

Inheritance of Loss: Dowry among the Syrian Christians

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Abstract

This paper focuses on the inheritance rights of the community with special emphasis on the women and the system of dowry as practiced. The paper tries to trace this custom through historical sources from the time of the Synod of Diamper to the present. The paper is divided into two parts. The first part will trace the historical roots of the inheritance laws and dowry practices of the community. It is here that the Decrees of the Synod of Diamper and the Hudaya Cannon will be discussed. In the second part the palm leaves of the Kuruppampady Church and the Nadama Church will help map the practices of dowry in the 19th century. The Kalpanakalum Niyamangalum of 1879 will further throw light on this. The argument here being that as far as the women were concerned, the practices of dowry and inheritance that was crystallized in the 19th century and which continues in the community is an inheritance of loss. The paper concludes by looking at the contemporary scenario along with the famous case of Mrs. Mary Roy. Though a protracted legal fight for equality was waged, dowry still continues to be practiced as a mode of disinheritance.

Keywords: Dowry, Synod of Diamper, Hudaya Cannon, Wedding Gift, Bridal Gift, Disinheritance.

Introduction

The Syrian Christian community of Kerala dates back to the early centuries of the Christian era. The community by the end of the medieval period had increased in size and spread to the hinterlands from the coast and slowly by the 19th century had become an agrarian community. The community by this time had got moulded into the political, social, economic and cultural fabric of Kerala society. The community though integrated to the local was at the same time part of the Syrian ecclesiastical structure. It was with the coming of the Portuguese that tumultuous changes occurred within the community.

This paper focuses on the inheritance rights of the community with special emphasis on the women and the system of dowry as practiced.

The paper tries to trace this custom through historical sources from the time of the Synod of Diamper to the present. The primary sources used include the palm leaf manuscripts from the St. Thomas Jacobite Church Parur, St. Mary's Jacobite Syrian Church, Kuruppampady and St. Mary's Jacobite Church, Nadama. To understand the provisions of the Hudaya Cannon secondary sources have been used as also in the case of the Decrees of the Synod of Diamper. The paper is divided into two parts. The first part will trace the historical roots of the inheritance laws and dowry practices of the community. It is here that the Decrees of the Synod of Diamper and the *Hudaya* Cannon will be discussed. In the second part the palm leaves of the Parur Church, Kuruppampady Church and the Nadama Church will help map the practices of dowry in the 19th century. The *Kalpanakalum Niyamangalum* of 1879 will further throw light on this. The argument here being that it was in the 19th century the crystallization of the present day inheritance and dowry practices happened within the community. The paper concludes by looking at the contemporary scenario along with the famous case of Mrs. Mary Roy.

I. Dowry, Bridal Gift, Marriage Portion and Wedding Gifts

The practice of 'Dowry' or '*Stridhanam*' is a practice that can be traced throughout India. It was also found in Europe from the ancient period. In fact it will not be wrong to say that dowry was the method by which the women were given their inheritance from her natal family among the followers of the patrilineal system of descent and inheritance. In Europe and the western world this system went out of practice by the end of the 20th century as a result of the industrialization and drastic changes in the socio-cultural sphere. But in the case of India, the system continues to be prevalent in various guises even today.

In Kerala the system was prevalent only among the upper caste patrilineal societies like the *Nambutiris* but as the major sections of the society including the *Nairs*, some of the *Tiyyas* and the *Moppilas* followed the matrilineal system of descent and inheritance this system was not practiced. As we see from historical sources the practice seems to have been prevalent among the Nazaranis or the Christians of Kerala. Inheritance and the practice of dowry is inextricably intertwined with each other among the Syrian Christians even now though terms like 'share' is being used.

