

# Verdict dilemma for Christians

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WITH the supreme court having rejected the Kerala government's review petition against retrospective application of its February 24 verdict repealing the Travancore Christian Succession Act, (1916), attention has turned to possible ways of overcoming certain practical difficulties posed by it.

One of them is to make the necessary legislative amendment to exempt partition of property and related transactions carried out before February 24 from the purview of the judgment. This can be done by either parliament or the state assembly, but in the case of the latter the relevant legislation will need the President's assent.

The Kerala government is yet to take a decision in this regard, pending detailed discussions on legal and other aspects.

While the verdict has been hailed widely as one aimed at ending discrimination against women, some legal experts have pointed to the complications stemming from enforcing it with retrospective effect from April 1, 1951.

## LEADERS SILENT

However, discussion on this issue has so far been limited, even within the Christian community. Religious leaders have, by and large, remained silent. The government may prefer to wait until all the aspects concerned are debated extensively, possibly throwing up useful suggestions.

According to the state law minister, Mr. K. M. Mani, the judgment can create numerous problems. "Once matters settled finally are re-examined, many will have to part with property in their possession. A number of others will suffer financially. Such a development will affect considerably the decisions taken in recent years in respect of surplus land and tenancy as well as the law governing indebtedness," he says.

The verdict "will also unsettle the succession procedures followed for a long time and transfer of property and other transactions carried out on their basis."

By declaring that the Travancore act became inoperative following the

enforcement of the part 'B' States' Laws Act, 1951, the supreme court has nullified partitions and other transactions carried out during the past 35 years in regard to property left by hundreds of men who died without writing wills. These can now be challenged in courts by their heirs and others concerned.

As per the verdict, the Indian Succession Act (1925), which confers equal rights on daughters and sons to paternal property in case of intestate death, will apply to such transactions.

Many of these transactions had been carried out on the basis of the judgments of the Madras high court and the Travancore-Cochin high court holding that the Travancore Succession Act survived the part 'B' States' Laws Act, 1951.

The Indian Succession Act (ISA), has for long been in force in the Malabar region. The Cochin Christian Succession Act, 1921 has not yet been challenged, but Christian families in the Cochin region will also be covered by the ISA following the supreme court verdict.

## WOMEN'S SHARE

The Travancore act, struck down by the supreme court, was indeed discriminatory against women. A daughter was entitled to only one-fourth of a son's share, subject to a maximum of Rs. 5,000.

The Cochin law is a little more "generous." A daughter is eligible for one-third of a son's share, without any limit.

As for widows, the Travancore act provided only for life interest, co-terminable with death, in the estate of their husbands. Under the Cochin law, a widow has absolute right over two-thirds of the share of a son. (Under the I.S.A. she has an absolute right over one-third of her husband's estate).

Women, who feel aggrieved at having been denied their due share because of the division of property as per the Travancore act, can now approach the courts to seek redress. They can do so even if the property which ought to have come to them in accordance with the I.S.A. is at present in the possession of some one outside the family.

But such claims will be subject to certain restraints. For instance, a per-

son in possession of a piece of property continuously for more than 12 years can raise the plea of "adverse possession."

Since the I.S.A. does not recognise dowry, daughters who were married after payment of dowry can claim a share in their father's property. So can spinsters, including those who have become nuns.

The retrospective effect of the verdict may also raise some problems relating to the disposal or mortgage of property inherited under the Travancore law. Of course, some of these can be solved by securing "release deeds" from the women concerned, declaring that they have no longer any right to the property in question. While this may pose no difficulty in some cases, there might be friction in others.

## REOPENING OF CASES

As far as the government is concerned, the judgment may necessitate the reopening of cases pertaining to land declared surplus under the Land Reforms Act. The declarations were made on the basis of possession as on January 1, 1970.

If women's rights as per the I.S.A. are taken into account, many families would have had no surplus land. Since the government has already distributed most of the surplus land among the landless and others, reopening the cases will pose a big headache.

Apart from legal complications, the verdict could strain relations among family members. But so far, there has been little evidence of such tension. Most people seem to realise that staking claims on the basis of the verdict, especially in view of the prevalence of the dowry system despite the anti-dowry law, will create unnecessary friction.

It is pointed out that in many cases, the amount given as dowry (including jewellery) exceeds the share that a woman would have got as her share even under the I.S.A. Also, claims will inevitably lead to counter-claims.

The problem was aptly illustrated in a cartoon in a vernacular weekly. It shows an angry husband closing the door after sending away his reluctant wife to her home to claim her share. Soon there is a knock on the door, and in walks his sister demanding her share!