmir. The effect of section 3 read with the schedule was to extent the provisions of the Indian succession act to all part B states including the state of Travancore and Cochin with effect from Ist April 1951. The Supreme Court approved the ruling of the Madras High court that "the Christian succession

regulation discussions Act is a law corresponding to the provisions contained in Part V of the *Indian succession Act (1925)* so far as Christians are concerned.<sup>44</sup>

The best of the Supreme Court verdict categorically stated that

“We are therefore of the view that on the coming into force of Part B states (laws) Act of 1951, the Travancore Christian succession Act of 1916 stood repealed and chapter II of Part V of the Indian succession Act of 1925 became applicable and intestate succession to the property of members of the Indian Christian community in the territories of the erstwhile state of Travancore was therefore governed by chapter II of part V of the Indian Succession Act of 1925. On this view it became unnecessary to consider whether sections 24, 28 and 29 of the Travancore Christian succession Act of 1916 are constitutional or not. We therefore allow the writ petitions and declare that intestate succession to the property of Indian Christians in the territories of the former state of Travancore is governed by the provision contained in chapter II of part V of the Indian succession Act of 1925. There will be no order as to costs”.<sup>45</sup> Thus the court held that the question of the constitutionality of the Travancore

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<sup>44</sup> Solomen v. Muthiah, 1974, *I.M.L. J.* 53, Madras: G.J. Publications, 1974, p.21

<sup>45</sup> Mary Roy v. State of Kerala, *A. I. R.* (1986) 2SCC, 209

Christian Succession Act did not arise as the law was not operative in Travancore from 1951 onwards. Following this decision, the High Court of Kerala ruled that Cochin Christian succession act (1921) also stood repealed by part B states (Laws) Act of 1951.<sup>46</sup> Through the Supreme Court did not expressly give retrospective effect to the verdict the mere declaration that the Travancore act stood repealed on April 1, 1951 gave these verdicts retrospective effect, overrunning the then existing law and practices among Syrian Christians of Travancore and Cochin.

Since the Supreme Court verdict categorically states that the laws of succession in force among Syrian Christians of Kerala is the *Indian succession act of 1925* it becomes necessary to examine the Indian succession act of 1925.

Indian succession act of 1925 is unduly acclaimed to be a progressive law ensuring equal property rights to women. When one reads section 33 of the act with section 42 it becomes clear that if any child dies intestate without any lineal descendents, leaving the mother and father alive, it is the father rather than the mother who inherits the property. Under section 47 of the act, if the intestate has left no children father or mother, the wife is entitled to only half of the property and the remaining half may go to relatives of the intestate. Like wise, section 43 read with

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<sup>46</sup> V.M. Mathew v. Eliswa, 1988 (1) *K.L.T.* 310 (DB)



sections 33(b) and section 35 makes it clear that when a Christian woman dies intestate leaving no issues, it is her father who gets half of her property to the exclusion of her mother. Under section 60 of the act the father is given absolute right to appoint a guardian for his minor children by way of a will but no such right is given to the mother even in case where the father is of unsound mind. Section 22 enables the father to make a pre-marital settlement of the minor's property; but no such right is given to the mother.

However, on comparison Indian succession act of 1925 may be less discriminatory towards women than the Travancore Christian succession act of 1916 and the Cochin Christian succession act of 1921.

Apart from the fact that there is tension and disagreement with the verdict at least in certain quarters of the community. The Christian community generally has not accepted the verdict in good faith. As stated elsewhere, the right of inheritance, succession and control of property are determined primarily by the values and norms which are socially acceptable. It is only to a lesser extent that legal prescription alone can serve the purpose. Hence, it is necessary to examine the customs and practices of Syrian Christian community towards granting property rights to females. When we examine the legal prescriptions prevailing in

the light of these customs and conventions we may get a clear picture regarding the property rights (especially land rights) of women in Syrian Christian community.

When the legislations contradict the acceptable customs and practices of the community then very often it is found that the legislations fail to serve the purpose for which they were enacted. Hence, the customs and practices of the community are very important in assessing the rights of succession and inheritance.

In the beginning as stated elsewhere the Syrian Christians were said to have followed the Biblical law as laid down by Moses. Jewish Society and laws were in line with the patriarchal ideology existing at that time and it did not recognize property rights for women. Syrian Christians consisted mostly of both migrant Christians from West Asia and the indigenous high caste (Brahmin) converts of St. Thomas. Among Brahmins in Kerala patriliney was a fundamental value.<sup>47</sup> It is highly improbable that women in those communities enjoyed property rights especially over land. This is despite the fact that traditionally *namboodiri 'illams'* (Joint families) were the custodians of most of the land in Kerala. Hence, from the very beginning, Syrian Christians did not have the practice of giving land rights to women.<sup>48</sup> But Syrian Christian

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<sup>47</sup> Alexander K.C. *Social mobility in Kerala*. Poona: Deccan College of post Graduate and research institute, 1968, p.62

<sup>48</sup> Susan Visvanathan *op.cit.* p.110

women were paid Sreedhanam by their parents. Though the payment was actually made by the parents of the bride to the groom or to the parents of the groom. 'Sreedhanam' is the sum of money that a Syrian Christian woman bring with her at the time of her marriage to her husband's home.<sup>49</sup> 'Sreedhanam' is generally a very large sum of money (often running into lakhs of rupees). But with the payment of this sum the women no longer has a share in her father's property. Hence, in real terms Syrian Christian woman had no rights over the property of her ancestral home.

The report of the Christian committee clearly depicts the practices prevalent among Syrian Christians regarding the granting of property rights to women. (The Christian committee consisted of prominent members of the Syrian Christian community, who examined the laws of succession on the basis of the customs and practices of the community)

"In social matters legislation to be effective must not be against public sentiment at least so far as conservative people like Travancoreans are concerned. Even if the introduction of the *Indian succession act* is the best thing for Travancore, a proposition the correctness of which we are by no means quite sure – it is better to being about the second best thing with the

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<sup>49</sup> *Ibid.*, p111

intelligent approval of the people as a whole rather than go against the sentiments of the community in the attachment of what one considers to be the best”

The report itself shows that the provisions of the Indian succession act were against the sentiments of Syrian Christians especially in so far as the provisions of land rights for women. This is despite the fact that even prior to the Travancore Act the High court of Travancore had resolved many disputes on the basis of the Indian succession Act. The same was the situation in Cochin. It is to be noted that the Travancore succession Act proposed by the Christian committee had practically disinherited women from their father's estate.

In this context it is to be noted that the ceiling of rupees 5000 as the maximum amount of money to be paid to women by way of *Streedhanam* or as their share is not followed in practice. When Travancore Christian succession act was framed (in 1916), 5000 rupees was a very large sum of money the equivalent of which would amount to more the 20 lakhs at present. This ceiling was not revised later by the law makers concerned. But the Christian community did not conform to this ceiling when paying *streedhanam* to their daughters. But very often the money paid to the daughter (on her behalf to the grooms family) would be even more than the share of the son, as often happens in middleclass

households where the entire property may be sold or mortgaged in order to marry off the daughter.<sup>50</sup> But in case of large estates it is usually less than what the son's receive. It would be interesting to note that as in accordance with the Supreme court verdict of 1986 in Mary Roy case, Mary Roy herself filed a partition suit in Kottayam Sub court demanding re-partionining of her father's estate in the custody of her brother as in accordance with the provisions of Indian succession act of 1925. The Kottayam sub-court ruled that Mary Roy had already received more than what was due to her as per the Indian succession act and that she had no right to claim a share in the property of her brother. Mary Roy has filed an appeal against this verdict in the Kerala High court but has dropped the charges of injustice and discrimination, and contended that the gift transfers should not be taken into account while considering a settlement suit and that such gifts had not extinguished her shares under the Indian succession Act to the remaining part of the shares of the estate in possession of other heirs.

Hence there is enough evidence to conclude that in practice (disregarding the Travancore Christian succession Act (1916) Syrian Christian women were paid Substantial amount of money as Streedhanam. Ceiling of 5000 rupees were not actually kept in

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<sup>50</sup> *Ibid.*, p.11

practice. Even in Malabar, where the Indian Succession act was the law in force, Syrian Christians (most of them migrants from Travancore) conformed to the customs and practices of their ancestors and paid women in cash but did not give them land rights.

Again, if the Indian succession act of 1925 is meticulously followed, it is possible to totally disinherit a female heir. In Christian families where parents reside with their male heirs it is nonsurprising that they are biased in allocating their shares to their sons. The father can distribute his property to whomever he pleases by means of a registered will executed by him. Since the community is aware of the prevailing situation there is a possibility that they take a precaution by executing a will in advance. Again, there is no bar as per the present legal enactments to dispose off the entire property by means of a will. It is to be noted that as per Muslim law only one-third of the property can be allotted by means of a will. The remaining has to be partitioned between male and female heirs (though, disproportionately). Even in the highly patriarchal Muslim community women enjoy property rights.

