

Judgement Confirmed

The Supreme Court has rightly struck down the challenge filed by the Kerala government against the retrospective application of its landmark ruling in February this year when a two-member bench repealed the Travancore Succession Act of 1916. Applicable to Christian women in the Travancore region, this act had deprived daughters of their full share of father's property in the case of intestate deaths. They could receive either Rs. 5000 or one-fourth the son's share whichever was less. The Supreme Court judgement not only restored equality of inheritance but made it retrospective from April 1952. The Kerala government, no doubt pressured by many of the most powerful churches in the state, did not oppose the ruling as such but argued that it should not be made retrospective because this would lead to enormous difficulties in that it would entail reopening inheritance cases and would complicate financial transactions of various kinds in which land had been given as collateral. It is possible that the judgement will create some difficulties in practice. But some practical inconvenience cannot be a reason for denying justice.

In any case, the Supreme Court had little choice but to confirm its earlier judgement. The February judgement did not repeal the Travancore act on the grounds that it fell foul of the principle of equality between the sexes. A bold step of that kind would, of course, have had far reaching implications regarding the very existence of separate personal laws and the deprivation of the rights of women belonging to the minority communities. The Supreme Court instead confined itself to affirming that the Travancore Succession Act was superseded by the 1951 Indian Succession Act. Retrospective application was thus logically granted from the date stipulated in that Act. The uniform application of the Indian Succession Act has thus been extended. The judgement should strengthen those women who are not covered by the Act because of separate personal laws, to oppose prevailing inequalities by taking recourse to secular laws. But the larger dilemma of securing full and uniform sexual equality in law remains. So far, the general approach has been partial, piecemeal and full of compromises. Advances on one front have often been offset by regression elsewhere. Thus marriage and divorce for Christians is still governed by the Indian Christian Marriage Act of 1872 which stipulates extremely restrictive and unequal conditions under which Christians can divorce. The irony is that the British who brought in this legislation have in their own country long ago liberalised their laws in this regard, while legislation that is anachronistic in the extreme continues to prevail here.