One of the earlier references of this practice is from, Penteado, a Portuguese, when he visited the Christians for the first time learned that generally the parents of both bride and bridegroom contented themselves by giving their children in marriage together with dowries and by each giving a feast for one day. (Mundadan, 1970: 175)

Synodal Decrees on Dowry and Inheritance

The Decrees of the Synod of Diamper is another major source of information in this regard. The Synod which started on 20th June 1599 saw the enactment of Decrees of varying nature. It was on the eight day that Decrees regarding the Reformation of customs took place. (Zacharia, 1994: 31-2) The Decree XIV of Session IX approved, “of the laudable custom of this diocese of men’s giving tenth part of their wives’ portion, when married to the church as also making a repartition of the said alms betwixt the fabric of the church and the priest thereof... custom does not obtain all over the diocese, and especially the southern parts... command all people to confirm themselves to the same... no reason ... why it should not be established all over.” (*Ibid*, 208-9) Thus it is clear that on marriage, the women were given a portion of wealth from her natal household to her husband’s household. And a part of it was given to the church. But it has to be noted that this custom was followed only in the southern parts. The Portuguese who found this to be profitable for the church urged not only its the continuation, but also its extension to the entire community. Going by records of the later period one can see that this soon came to be practiced by the community as a whole.

As regards laws of inheritance are concerned, Decree XX of Session IX talks of an “unreasonable custom... that the males only inherit their fathers’ goods, the females having no share at all thereof; and that not only when there are sons, but when there are daughters only, and they unmarried, and many times infants, by which means great number of them perish and others ruin themselves for the want of necessaries, the fathers’ goods falling to the males next in blood....Synod declare this custom as unjust and that the next to kin have no right when there are daughters to inherit ... neither is it lawful for the males to divide the estate among them, without giving an equal portion to the females; ...Synod ...commanding all... as law being a son deny to give portion to his sisters... the prelates ...shall compel by penalties, censure and excommunication until such time as they shall pay an effectual obedience and shall make a restitution.” (*Ibid*, 211-2.) Thus we see that the general practice among the Syrian Christians was in keeping with

the patriarchal societies where inheritance was being handed down through the sons while the daughter was given only a portion at the time of marriage. This was carried to the extent that even in the absence of sons, the daughters had no right to inherit her ancestral property.

The Syrian Codes

This brings us to the question of inheritance rights in the Syrian tradition. It is not accidental that the first translation of the chapter on inheritance rights of the Hudaya Canon that was translated by Rev Konattu Mathan Kathanar came out in the *Jeeva Nikshepam* magazine in 1908. (Report of the Travancore Christian Committee, henceforth RTCC, 1912:8) Litigations had started coming to the courts of the land after 1860's (*Idem.*) on various issues reflecting the fact that by then the community had become landed and they were looking out for opportunities to increase their landed wealth. The amount brought in as dowry thus assumed much importance.

On looking at the *Nomocannon*, one finds that the daughter and wife always inherited lesser amounts than the son. In the case of the husband's death, if there are no issues the wife gets half of the husband's property as, 'the woman was created as a helper to the man' and the other reason given being was that even in the case of offerings half the amount was fixed for the woman when compared to the man. (Konnat, 2000: 156.) These reflect the influence of the Judaic tradition. Again the canon also mentions that in case of the man left behind children, then wife gets half and 1/8th of each of the child of her husband but if there were no son then her share would be 1/4th. If she was childless then she would only get 1/4th of the property the rest will go to the husband's relatives on the paternal and maternal side. If there were no relatives, then 2/3rds would go to the church and 1/3rd to the wife. (*Idem.*) With regards to the right of inheritance of the children, the Roman Law seems to have been the basis of inheritance devolving on the paternal side. In the case where the man left behind wife and sons, then the division of property would be 1/9th to the wife and rest to the sons. In case he had daughters only, then the wife would get 1/5th of the property while the rest of the four parts would devolve on the daughters. In the case of wife assets on her death the husband would get 1/5th and the sons 1/4th each if they had only sons. In case they had only daughters, the husband got 1/3rd and 2/3rds of the share will be divided among the daughters. What is significant is that the daughter would inherit the whole property if there were no sons. (*Ibid:* 157-8.)