But it is not so in case of Syrian Christians. First and foremost, in accordance with the customs and practices of the community the women are not given property rights over the estate of the family. Syrian Christians being one of the prominent

land owning community in Kerala, this would imply that women do not have considerable land rights. Even as per the 'progressive' legal enactments women can be totally disinherited of their father's estate. (family estate).

Secondly, a substantial amount of money is paid at the time of her marriage, the money is not paid to the woman. But either to the groom or to the father of the groom. The groom exercises control even over the ornaments given to her. Hence there is enough evidences to conclude that women in the Syrian Christian community do not enjoy any substantive property rights. In the next chapter as we examine the property rights for women in Nayar community, the above mentioned point may be well established.

## CHAPTER-IV

### PROPERTY RIGHTS FOR WOMEN IN THE NAYAR COMMUNITY

The position of Nayars in Kerala Squares closely with the definition of 'dominant caste' given by the anthropologist Louis Dumont. According to him "a dominant caste has rights over the land power to grant land, and to employ other castes and has a monopoly of authority. A dominant caste is often a royal caste or a caste allied to royal castes".<sup>1</sup> The original Nayars were undoubtedly a military body holding land and serving as warriors.

They enjoyed special privileges and power. Since the matrilineal joint family is considered to be a very special characteristic of the Nayar community, (which has a direct bearing on the property rights and status enjoyed by Nayar women) it is necessary to examine this system in some detail.

Scholars like Morgan, Engels and Mc Lennan have put forward the theory that in the early stages of human history, the matrilineal system was the common basis of inheritance and succession and it was only later that the patrilineal system of inheritance and succession came into existence. But in the case of Kerala the matrilineal system was in existence among certain

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<sup>1</sup> Louis Dumont, *Homo Hierarchicus*, London: Paladin, 1972, p.207



communities like Nayars even in the first half of the 20<sup>th</sup> century. This was not because of the extension of the primitive social order upto the 20<sup>th</sup> century. In Kerala the matrilineal or *Marumakkathayam* system came into existence due to a number of socio historical processes. A prominent outcome of the chera-chola war during 11<sup>th</sup> century was the disintegration of the patrilineal system of inheritance and it's eventual replacement by matrilineal or 'Marumakkathayam' system.<sup>2</sup> The political and religious ascendancy of the Namboodiri Brahmin during the war, their rise to superior economic positions as Jenmis of Kerala, the introduction of compulsory military training and the formation of chevar army to meet the threat of chola invasion etc. were some of the conducive factors which brought about the adoption of the *Marumakkathayam* system in the 11<sup>th</sup> century A.D.<sup>3</sup>

The essence of matriliney is it's system of succession or descent. Under this system the individuals were assigned to their mother's lineage or sibs or clan and not that of their fathers. Women formed the nucleus of the 'Tarawad' (Joint family). However, it is to be noted that the 'Tarawad' was managed by the eldest male member called 'Karanavan'<sup>4</sup>

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<sup>2</sup> Sreelekha. *Nayar women today, op. cit*, p.5

<sup>3</sup> *Ibid.*, p.4

<sup>4</sup> *Ibid.*, p.5.

The matrilineal system of descent among the Nayers was a byproduct of social and historical factors. The marriage and kinship system in that community have a bearing on this. There is a functional connection between the Nayar's military organization and the matrilineal system of inheritance and descent. It also has an impact on the nature of affinal ties and family organization.

As warriors Nayar men were frequently away from their native villages for several months together and were often on the move. This did not promote close binding attachments and affectionate relationships between Nayar men and women in their native villages. But at the same time, Nayar men were permitted sexual access to Nayar women throughout the land.<sup>5</sup> This led to the social recognition of loose and temporary sexual relationships between Nayar men and Nayar women. These loose liaisons were not recognized as marriages as we understand them today. They were termed as '*Sambandhams*' or temporary relationships. In addition to Nayar men, Namboodiri (Brahmin) males also were eligible to enter into '*Sambandham*' with Nayar women. But it is to be noted that a Nayar woman of an upper caste could not enter into a '*Sambandham*' relationship with a Nayar man of a lower caste. (the Nayar community consist of a number of sub castes and a system of hierarchy existed among them). An upper caste Nayar

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<sup>5</sup> *Ibid.*, p.7

man could have '*Sambandham*' (sexual relationship) with a lower caste Nayar woman, but the societal norms did not allow him to eat with his sexual partner or even with his own children (the children born out of wedlock).

Hence among Nayars the link between the woman and her husband was one of the weakest of its kinds. At any time the woman could refuse admittance to her partner and likewise the man also could terminate the relationship at will.<sup>6</sup> The husband-wife relationship was not supported by familial obligation either.<sup>7</sup> Children born out of '*Sambandam*' relationship were considered to be children of the family of the mother and they were heirs to the family property of the mother. The father was not obliged to provide for them. The absence of definite relationship terms for relatives on the father's side shows the subordinate position of the father in the Nayar community.<sup>8</sup> Disregard of the father goes to such an extent as to tolerate marriage of parallel cousins on the father's side. The relatively insignificant position of the father is a natural consequence of polyandry. Fernando Lopez a Portuguese traveller described the domestic life of Nayars Thus:

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<sup>6</sup> Robin Jeffery, *Decline of Nayar dominance* New York:Holmes and meier Publishers. Inc. 1976, p.15

<sup>7</sup> K.C. Alexander, *social mobility in Kerala*, Poona:Decan College of Post graduate and Research Institute , 1968, p. 68.

<sup>8</sup> A. Ayyappan, *The Personality of Kerala*, Department of Publications, Trivandrum, Kerala University, 1982.

"By the laws of this country the Nayars cannot marry so that no one has any acknowledged son or father, all their children being born out of mistresses with each of which three or four Nayars cohabit by agreement among themselves. Each one of this confraternity dwells a day in his turn with the joint mistress counting from noon of the day to the same of the next, after which he departs and another comes for the like time. They thus spend their lives without the care or trouble of wives and children yet maintaining their mistress well according to their rank. Anyone may forsake his mistress at his pleasure. Mistress may refuse admittance to any of her lovers when she desires so"<sup>9</sup>

Considering that there are several men attached to one woman the Nayars never look upon any of the children born of their mistresses as belonging to them, however strong a resemblance may subsist. All their inheritances go to the sons of their sisters born of the same mother, all relationships being counted by female consanguinity and descent.<sup>10</sup>

All this points to the fact that in the matrilineal system parternity was an uncertain factor and hence succession and inheritance were traced only through the mother.<sup>11</sup>

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<sup>9</sup> Modayil P. Joseph, *Principles of Marumakkathay Law: A commentary on Nair regulation of 1088*. Kottayam: CMS Press, 1918, p. 3-4.

<sup>10</sup> *Ibid.* p. 4.

<sup>11</sup> Sreelekha *op.cit.* p. 10.

Nayars lived in the Matrilineal joint family called 'Tarawad'. A 'Tarawad' might have a number of members all living together in one big house and having a common kitchen. Each 'Tarawad' was an independent economy unit, its members collectively owned property from which they derived their livelihood.<sup>12</sup> Since the 'Tarawad' was centered around its female members, they enjoyed a status relatively superior to that of the men and the absence of daughters meant a crisis for the Tarawad.<sup>13</sup>

The members of the 'Tarawad' held a collective responsibility in keeping the property intact. The property and other assets that belonged to the 'Tarawad' were the joint property of all the males and females that composed of 'Tarawad'. This property was indivisible and the individual members were not entitled to partition. The eldest male members of the 'Tarawad' was entrusted with the management of its property and allied affairs. The Karanavan was the center of the matrilineal system. The junior members of the Tarawad were supposed to have no right to possess anything that formed the Tarawad property in antagonism to the 'Tarawad Karanvan'.<sup>14</sup> The Karanavan also represented the

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<sup>12</sup> Sreelekha, *op.cit.* p.1

<sup>13</sup> Robin Jeffery, (1993), *op.cit.* p. 35.

<sup>14</sup> Joseph Puthenkalam, *Marriage and Family in Kerala*, New Delhi, Community Centre, 1979, p. 213.

Tarawad and he alone could sue and be sued on behalf of the Tarawad.<sup>15</sup>

Among Nayars neither the husband nor the wife changes residence. In that sense they can be considered as duo-local.<sup>16</sup> No affine generally lived in the Tarawad except occasionally the Karanavan's wife.<sup>17</sup> The members of the same 'Tarawad' observed 'Pula'<sup>18</sup> on occasion like birth or death in the family.<sup>19</sup>

The property rights of Nayar women have been considerably affected by the system of marriage and family organization in that community. The essence of matrilliny which is the system of descent based on the female line has also considerably improved the status of women. It is in this background of the matrilineal joint family system that we shall examine the property rights for women in Nayar community.

The concept of 'property rights' in this context emphasises in a special manner the distribution of property between men and women in the community not only in terms of legal ownership but also in terms of control. Among Nayars, who were primarily a land owning caste, arable land was considered to be the most valued form of property. Hence property rights for women in this context

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<sup>15</sup> Sreelekha *op.cit.* p. 13

<sup>16</sup> Kapadia *op.cit.* p. 336

<sup>17</sup> Sreelekha, *op.cit.* p.14

<sup>18</sup> Pollution attached to birth or death of relatives

<sup>19</sup> Puthenkalam, *op.cit.* p.135.

would mean the right to own and control land. Land provides a sense of identity and rootedness within in the village and in social perception land has a durability and permanence which no other asset possesses.<sup>20</sup> Although other forms of property such as cash, jewellery and cattle and even domestic goods could in principle be converted into land, in practice rural land markets are often constrained.<sup>21</sup> Property rights (and in particular land rights) are defined here as claims that are legally and socially recognized and enforceable by an external legitimate authority: be it a village level institution or some higher-level judicial or executive body of the state.

Land rights can stem from inheritance on an individual or joint family basis, from community membership, transfer from state or from tenancy arrangements, purchase and so on. Rights in land also have a locational dimension. They may be hereditary or accrue only for a person's lifetime or for a lesser period and they may be conditional on the person residing where the land is located.<sup>22</sup>

In this context one needs to take into account three additional distinctions. The first of these is the legal recognition of property and the social recognition of property. For instance a woman may have the legal right to inherit property but this may

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<sup>20</sup> Bina Agarwal, *op. cit.*, p. 17

<sup>21</sup> *Ibid*, p. 21.

<sup>22</sup> *Ibid* p. 19.

remain merely a right on paper if the law is not enforced or if the claim is not socially recognized as legitimate and family members exert pressure on the woman to forfeit her share of the property in favour of other male members. Second distinction is that between the ownership of property and its effective control. Control itself can have multiple meanings, such as to decide how the land is used, how its produce is disposed of, whether it can be leased out, mortgaged, bequeathed sold and so on.<sup>23</sup> Thirdly it is also important to distinguish between ownership in terms of the use of rights vested in individuals and those vested in a group.

Prior to colonial rule, the inheritance of property including land in India was governed by local customs. Hence to trace the property rights of any social group we need to understand the customary practices in that particular social group/region.

In the pre-colonial period the Nayers of Kerala were a matrilineal community living alongside a number of patrilineal groups. The system of land holding in the region was complex involving a hierarchical and varied categorization of land rights. Nayers were mostly land lords and non-cultivating tenants. The Nayar matrilineal joint families termed 'Tarawads' were comprised of the matrilineal descendants of a common ancestress and usually contained a set of brothers and sisters, their mother and sisters

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<sup>23</sup> *Ibid.* p. 19.



their children and sister's daughter's children. They normally shared a common residence and enjoyed property collectively.<sup>24</sup>

Ancestral property was inherited through the female line in accordance with '*Marumakkathayam*' system of matrilineal system in inheritance. All Tarawad members had equal claims to maintenance from 'Tarawad' property. But no individual member could ask for a share by partition which could only be brought about with the consent of all adult members.<sup>25</sup> The management of the 'Tarawad' was done by the eldest male member called 'Karanvan'.

The self acquired property of the Karanavan was added to the Tarwad property on his death and that of the female members passed on to their children and descendents solely in the female line. Occasionally a new Tarawad branch (tavazhi)' was formed.<sup>26</sup> For instance if the membership of the 'Tarawad' grew too large, a new branch was established as a separate property owning group with the partitioning of the ancestral property of the parent 'Tarawad,' if all the adult members agreed.<sup>27</sup> Independent land gifts to Nayar women by '*Sambandham*' partners could also constitute the property bases of such branches.<sup>28</sup>

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<sup>24</sup> K. Gough and D. M. Scheider, *Matrilineal Kinsip*, Berkely: University of California Press, 1961, p. 298.

<sup>25</sup> Bina Agarwal *op.cit.* p. 113.

<sup>26</sup> Mencher "Nayars of South Malabar" in M. T. Nimkoff (ed.) *Comparative family systems* New York: Houghton Mifflin, 1965, p. 163-91.

<sup>27</sup> Bina Agarwal *op.cit.* p.112.

<sup>28</sup> Mencher *op.cit.* p. 163

In short for Nayers in Kerala, land was traditionally held in joint family estates and was not individually inheritable. All the adult members in the family whether males or females had equal legal rights over the land. Inheritance was through the female line. Women in principle were equal participants with men in any joint family decisions such as those involving the partitioning of any part of the 'Tarawad' land.

When we attempt to evaluate the control that women exercised over the land, we find that most women had little control over the management of the property. In Nayar Tarawad, the fact was that apart from the 'Karanavan' even other adult members of the Tarawad had little control over the management of the property. The Karanvan was practically an autocrat in most of the Tarawads. Typically Nayers did not themselves cultivate agricultural land. Cultivation was done by the tenants. Even in less prosperous households the women's involvement in the cultivation of the land was minimal.<sup>29</sup> Occasionally some may have assisted in supervisory capacities. The 'karanvan' usually allocated a share of the estate's paddy crop and other consumption items to the senior most women of the Tarawad, who kept the key to the store house. Where there was more than one homestead separate allocations were made to each homestead. Thus the effective daily management of Tarawad

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<sup>29</sup> Bina Agarwal *op.cit.* p. 113.

activities was divided between the karanvan and the oldest women. The former carried out all transactions outside the group, controlled the estate in toto, and disciplined the men and the boys. The latter organised the feminine tasks and held more informal authority over woman and children.<sup>30</sup> Where the 'karanvan' was the son or the younger brother of the Tarawad's senior most women she had some say in the management of the estate as well (e.g. Counselling the karavan in his transaction with outsiders). This was less likely where the karanavan was the older brother or uncle of the senior most women. There also appear to have rare cases of women managing the Tarawad estate and even some degree of political power.<sup>31</sup> Among the Nayars of Northern Kerala women moved to their husband's home after marriage but were partly maintained by their maternal 'Tarawads' and received a share of the harvest as their right.

Hence the customs of the community endowed Nayar women with rights over the property of the joint family. Their legal rights over the family property were equal to the male heirs. Since inheritance was through the female line their comparative portion vis-à-vis the male heirs in matters of legal ownership of property was better. But the management of property was entirely in the

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<sup>30</sup> K. Grough *op.cit.* p. 341.

<sup>31</sup> Bina Agarwal *op.cit.* p. 113.

hands of the autocratic 'karanavan' who was the eldest male member of the family.

### **Impact of the Hindu Succession Act 1956 on Property Rights of Nayar Women.**

As mentioned above, the customary practices followed in various parts of Indian had given considerable inheritance rights to women at least in certain communities. But colonial rule and the introduction of the colonial code of conduct initiated the erosion of the rights of women in India. The prime reason for this was the fact that the British used 'Shastras' as the reference point for deciding the laws to be followed in matters of marriage, inheritance etc. They assumed that, just as the European marriage laws were based on biblical texts so must the personal laws of various communities draw their legitimacy from some fundamental religious texts.<sup>32</sup> The use of Sanskrit Pundits to interpret the customary laws for the benefit of the courts invariably brought in a heavy anglo-brahmanical bias.<sup>33</sup>

It also led to the myth that Hindus were governed by shastric injunctions. These new law codes backed by the authority of the British courts began to make alterations in custom, even when the British law provided for the protection of the custom. Since then,

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<sup>32</sup> Madhu Kishwar. "Codified Hindu Law: Myth and reality in *E. P.W.* August 13, 1994, p.2145.

<sup>33</sup> *Ibid.* p.2145.

customers has been forced to struggle against the anglo-shastric law brought into existence at the behest of the British. It was this ossified Anglo-Hindu law that the Indian Parliament set out to reform. In the first decade of Indian independence, the Congress party was then dominated by the lawyers trained in British law. They were not just English educated, but were also educated in English law and had consequently imbibed all the colonial biases regarding the functioning of Indian society as well as the changes that were supposedly needed to modernise it. This is a major reason why the reformed Hindu law is in conformity with reforms initiated during British rule. These reforms viewed the diverse customary laws prevalent in various parts of India to be something regressive especially with regard to the recognition of the rights of women. When the Hindu the succession Act was passed in 1956, it was projected as a revolutionary step in recognizing the property rights of Hindu women. But as we have seen earlier different customary laws prevalent in various parts of the country were better equipped to protect the property rights of Hindu women than the Hindu succession act of 1956 which superseded them.