The canon talks not just about dowry (*parnitho*) at the time of marriage but also of bridal gift (*dorea*), marriage portions (*zabde*) and wedding gifts (*shdke*). Dowry was defined as “whatever the women brings to her husband’s house from her paternal home with written proof.” (*Ibid*: 122, Varghese, 2014: 157.) “Bridal gift means whatever the husband offers to his wife as gifts or promised (to give) her in writing. Marriage portion means the ornaments and dresses that her parents give (her) without any proof. Similarly wedding gifts (means) ornaments, dresses, food or drinks sent without proof through those who go for betrothal.”(Varghese, *Ibid*.) Thus we see two types of gifts one recorded another unrecorded. These it was assumed became the wealth or possessions of the women in her new home. These two types of gifts had come into being from both the Judaic and the gentile customary practices as the gentiles were not on the habit of recording the gifts given. Food items exchanged were outside the pale of gifts that were reckoned later. It also mentions that gifts and dowry could be also in the form of servants, cattle, wages of servants instead of servants, amount of mule work instead of mules, rent for a house, income from the orchid etc. Though some authorities like Timothy and Yeshu Bar Nun do not permit land or houses with deeds as dowry or gifts but the *Namocannon* permits them. (*Ibid*: 157-8.) The canon also fixed the maximum amount of dowry that was to be given by each class according to what was fixed by the Blessed Patriarch Cyriacus. The ratio of the dowry and bridal gift too was fixed. (*Ibid*: 158-9.)¹ It also had to be noted that the women had no right to alienate it during her lifetime without her husband’s permission though she could write a will without his order. Thus the husband is the steward of his wives assets over which in actuality she had little control. Thus one can see that the influence of patriarchal norms in both in the Pre-Diamper practices and in the Syrian code but it is possible that the Syrian Christians had evolved their own customs and practices in Kerala within a patriarchal frame. Only dowry seems to have been present while the custom of bridal gift seems to be conspicuously absent.

II. Dowry in the 19th and 20th Centuries

By the time of the 19th century the community had got divided into the *Puthankuru* and the *Pazhayakuru* factions. The economy of Kerala was by then in the throes of change from feudalism to capitalism. The colonial economy was being put in place. In the native states of Travancore and Cochin, land was now getting transferred from the traditional land holders and tenants to new ones. Christians were now

increasingly acquiring land by the closing decades of the 19th and the early 20th century. This meant that the community was increasingly becoming agrarian and was trying to corner as much land as possible. The dowry and inheritance too was being tailor made to optimize their hold on land. The palm leaf manuscripts available will help us to trace the dowry exchanges of the period.

Leaves of the Past

The first leaf is dated to the month of *Vrikshikam* 1018 KE i.e., 1843AD. It records the grant of a slave Kunjan, a *Pulayan* along with 300 *Puthans* as dowry or *stridhanam*. It says: “To let my son-in-law know: Kurumba, a *Pulaya* woman and Kunjan, a *Pulayan* whom I bought by ‘*theeru*’ (written deed) from Vellattummel Chinmar by paying the price... I give Kunjan, a *Pulayan* to you as part of *stridhanam* together with 300 *Puthan* and I give a *theeru* and agree that hereafter me or my descendants will not have any right over him.” (Palm Leaf from St. Thomas Jacobite Church, Parur.) Thus we see that dowry was not only paid as money but also as a slave servant for her daughter. But one needs to note that land or any other form of immovable property was not given.

The second set of leaves studied here are from the St. Mary’s Jacobite Church, Kurppampady. These records show that dowry was given for all the marriages that were conducted and it was recorded in the accounts of the church as the church was to be given a share from it. This share was a percentage of the dowry that was calculated and given to the church as *pasaram*.² The day book income entries or *Panavakavaravu for Makaram* 24th and 28th K.E 1068 (1893 A.D) of the St. Mary’s Jacobite Syrian Church Kuruppampady are thus:

Munnethumpady Varkeyyude makal Mariathine Koiparambil Varkeyyude makan Ouseph kettunnathinnu stridhanam Puthen 1800rum, Thettikkottu Moolathu Mathaiyude makal Cheruchye Chattanattu Pathrosinte makan Ouseph kettunnattinnu stridhanam Puthen 500 rum.....Aake stridhana kalyanam 20 ku Puthen 10,200 Chakram 1,200 koodipasaram Puthen 765 Chakram 90il pattakarude upakari onnu pakuthi kodutittu neekivarendum Puthen 382 ½ Chakram 45.... Thuruttummali Yacob Kattanarude makal Annathinne Kidangattu Varkeyude makan Varkey kuriprakaram kettunnattinnu nadavzhakkam Roopa Inum Stridhanakalyanam 20ku ottanalatte varendum Puthen 40... tee kalyanam 20kum nadavzhakkakalyanam Ikku koodivach (kumbittum) varavu Chakram 42. (Palm leaf from St. Mary’s Jacobite Church, Kuruppampady)

From the above it can be seen that the *pasaram* in this case was around 7%. In the case of the marriage of the daughter of the priest, *pasaram* was waived off and instead *nadavazhakkam* or offering to the church was given. Out of the *pasaram* half went to the priest as *Pattakarude Upakari*. One should also note that the amount given as dowry was not small amounts they ranged from 300 *Puthens* to 3000 *Puthens* depending on the status of the family. For the church and the clergy it was a major source of income. The church also must have insisted on knowing the exact amount as it also had a stake in it.

Unfortunately the women rarely had any control or even say in the amount she brought to her husband's home as dowry. In times of need after the death of her husband she often had a tough time eking out her living and fending for her children. This can be seen from the palm leaves of St. Mary's Church. The palm leaf was written in the month of *Makaram* in the year 1863 by Varkey Cheruchy to the *yogam* of the church. The leaf was a plea for the restitution of her sacraments which had been debarred for adultery. She says she was living with her husband Varkey, daughter Cheruchy and her husband's brother Chacko in her husband's taravad, but after the death of her husband brother-in-law Chacko did not look after them and they found it difficult to make ends meet, could not give dues to the church. At that juncture, Late Varkey of Karingachira Parish helped her and soon this led to Cheruchy to her giving birth to his children - a boy and a girl who were baptized at Pallikara church and Karingachira Church. After the death of Varkey, the *Yogam* summoned her before it and tried her and meted out punishments. (Palm leaf from St. Mary's Church Nadama.) Leaves written by Ealli a widow in *Meenam* 1874 and *Medam* 1883 shows how she had to work in Iype's house to take care of herself. In most cases of the trial for adultery it is not coincidental that it was the widows who were involved. In the case of the palm leaves of St Mary's Forane Church, Muttam, Cherthala we find many instances of remarriage probably signifying the fact that people did not prefer to keep the widow in the house due to the fear of claims on property.³

By the 19th century dowry had become a well-established part of the weddings among the community as it was in lieu of the inheritance rights of the women. While narrating the Syrian Christian marriage, Samuel Mateer observes:

Much useless expenditure is incurred on weddings for the hire of conveyances, jewels, umbrellas and musicians and feasting for days. The marriage expenses are roughly estimated at half the dowry. Both par-

ties meet in the bride's house to arrange the dowry and date of marriage. The dowry may consist of ornaments, lands, or money. Eight days before the wedding the parents of the girl send a deputation to the house of the boy's father with the money for the dowry; it is contained in a purse carefully tied and received without counting, but should the contents prove, in the meantime, to be less than the sum agreed on, they do not come to the church. (Mateer, 1883: 162)

The prevalence of the practice of dowry by the community was echoed by the others writers of the period.