The Hindu succession act of 1956 is applicable to all states other than Jammu and Kashmir and it covers about 86% of the Indian population. In the Act, Hindus are defined as including Sikhs, Jains and Buddhists. The act sought to unify the mitakshara and dayabhaga systems and purported to lay down a law of succession

whereby sons and daughters would enjoy equal inheritance rights. But significant gender disparities exist in the above-mentioned law.<sup>34</sup>

The Hindu succession act has made special provision for the devolution of property for Hindus customarily governed by 'Marumakkathayam' and Aliyasanthana systems. As per this provision if a man dies intestate his property (including all separate or self acquired property as well as any share he may have in joint family property) devolves equally upon his son's daughters, widow and mother. In addition (and simultaneously with the above mentioned four categories of heirs) if there is a pre deceased son, his children and widow get the share he would have received if he was alive. Children of a pre-deceased daughter get her share likewise, and the children and widow of a pre-deceased son of a pre-deceased son similarly inherit a share as the representative of the deceased in question. All the above mentioned heirs are categorised as class I heirs.<sup>35</sup> In the absence of class I heirs the property devolves on secondary heirs, or class II heirs. In the absence of heirs in these two categories the property goes to agnates and cognates without distinction or preference between them. If a woman dies intestate all her property (again including separate or self acquired property as well as any share in the joint

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<sup>34</sup> Bina Agarwal *op.cit.* p.211

<sup>35</sup> Class I heirs are those who have the first right to the property of the deceased.

family property) devolves in the first instance equally on her sons and daughters (including children of any pre-deceased sons of daughters.) and mother. If the intestate leaves no children of pre deceased children her mother takes all the property except that inherited from her husband or father-in-law which goes to her husband's heirs. If there are no children or grandchildren but if the intestate's husband is alive the property goes to the intestate's father and husband. In the absence of children, grand children and husband all the property of the intestate other than that inherited from her husband and father-in-law, (which devolves on husband's heirs) will first go to her mother's heirs and in their absence to her father's heirs and lastly to the heirs of her husband.<sup>36</sup>

Again, both men and women have full testamentary powers over all their property. From the above mentioned details it is quite clear that even after the enactment of the Hindu Succession Act of 1956 there has not been considerable erosion of the property rights of women in communities which were following Marumakkathayam (matrilineal) customs, as the Hindus succession act of 1956 recognizes and has made special provision for communities following 'Marumakkathayam' and 'Aliyasanthanam' customs.

On evaluation, it is observed that both the customs of the community and the legal enactments in the immediate post

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<sup>36</sup> Bina Agarwal *op.cit.* p. 214.

independence period endowed Nayar women with legal property rights almost on par with their male counterparts

### **Changes in the Matrilineal System and it's Impact upon the Property Rights of Nayar Women**

Changes in the matrilineal system have been effected because of a complex set of interacting factors. The most important among these could broadly be divided into four categories: (1) The demobilisation of Nayar armies in the late eighteenth and early nineteenth century, (2) changes in the local economic conditions, (3) land and marriage legislations passed by the British, (4) shifts in the ideological and social climate.

The British disbanded the Nayar armies after their annexation of Malabar in 1792. The Nayar armies of Cochin and Travancore were disbanded by the respective Rajas soon after. It is believed that it created a 'crack in the fabric of the System', which was to widen over time.<sup>37</sup> The return home of the younger Nayar men on a permanent basis led to the strengthening of 'Sambandham' ties and it also promoted a tendency to form monogamous permanent unions. Strong ideological and social pressures also induced changes in marriage practices. Victorian notions of morality and

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<sup>37</sup> C. J. Fuller, *The Nayars today*, Cambridge: CUP, 1976, p.125.



how a proper family should be constituted clearly influenced condemnation of Nayar practices.<sup>38</sup>

Elite Nayar men educated in the Colleges of Madras and some in England and steeped in a mixture of Tamil Brahmanical and western ideas were embarrassed by the polyandrous unions of their mothers. It was in this context that certain legislations pertaining to inheritance, land reforms and marriage practices were passed by the British and the kings of Travancore and Cochin.

In 1896, the Malabar marriage act was passed followed by the first Travancore Nayar act of 1913 and Cochin Nayar regulation 13 of 1926 all of which recognized Sambandham as legal marriage. This had wide ranging implication for the kinship organization of Nayars and also for the sexual freedom of Nayar women. It also had an impact upon the property rights enjoyed by Nayar women. The above mentioned acts also gave the Nayar male the right to pass half of his self acquired property to his wife and children, if he died intestate. Earlier such property would have become part of the collective property of his matrilineal joint family estate. A number of such acts followed which increasingly expanded the rights of individuals not only over their acquired property but also to seek division of joint family property.<sup>39</sup>

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<sup>38</sup> Bina Agarwal *op.cit.*, p.170.

<sup>39</sup> Robin Jeffery, (1993), *op.cit.* p. 43.

From the nineteenth century onwards 'Tarawadd' property came to be increasingly divided because of a number of reasons. Initially these partitions were between branches with each section continuing to operate as a joint property units; but over the time segments became shallower and narrower. From the 1930's onwards the partitions were more on an individual basis.<sup>40</sup> A number of factors such as the disbanding of Nayar armies, the strengthening of Samabandam unions, the common belief that joint family organization has inhibited the entrepreneurial abilities of Nayar communities etc has contributed to this. The second Travancore Nayar Act of 1925 allowed almost unrestricted partitioning of Nayar Tarawads. Many Nayar leaders carried out an intensive campaign in the early part of the 20<sup>th</sup> century in support of this legislation.<sup>41</sup> Within five years of the enactment of Nayar act of 1925, some 32, 903 Tarawads are said to the partitioned.<sup>42</sup>

Similar acts which promoted the partition of 'Tarawads' were enacted in Malabar and Cochin in 1933 and 1938 respectively; the former allowed the legal partitioning of the 'Tarawad' into matrilineal segments and latter allowed partitioning on an individual basis. With the further passing of the Kerala Hindu joint family system (abolition) Act of 1976, the corporateness of the family was no longer legally recognized. The act deemed all family members

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<sup>40</sup> Bina Agarwal *op.cit.* p. 173

<sup>41</sup> *ibid* p. 174

<sup>42</sup> Fuller *op.cit.* p. 135.

with an interest in the Hindu undivided family estate as holding their shares separately as full owners from then onwards. This act struck a final blow to the remnants of matrilineal joint family estates. It also eliminated any advantages that sons may have enjoyed over daughters in the joint family among patrilineal Hindus in Kerala.<sup>43</sup>

The partitioning of Nayar Tarawads as laid down by the above mentioned legislations conferred equal rights on each individual in the 'Tarawad' and women and men in the 'Tarawad' were given equal property rights on an individual basis. Hence the breakdown of the matrilineal joint family system has not considerably affected the property rights enjoyed by women in Nayar community. While in the matrilineal joint family, women had equal legal property rights with their male counterparts when it came to the control of the property legally owned by them, they had very little of it. But with the breakdown of the matrilineal joint family system women started exercising control over it. With the partition of the 'Tarawads' the institution of marriage was strengthened and families were better stabilized. Nuclear families developed and in those nuclear families women had comparatively more decision-making powers over property legally owned by them.<sup>44</sup>

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<sup>43</sup> Sreelekha, *op.cit.* p. 62.

<sup>44</sup> *Ibid.* p. 74.

To conclude, Nayar women had traditionally enjoyed equal legal property rights with their male counterparts. But they had very little control over the management of the property owned by them. But with the enactments of certain legislations which led to the breakdown of the matrilineal joint family system, women have better control over the property owned by them, while maintaining equal property ownership rights vis-à-vis their male counterparts. Hence Nayar women seem to have enjoyed Substantive property rights over their ancestral estate. From here we go on to compare the property rights and empowerment status of Syrian Christian and Nayar women.

## CHAPTER-V

### PROPERTY RIGHTS AND EMPOWERMENT STATUS OF WOMEN IN THE SYRIAN CHRISTIAN AND THE NAYAR COMMUNITY: A COMPARISON

#### Customary laws of inheritance among Syrian Christians

In the early centuries as mentioned elsewhere, the Syrian Christians of Travancore, Cochin and Malabar were said to have followed the biblical law as laid down by Moses.<sup>1</sup> The biblical law prescribed that "If a man dies and has no son, then you shall pass his inheritance to his daughters. If he has no daughter, then you shall give his inheritance to his brothers. If he has no brothers, then you shall give his inheritance to the nearest kinsman of his clan".<sup>2</sup>

In course of time, the customary usages went beyond the biblical prescription, Christian women, whether married or not were excluded from the right to inherit the estates of their fathers; even if they had no brothers and the property was passed on to the male collaterals of the intestate.<sup>3</sup>

The decrees of the Synod of Diamper condemned this practice but Syrian Christians mostly continued these customs. The

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<sup>1</sup> Sebastian Champappilly, *op. cit.*, p.8.

<sup>2</sup> "The Book of Numbers, Chapter 27: Versus 8 – 11" From *The Holy Bible*, Theological Publications, Bangalore, 1993, p. 146 – 47.

<sup>3</sup> L. K. Ananthakrishna Ayyar, *op. cit.*, p. 120 – 22.

patrilocal residence, and patrilineal mode of inheritance prevailing among Syrian Christians complemented and contributed to the discrimination accorded to women in matters of inheritance and succession.

In contrast, the Nayar community had followed the matrilineal mode of inheritance and were accustomed to matrilocal residence. The matrilineal mode of inheritance and matrilocality had a direct bearing upon the customary laws of inheritance and succession among Nayars. The social recognition of 'Sambandhams' (a temporary and flexible sexual relationship between men and women in the Nayar community) is also not unrelated to the customs and practices in that community. These peculiar characteristics of Nayar Tarawad (matrilineal joint family) were at the same time the cause and the consequence of the above mentioned realities.

As per the customs prevalent in the Nayar community, the Nayar *Tarawad* was an independent economic unit, in which its members collectively owned the family property. All the members of the 'Tarawad' whether male or female had equal rights over the property of the 'Tarawad'. Under this system, individuals in the 'Tarawad' were assigned to their mother's lineage or sib or clan and not that of their father's. Women formed the nucleus of the 'Tarawad' and the system of descent was traced through the female

line. Even though, all the 'Tarawad' members had equal claims to maintenance from 'Tarawad' property, no individual members could ask for a share by partitioning the 'Tarawad' unless all the adult members of the 'Tarawad' consented to it.

In this context it is to be noted that women were equal participants with men in joint family decisions like partitioning the 'Tarawad'. But the management of the 'Tarawad' was done by the eldest male member of the family called 'karanvan'. *Karanavan* was an autocrat in the sense that other members of the 'Tarawad' whether male or female had no right to possess anything that formed the 'Tarawad' property in antagonism to the decision taken by him.

When we compare the customs of Syrian Christian community with that of Nayers regarding inheritance and succession we can see that Syrian Christian women were not entitled to have any right over the family property. All that they were entitled to was 'Streedhanam', (A payment made by the father of the bride to the father of the groom). Over the landed assets of the family in which she was born and brought up, a Syrian Christian woman had no right. But the Nayar woman enjoyed equal property rights with her male counterparts over the property of the joint family of which she was a member. Moreover, it was through the female line that the descent was traced and hence she enjoyed

an important position in the family. But the control of the property was not with the individual members of the family. Even so, customary practices placed Nayar women in a better position compared to their Syrian Christian counterparts.

### **Impact of Legal Enactments on the Customs of Nayars and Syrian Christians.**

With the advent of the British, the colonial legal prescriptions were sought to be introduced into the customs and practices of Syrian Christians. The Third Law Commission directed its attention to the preparation of the draft of a law of inheritance and succession, generally applicable to all classes of persons other than Hindus and Muslims. The draft bill, was enacted into a law by the Governor General-in-council as the *Indian Succession Act of 1865* which was later revised as the Indian Succession Act of 1925. The Indian succession act of 1925 became operative in all British Indian Provinces; thus Christians in Malabar came under its purview. But at that time, the Syrian Christian population in Malabar was insignificant and even those present continued to follow their customary law in matters of inheritance and succession just like their co-religionists in Travancore and Cochin. With the establishment of various courts of law for administration of justice in Travancore and Cochin, the customary law was found to be technically inadequate and undefined. It was in this context that the



*Travancore Christian succession Act of 1916* was enacted by the Maharaja of Travancore in consultation with representatives of all denominations of Christians in Travancore. In a similar manner the *Cochin Christian succession act of 1921*, was enacted by the Maharaja of Cochin. Both the laws mentioned above did not recognize equal property rights (on even property rights) for women. As per the *Travancore Christian succession Act*, a woman who had received 'Streedhanam' from her ancestral home had no right to claim a share in her ancestral estate. If a woman had not received Streedhanam she was eligible to get one fourth the share of a male heir or rupees five thousand whichever is lesser.

In Cochin Christian Succession Act, the share allotted to a woman was one-third the share of a male heir. However no ceiling was fixed as in the case of Travancore Christian succession Act. Both the above mentioned laws were enacted in consultation with representatives of Syrian Christian community (Consisting only of male members) and customs, traditions and sentiments of the community were reflected in the above mentioned law.

An examination of the above mentioned laws reveal that women were clearly discriminated against with regard to inheritance of ancestral property. The enactment of laws had not improved the condition of women in the matter of giving them property rights.

The verdict of Supreme Court in Mary Roy case initiated a debate on giving property rights to women in the Syrian Christian community. The court ruled that with enactment of part B states (laws) Act of 1951, the law in force among Christians of Travancore with regard to inheritance and succession was the *Indian Succession Act of 1925* and not the *Travancore Christian succession Act of 1916*. Based on the above verdict the Kerala High Court ruled that the Indian succession Act is the law applicable to Syrian Christians of Cochin and not Cochin Succession Act of 1921. But even the Indian succession act of 1925 contains provisions discriminatory to women. Apart from this the parent can totally disinherit a female heir by registering a will in favour of other male heirs. There are no provisions to check this. The Syrian Christian community has not accepted the verdict in good faith and even now women are not given a share in their ancestral property.

Colonial rule had its impact upon the customs and practices of Nayers Colonial code of conduct changed many of them and altered the kinship organization substantially. A number of legal enactments manifested British notions of morality and justice. In 1896 the *Malabar marriage act* was passed followed by the *Travancore Nayers Act of 1913* and the *Cochin Nayar regulation 13 of 1920*. All the above mentioned regulations recognized 'Sambandham' as legal marriage. A number of other acts expanded the rights of individuals not only over their self acquired property

but also to seek division of joint family property. The *second Travancore Nayar act of 1925* allowed almost unrestricted partitioning of Nayar *Tarawad*. Similar acts which permitted the partitioning of *Tarawad* were enacted in Malabar and Cochin in 1933 and in 1938 respectively. But the above mentioned legal enactments did not deprive Nayar women of the rights they enjoyed over the property of the family. Further, it enhanced their rights at least in certain cases. The *Nayar act of 1913* entitled wives of Nayar men to claim half the portion of the self acquired property of her husband along with her children, while retaining her right to claim equal shares from the family property.

Again, *the Hindu succession act of 1956* was enacted in the post independence period. Though this act is considered to be discriminatory to women in many respects, it contains special provisions for communities that followed *Marumakkathayam* (Matrilineal) customs of inheritance. These provisions endowed women in the matrilineal communities with equal property rights on their ancestral estates. Thus legal enactments in the British period and the post independence period did not deprive the women in the Nayar community of the property rights which they had traditionally enjoyed. With the passage of the *Kerala Hindu joint family System (abolition) act of 1976*, the corporateness, of the Nayar family was no longer legally recognized. It gave individual members the right to claim their share from the family estate. Women were at an

advantageous position in this situation too. On the whole the Nayar women of Kerala has traditionally enjoyed equal legal property rights with their male counterparts. The enactment of legislation in the colonial and post independent period did not deprive them of the rights they enjoyed traditionally. But it has to be mentioned that they did not have absolute control over the property legally owned by them. However, the lack of individual control over the property legally owned was not applicable only to women. It was a characteristic feature of Nayar family organisation. Even adult male members could not exercise their control over property against to the wishes of the 'Karanvan'. But with the legislation of 1976, the individuals (both males and females) could claim their Shares from the family property and exercise their control. This further strengthened the position of women in Nayar community.

Syrian Christian women on the contrary did not have any rights over their ancestral estate. The subsequent legal enactments reinforced the customs of Syrian Christians which denied property rights to women. The introduction of British legal norms by means of Indian Succession Act also did not help. The Supreme Court Verdict on Mary Roy Case (1983) was acclaimed to be a very progressive verdict giving equal property rights to women in Syrian Christian community. But taking into account the context it was given, the loopholes in the Indian Succession act of 1925 (Which was upheld by the verdict), The rigid customs and traditions of the

community, it can be argued that even after the verdict Syrian Christian women do not have substantial property rights in comparison to their male counterparts. Hence land rights for women in Syrian Christian community were substantially less than those available to their sisters in the Nayar Community.

### **Comparison of Empowerment Statuses of Women in Syrian Christian and Nayar Community**

As stated elsewhere, a precise definition of the term 'empowerment' is not available in existing social theory. In a similar manner a comparison of empowerment statuses of women in these communities faces many challenges. Any comparison of empowerment statuses can be possible only through comparing certain indicators that have a bearing on the level of empowerment. These indicators of empowerment have been selected on the basis of the definition of empowerment as 'capacity building' and 'conscientisation'. Since empowerment is also used in the context of 'radical redistribution of power' and 'democratisation', the aspect of 'equality' also has to be taken into account. Hence the level of equality of females in a community vis-à-vis their male counterparts is also taken into account while comparing the empowerment statuses of women in the communities studied here. This aspect has great significance as the term 'empowerment' is most often used in the context of marginalisation of certain social

groups. Hence a mere comparison of the empowerment indicators of women in the two communities would not be adequate to assess the situation effectively. For each indicator, e.g. literacy, education etc., the male-female disparity in one community has to be compared with the male-female disparity of the other community. After all, "women empowerment" arises from the context that women as a social group are marginalised in a male-centric society.

The comparison of the empowerment statuses of women in Syrian Christian and Nayar community, was done by comparing certain selective indicators that have a bearing on the empowerment statuses of women. It is to be noted that the study has its limitations to the extent that some of the indicators that have an effect on the empowerment status are not measurable and others are not available. The researcher has exercised his selectivity in choosing the indicators and to that extent the study has a subjective element.

The researcher has analysed certain indicators that may be taken to reflect the empowerment statuses of women in the two communities. Those indicators are:

- a) Demographic features
- b) Literacy rate of women in two communities
- c) Educational skilled of women

- d) Employment access and rate of employment
- e) Unemployment rate
- f) Mobility of skilled labour
- g) Certain other indicators that have a bearing on women's bargaining power over allocation of domestic resources.

The indicators mentioned above can be considered to reflect the capacity and awareness level of women in Kerala society which is transforming itself from a primarily agrarian economy to a non-agrarian economy. Prestige enjoyed by white collar jobs in Kerala society has to be specially mentioned in this context. Hence women's performance in the tertiary sector deserves special attention. The indicators like education, literacy, employment (especially employment in non-primary sector), mobility, migration, voice with-in the household in the allocation of resources etc reflect the capacity and conscientisation levels of women.

For this purpose the data obtained from a study conducted by the Center for Development Studies (CDS), Trivandrum namely Kerala Migration Study 1998; was used. It was based on a sample Survey that collected information from 10,000 households selected at random from all the 14 districts of the state and it included households from all the 61 Taluks of the state. It collected information on most of the usual personal characteristics and

household characteristics of the sample population. The study classified the sample households in to 7 communities listed below:

1. Syrian Christians
2. Nayars
3. Muslims
4. Ezhavas
5. Latin Christians
6. Scheduled Castes/Tribes
7. Others.

h) To arrive at his conclusions the researcher has used the data on Nayar and Syrian Christian communities selectively. Unless otherwise specified, the data, graphs and Tables provided hereafter are taken from the above mentioned study.

### **Demographic Profile of Various Communities in Kerala:**

#### **Population Size**

The size of the population is one of the most important demographic features of the community. Nayars constitute about 11.9% of the total Kerala population while Syrian Christians constitute about 9.5%. Hence both these communities are comparable in so far as the demographic features are concerned. It is also ironical that the so called dominant communities in Kerala



are numerically weaker than other communities like Ezhavas and Muslims, who constitute 23.4% and 24.1% of the population respectively. (Table 5.1).

**Table 5.1 Total population of Kerala by Communities (2001)**

Community	Total Population			Percent	F/1000M
	Males	Females	Total		
Syrians	1482	1536	3018	9.5	1036
Latins	1433	1477	2910	9.1	1030
Nayars	1840	1944	3784	11.9	1057
Ezhavas	3602	3847	7449	23.4	1068
Muslim	3645	4028	7673	24.1	1105
SC/ST	1517	1552	3069	9.6	1023
Others	1961	1975	3936	12.4	1007
Total	14854	15585	31839	100.0	1058

### Sex ratio

Table 5.1 also gives the sex ratio of various communities in Kerala. As per the table the sex ratio of Nayar community is higher than that of Syrian Christians. Syrian Christian community has a comparatively lower sex ratio of 1036 in comparison to the sex ratio of Nayars i.e. 1057. In a closed community the sex ratio of the population is a good indicator of sex differentials in mortality. But in Kerala migration differentials have a larger impact than mortality differentials.<sup>4</sup> Hence the higher migration rate of Syrian Christian women could be the possible reason for the lower sex ratio of

<sup>4</sup> K.C. Zachariah, *op. cit.*, p. 145.

Syrian Christian. This is validated by the data obtained from the table; for example, Muslim women has the highest sex ratio of 1105. But that is no reason to conclude that Muslim women have the lowest female mortality rate. If we consider other factors like, education, fertility, age at marriage etc. which have an impact on female mortality rate we can see that performance of Muslim women are far below their Syrian Christian and Nayar sisters. The higher sex ratio of Muslim women can be attributed to the higher rate of male migration in the Muslim community. Like wise, the lower sex ratio of Syrian Christians can be attributed to the higher rate of female migration among Syrian Christians; most of these are migrants of skilled labour as we shall see later. Hence, the above mentioned phenomena turn out to be a positive empowerment indicators for Syrian Christian women.

### **Age at Marriage**

Historically, Syrian Christian families had one of the lowest ages at marriage in Kerala. The situation at the end of the century is totally different. The Syrian Christians have the highest proportion of unmarried women in the age groups of 15-19 years and 20-24 years.<sup>5</sup> While 58% of Syrian Christian women between 20-24 years were single, only 52% of Nayar women and 18% of

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<sup>5</sup> *Ibid.*, p. 147.

Muslim women in that age group were unmarried. The state average was 38%.

Higher age at marriage can be considered as a positive indicator as far as empowerment status is concerned. Higher age at marriage will indicate higher educational status. This is validated by the data provided in Table 5.3 regarding the educational status of women. In addition it also has a positive effect as far as fertility, maternal mortality and other indicators. So Syrian Christian women seem to be better placed than Nayar women when the age at marriage is taken into account.

### **Literacy**

Literacy is a major indicator that has an effect upon the empowerment status of women. As per the Travancore Census report 1941 (Table 5.2) all sections of Syrian Christians (Marthoma, Jacobite, Syrian Catholics) had comparatively higher literacy rate for females than that of Nayar community. Another point to be noted is that while 73% of males in the Nayar community were literate, only 50.3% of females were literate. Even among Syrian Catholics, who had a male literacy rate of 67.1% (which is lesser than Nayar male literacy), the female literacy rate of that community was higher than that of the Nayar community.

From the data given, we may conclude that Syrian Christian women had comparatively higher literacy rate than Nayar women

even as early as 1941. With the better performance of the Christian community in running educational institutions the present case is also not very different from that.

**Table 5.2 Literacy rate among Nayers and Syrian Christians**

Community	Literacy rate (%)		
	Male	Female	Total
Nayars	73.4	50.3	61.7
Morthoma	77.4	63.8	70.7
Jacobite	71.6	58.1	62.5
Syrian Catholics	67.1	56.4	61.9

Source: Travancore Census Report 1941, p. 162.

### **Education**

The migration study 1998, used two measures to compare the educational achievement of communities. The first one is the index of educational level, which is a weighed average of the distribution of population by educational level. The second measure was the proportion of population who had passed the secondary level (including those who had a degree). The data obtained in this regard is given below (table 5.3)

**Table 5.3: Measurement of educational achievement By community**

Community	Index of Education			Percent with secondary education of a degree		
	M	F	Total	M	F	Total
Syrians	7.96	7.86	7.91	37.98	38.35	38.17
Latin	7.04	6.91	6.97	24.75	25.66	25.21
Nayars	8.22	7.65	7.93	40.58	38.31	37.85
Ezhawas	7.20	6.83	7.01	23.66	23.96	23.81
Muslims	6.38	5.85	6.10	14.62	11.24	12.84

### **Index of Education**

The data on the index of education reveals that Syrian Christian women have a comparatively better index of education (7.86) than their Nayar counterparts (7.65). Nayar males have a comparatively higher index of education (8.22) than Syrian Christian males (7.96). But when it comes to females Syrian Christian women are better than Nayar women. So the position of Syrian Christian females vis-à-vis their male counterparts is much better than that of Nayar females, vis-à-vis their male counterparts. So the position of Syrian Christian women seems to be much better than Nayar women when we compare the index of education of these two communities.

The percentage of women with secondary education or degree can be considered as another measurement of educational achievement. As per the data, 38.35% of Syrian Christian women have secondary education and above while 35.31% of Nayar women have it. Nayar males have the highest percentage of secondary and higher education (40.58), while Syrian Christian males have 37.58% which is lower than their female counterparts. From the data it can be inferred that Syrian Christian women have shown better performance in this regard in comparison to Nayar women. Again the position of Syrian Christian women vis-à-vis their male counterparts is much better than that of Nayar women vis-à-vis their male counterparts. Hence on both counts Syrian Christian women are better off. Again Syrian Christian women show better performance than Syrian Christian males and this indicates more than equal access to secondary education and above.

On the whole the performance of Syrian Christian women in literacy, index of education and higher educational achievements is better than Nayar women.

### **Employment Status**

Access to employment and the Status of employment has a direct effect on the empowerment status of women. Hence this indicator is analysed under three categories:

1. rate of unemployment

2. percentage of participation in government jobs
3. percentage of participation in private sector employment.

Table 5.4 gives the data regarding employment status of Syrian Christians and Nayars. From the table we can infer that unemployment rate among Syrian Christians are comparatively lower (30.3) than that of Nayars (33.3).

Regarding participation of women in government sector employment, we see that Syrian Christian women perform better (22.3) than Nayar women (22.1). Apart from that, we can also infer that the position of Syrian Christian women vis-à-vis their male counterparts is much better than that of Nayar women vis-à-vis Nayar men. Among Syrian Christian women 22.3%, are working in government sector while only 9.6% of men in Syrian Christian community do so.

Coming to employment in Private sector, we can infer from the table that position of Nayar women are slightly better (17.2) than their Syrian Christian Sisters (15.9). But another thing to be noted is that the performance of Syrian Christian females are better than Syrian Christian males (11.5), while the performance of Nayar females are far below than Nayar males (30.0). Though the performance of Nayar women vis-à-vis their male counter parts is

not as good as the performance of Syrian Christian women vis-à-vis Syrian Christian men.

**Table 5.4**

**Employment Status of Syrian Christians and Nayars**

Employment Status	Community			
	Syrian Christian		Nayar	
	M	F	M	F
Unemployment rate	7.6	30.3	10.9	33.3
Employed in Govt. sector	9.6	22.3	17.8	22.1
Employed in private sector	11.5	15.9	30.0	17.2

Hence, we can conclude that in terms of the three indicators of employment, Syrian Christian women perform better than Nayar women, not only in comparison among themselves but also when compared on the basis of performance vis-à-vis their male counterparts. In government sector which provides comparatively higher gain in employment, Syrian Christian women over perform compared to Nayar women. Only in private sector employment Nayar women are slightly superior. In both these cases gender disparity is comparatively higher among Nayars where as Syrian Christian women seems to perform better than their male



counterparts. Again Unemployment rate is also lower among Syrian Christians.

### **Mobility and Migration**

Mobility and migration have a bearing on the educational and occupational patterns of the social groups under study. The educational standard of the migrants reflect their employment status in the place to which they have migrated. So the educational status of migrants were analysed. As per the data given in Table 5.5 we can infer that Syrian Christian females perform much better than their Nayar sisters. The percentage of Syrian Christian women migrants with secondary education or higher is 75.4% while that of Nayar women migrants is only 38.5%. Syrian Christian females perform even better than their male counterparts.

The percentage of Syrian Christian males with secondary education or above is 75. But among Nayar women migrants there are only 38.5% with secondary education or higher while the percentage of Nayar men migrants with secondary education or higher is 69.3%. Hence Syrian Christian women have better indicators regarding educational qualifications of migrants, in comparison to Nayar women.

**Table 5.5 Percentage of Migrants with secondary education  
or higher qualification**

Community	Percentage of education	
	M	F
Syrian Christian	75	75.4
Nayar	69	38.0
Latin	46	31.0
Muslims	23	16.1
Ezhavas	46	8.3

Employment mobility can be interpreted as an indicator of women's social status and empowerment. It is quite likely that there is less employment mobility in a society where women do not enjoy rights to exploit their potential under the burden of social customs, in comparison to other societies where women have rights to decision making concerning their interests and privileges and where economic dependency of women is less. In order to assess how employment mobility differs between Nayar and Syrian women, the researcher has undertaken a survey of 10 reputed hospitals in Delhi. In all the above mentioned hospitals, salary and service conditions are considered to be good. Three out of them are government hospitals where the salary and perquisites are excellent. (Rs. 9000 and more to begin with).

All the above mentioned hospitals employed nurses who had qualifications recognized by the Nursing council of India. More than 70% of Nurses in these hospitals migrated to countries like U.K., U.S.A. and other Gulf countries where they could command excellent remuneration. For example, it was found that more than 60% of Nurses from Escorts Hospital were migrating to U.K. or U.S.A., where they got a remuneration of 1 lakh rupees or more in the beginning.

In order to assess the difference in employment mobility between nayar and Syrian Christian women in this sector, information on number of Nurses from these two communities have been collected and tabulated. (Table 5.6). To compare the mobility factor, an index have been created on the basis of data obtained from the table.

Mobility Index:

$$\frac{\text{No. of Nyars Nurses/ No. of Syrian Nurses}}{\text{Total female population of Nayars/ Total female Population f Syrians}}$$

$$MI = \frac{\left( \frac{\text{N. Nurses (Nayars)}}{\text{N. Nurses (Syrian)}} \right)}{\left( \frac{\text{Female Population (Nayars)}}{\text{Female Population (Syrians)}} \right)}$$

Normalizing the ratio of Nayers to Syrian Nurses in the hospital by corresponding ratio in the population of Kerala gives better representation of employment mobility in cases of Nurses from both these communities. The interpretation of mobility index is as follows. If mobility index is greater than one, this suggests that Nayar Nurses are more mobile than Syrians taking into account of their population proportion in Kerala. If it is less than one, we can infer that Syrians are relatively more mobile.

From the table (4.6) it can be seen that the number of Nayar nurses is very small in absolute terms as well as to the number of Syrian nurses. There are only 3 hospitals in Delhi where number of Nayar nurses is at least 5% of total nurses. On an average, Nayars account for only 3 percent of total Nurses for all the sample Hospitals: as the mobility index is considerably below 1, it indicates that in proportion to the population, Syrian women are more mobile than Nayar women.

**Table 5.6 Mobility index for Nayars and Syrian Nurses  
(Women Nurses) in Selected Hospitals in Delhi**

Name of Hospital	No. of Nurses			Nayars as % total	Mobility Index
	Nayar	Syrian	Total		
Escorts Heart Institute	14	900	914	1.53	0.012291
St. Stephen	1	601	601	0.17	0.001317
Vimhans	1	164	165	0.61	0.004818
Appollo	10	1100	1110	0.90	0.007183
G.B. Pant	75	100	175	42.86	0.592593
V.V. H.F.	2	25	27	7.41	0.06321
Safdarjung	5	600	605	0.83	0.00658
Sitaram	3	60	63	4.76	0.039506
Holy Family	30	400	430	6.98	0.059259
AIIMS	30	1170	1200	2.56	0.020793
All Hospitals	171	5089	5260	3.25	0.02655

**Possession of selected consumer durables**

Possession of certain types of consumer durables by the household can be an indication for women's bargaining power within the household regarding allocation of resources. It has a bearing on women's power of decision making within the household at least in the economic sphere. Table, 4.7 shows that percentage of Households possessing a set of consumer durables out of this 4

consumer durables such as water pump, Fridge, gas stove and washing machine were selected specifically because it is found that women gain more out of possession of these consumer durables.

The selection of these domestic devices are based on the premise that in Kerala society genderwise division of labour does exist (just as in other places) and all these consumer durables are related to the domestic sphere of labour in which women have a greater part to perform.

**Table 5.7 percent of Households Possessing consumer durables:**

Items	Percent of Households Possessing them				
	Syrian	Latin	Nayars	Ezhavas	Muslims
Water Pump	43.2	26.3	35.1	25.2	35.4
Fridge	38.2	17.5	26.6	15.5	24.0
Gas stove	41.7	20.6	29.9	14.8	21.9
Washing Machine	13.8	7.1	8.1	5.0	7.5
Television	55.5	42.8	55.0	40.0	31.0S

The data reveals that 43.2% of Syrian Christians households possess a water pump while only 35.1% of Nayars are having it. While 38.2% of Syrian Christian households had a fridge while only 15% of Nayars have it. The percentage of Syrian Christian

households having a gas stove is 41.7% while, the percentage of Nayar households having the same is only 29.9%. Again only 8.1% of Nayar households have a washing machine while 13.8% of Syrian have it.

The data reveals that Syrian Christian households possess certain consumer durables which are more beneficial to women. This can be an indication of their bargaining power in allocating resources useful for them. It is to be noted that in certain consumer devices where women and men are to gain equally the condition is different. For example, 55.5% of Syrian Christian households have a Television and 55% of Nayar households also have it. This reveals the difference in the allocation of resources for utilities within the households.

There is another argument that the possession of consumer durables by Syrian Christians is perhaps because of their higher foreign remittances and development of consumeristic tendencies due to migration. But we cannot agree with that argument as the Muslim community which has the highest foreign remittances among all the communities in Kerala<sup>6</sup> do not exhibit similar tendencies. The possession of the above mentioned consumer durables by Muslims households is very low in comparison to Syrian Christian (Table 5.6).

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<sup>6</sup> *Ibid.*, p. 144.

Hence we can deduce that Syrian Christian women exhibit comparatively higher bargaining power than Nayers within the households with regard to decision making in economic matters.

Certain indicators that have a bearing on the empower status of women were analysed so far. Those indicators included demographic features, literacy rate, index of education, higher educational achievements, employment status, mobility and migration and the possession of consumer durables that indicate women's bargaining power over the allocation of resources. In all the indicators mentioned above Syrian Christian women are found to be better placed than Nayar women. So, we can conclude that the empowerment status of Syrian Christian women are higher than that of their Nayar counterparts. Apart from this the level of equality of males and females with regard to each of this indications were also monitored. In that case too we found that Syrian Christian women perform better than their Nayar sisters. Surprisingly the performance of Syrian Christian women in many cases were higher than their male counterparts while performance of Nayar women were much below than that of Nayar men. It is from this point that we go on to draw our conclusions on the impact of property rights on empowerment status of women.



## **CHAPTER-VI**

### **CONCLUSION**

The empowerment of women is considered to be one of the most important goals of the Indian society. Even in the absence of a consensus as to the precise meaning of empowerment, policy makers and social activists claim to pursue it passionately.

Social science theory has not thus far provided a conceptually sound definition of the term 'empowerment'. But certain elements are commonly accepted to be associated with it. Empowerment is all about giving power to certain imarginalised sections of the society. The concepts of 'equality' and 'freedom' can also be considered vital to the process of empowerment. Assessment of empowerment status also appears to be a difficult process. It is however generally accepted that certain indicators that represent the participation level of a social group can be used to compare the levels of empowerment of a social group with other social groups. Some of these indicators are literacy, index of education, index of employment, index of mobility, demographic indicators, etc.

As part of the empowerment process mentioned above, there have been ongoing campaigns for giving property rights and especially land rights for women. Some people argue that, in any agrarian society, giving equal land rights to women is the single most important factor in determining the empowerment status of

women. A comparative study of Syrian Christian and Nayar women in Kerala throws light on the impact of property rights on the empowerment status of women.

On analysing property rights for women in Syrian Christian community, it is found that customs and practices prevalent in Syrian Christian community did not recognize property rights for women. But a payment (Streedhanam) was made to the groom or to the father of the groom at the time of marriage of a girl. This payment was recognized as the share of the girl in the ancestral property. Apart from this, women had not enjoyed much by way of property rights. Giving a girl child a share in her ancestral property (especially land) was not recognized as a custom in the Syrian Christian community.

The advent of colonial rule could not alter the customs and practices of Syrian Christians. Colonial legal enactments did not change the situation in general. The Travancore Christian Succession Act (1916) and the Cochin Christian Succession Act (1921) maintained the status-quo and gave legal validity to the customs and practices of Syrian Christians. It was only in 1983 (with the Mary Roy Case) that these customs and practices came to be questioned. The Supreme Court verdict in the above mentioned case upheld, the *Indian succession Act of 1925* (which hitherto was not applicable to Syrian Christians of Travancore and Cochin as the

law of succession of Syrian Christian in Kerala. It gave a moral victory to Syrian Christian women in the sense that they were made eligible to inherit the property of their father when he died intestate. The impact of the Mary Roy case on property rights of Syrian Christian women is debatable because even after the verdict, it is possible to totally disinherit a female heir even as per the provisions of the law. Hence one can rightly say that Syrian Christian women had practically no rights over the estates of their ancestors, both in term of customs of the community and also in terms of the existing legal enactments.

But the condition of Nayar women was quite different. Nayars by tradition had followed the matrilineal mode of inheritance and descent. This gave them a pivotal position in the joint family (*Tarawad*). Nayar women from the very beginning had enjoyed equal property rights (especially land and immovable property) with their male counterparts.

The customs and traditions of the community did not discriminate against women enjoying equal (sometimes even more than equal) property rights with Nayar men. Legal enactments in the colonial period led to the disintegration of the Nayar joint family (*Tarawad*), but women's property rights were not encroached upon. Laws in the post independence period, especially *Hindu succession Act 1956* allowed special provisions for those communities that

followed matrilineal mode of inheritance. Thus even the *Hindu succession Act of 1956* did not substantially affect the property rights hitherto enjoyed by women in the Nayar community. Even though Nayar women had enjoyed legal property rights, the control over the property was exercised by the eldest male member called the 'karanavan'. But this cannot be seen only as an indication of discrimination against women though it was a characteristic feature of Nayar family organisation. Males other than the 'Karanavan' in the joint family did not exercise any control over the management of property. But in certain important decisions like the partition of 'Tarawads' (joint family) all the adult members of the 'Tarawad' had equal decision making powers. Women were not discriminated against in this process and had an equal voice with that of men. With the passage of the Kerala joint family (Abolition) Act of 1976, the corporateness of Nayar 'Tarawads' was no longer recognized, and any individual member could acquire his/her share from the family property on demand. This was beneficial to women to the extent that they were able to exercise control over the property legally owned by them.

When we compare the above mentioned communities we find that women in Nayar community enjoyed equal property rights with their male counterparts while women in the Syrian Christian community had practically no property rights. The customs and practices of the Nayar community as well as the legal enactments

pertaining to the community provided that women should be given equal property rights with men. The customs and practices of the Syrian Christian Community as well as legal enactments pertaining to the community denied property rights to women in the Syrian Christian community. Hence our first hypothesis which states that women in Nayar community enjoy more property rights than women in Syrian Christian community is validated by this study.

However, when we go on to compare the empowerment status of women in these two communities we see a different picture. To compare the empowerment status of women in these two communities, certain indicators that have a bearing on the empowerment levels of women were compared. They included demographic characteristics like sex ratio and age at marriage, and other indicators, such as literacy rate, index of education, index of higher educational achievements, unemployment rate, employment in government and private sectors, mobility and migration. On almost all the indicators mentioned above the performance of Syrian Christian women, was found to be much better. Apart from this the levels of equality between males and females in the above mentioned communities, with regard to each of these indicators was also compared. The Syrian Christian community exhibited a very high level of equality with regard to each of these indicators. The level of equality between males and females in the Nayar community was found to be comparatively very low. Surprisingly

the performance of females in the Syrian Christian community with regard to many of the above mentioned indicators were higher than their male counterparts. But women in the Nayar community performed far below their male counterparts on all the indicators. Hence we may conclude that the empowerment status of women in the Syrian Christian community is better than that of women in the Nayar community. Hence our second hypothesis is nullified by the study.

The conclusion drawn from the study have wider implications. Property rights (especially land rights) need not necessarily empower women in all societies that have an agrarian background. Syrian Christians and Nayars were the most dominant land owning communities in Kerala in the beginning of the 20<sup>th</sup> century. In addition to this Nayars were the most prominent community in South India that had followed the matrilineal mode of inheritance, which provided a pivotal position to women in matters of succession and descent. Nayars were perhaps the only community in Kerala which had provided a substantial amount of sexual freedom to women. The loose affinal ties called 'Sambandham' are an indication of this. The most crucial point is that from the very beginning Nayar women had enjoyed equal property rights with their male counterparts.

Syrian Christian on the other hand had at no point of time given property rights for women (if they could help it), let alone, equal property rights. The community was patrilineal in nature and had accorded minimum sexual freedom to women. Marriage was a sacrament for Syrian Christians and extra-marital relations were strongly condemned.

Notwithstanding all this, when we examine the situation towards the end of 20<sup>th</sup> century it is contrary to what was expected. Syrian Christian women out-perform Nayar women on all indicators of development such as demographic indicators, literacy, educational index, higher education, empowerment, mobility, etc. On all the indicators of development the level of equality between males and females in the Syrian Christian community was much higher than the Nayar community. The Nayar Community on the other hand had transformed itself from a matrilineal to patrilineal community towards the end of the century. Even the degree of sexual freedom that women had enjoyed was completely lost. Despite the demand of women to have regular salaried employment, Nayar women were discouraged from pursuing the professions like Nursing, (Which had good employment prospects) because of the social stigma associated with the profession, as one in which women are considered to be sexually vulnerable.

All this proves that property rights need not be the single most important factor that enhances the empowerment status of women in all societies. Other factors such as literacy and education can play a greater role in raising the status of women. In fact the only advantage that Syrian Christian women had over their Nayar counterparts was literacy and education. Travancore census reports in the second quarter of the century reveal this. This was so because of the active involvement of Christian church in providing education to males and females alike. This raised the condition of women in the Syrian Christian community, so much so that they even began to question the discrimination practiced against them in matters of inheritance and succession and the Mary Roy case is the best example of this. The mobilisation of Christian women in favour of the verdict also indicates this.



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