Church and the Regulation of Dowry Contestations

By the mid 1800's, as said before, the litigations regarding dowry and inheritance increased considerably. In the palm leaves of Kuruppampady the day book for the year 1848 mentions a dispute that had arisen regarding the dowry of Fr. Veliyattu Korathu who was promised 500 *pannamida* gold for his wife Kunja Mariam. His father, then gave a complaint to the Parur Zilla court that only 400 was given and as proof cited the church records. The courts then directed the *Mandapathuvathikal* and which in turn directed the *Pravurthi* to go and inspect the records and report the same. The trustees were then called for by the *Pravarthiyar* and they said that they would do the needful after placing the issue in front of the *Yogam* of the church. After the *Yogam* granted the permission, the records of 1812 were scrutinized and taken to the court. (Palm leaves of Kuruppampady Church) It is interesting to note that the dispute in this case occurred almost 36 years after the wedding and it was the father-in-law who had filed the suit. Thus church records were used by the litigants in cases of dowry to prove claims. It must be cases like this that led the Catholic Church to ask their members to execute written agreements regarding dowry details. The fact that there was no uniformity or definitiveness only increased the confusion. This must have led the Catholic Church which was by then regulating a lot of issues within the community to act on the matter in its Codes and Regulations. The *Kalpanakalum Niyamangalum* of 1879 issued by the Arch Bishop Leonardo of St. Louise, the Vicar Apostolic of Verapoly Archdiocese, acted on it. The preface of the Regulation states that though many of the provisions were declared by his predecessors from time to time, these along with others were now issued as a body of Cannons and codes together now for more clarity. So probably this was in practice before but was now laid down once again. Clause 3 of Section 6 reads thus, "Due to nonpayment of dowry, there is an increase in the quarrels between families of the brides and grooms;

to lessen such quarrels, it is hereby ordered that the *karanavan* of the bride should give a *kacheetu* to the *karanavan* of the groom specifying the amount and the time of the dowry to be given signed by two witnesses. The priests were to verify this *kacheetu* before reading the bans for the marriage.” (*Kalpanakalum Niyamangalum* of 1879, 64) In the case of quarrels that arose this was what was referred to by the church to settle the disputes among the Catholics.

Thus dowry had by this time also become a bone of contention if unpaid and a main reason for this could be due to the fact that the amount of dowry that was exchanged was no small amount and was seen as the legitimate share given to the daughters. But to raise that amount might have been difficult for them and hence the default in payment. Occasionally it was a result of the elders trying to marry off the girls by giving bare minimum or even lesser as the attitude was to give the maximum to the sons who looked after them and continued the family name. Christians who were becoming a landed class did not want to give their daughters their landed property as they believed that it would lead to its fragmentation and loss of property from their control. This is very clearly stated by Francis Day in the 19th century, when he said that attempts to change the custom was unsuccessful because the “Syrians refused to agree to, as they said it had been established, in order to obviate the sub-division of estates into small portions” (Day, 1863: 261) This practice was well established by the 19th century as part of the marriage rituals.

As regards inheritance, Section 7 Clause 5 of *Kalpanakalum Niyamangalum* says that to avoid quarrels among sons the property to be divided equally among them after giving *legitima* to the daughters. But what amount or percentage of the property comprised of this *legitima* was never mentioned. While Clause 8 says the in case of intestacy, and the man has only daughters, then it was to be equally divided among them. If anyone else tried to get a share then they shall be punished. This shows that old customs had not completely been wiped off. Clause 7 of Section 8 states that if the wife does not have a means to maintain herself then the husbands had to provide for their maintenance in their wills. While clause 9 made it clear that in case the mother dies intestate then her property was to be equally divide among both sons and daughters. (*Ibid.*) In August 1900 the then Arch Bishop of Verapoly again issued a circular to all the Vicars of his Archdiocese to elicit from his flock what the daughter’s share would be. After

considering the responses it was decided that the daughters were entitled only to *legitime* including the dowry. This decision was reprinted in the organ of the Archdiocese – *Satyanadam* on October 27th 1911. (RTCC, 1912:37) Thus it becomes very clear that what was considered as the inheritance of the daughter was not fixed but differed according to families and situations. The church was interested in it not just because it was causing frictions within the community but also because it received a percentage of the dowry and it was one of the major sources of its income.

Towards Legislations

Such written laws and regulations and unwritten customs and practices were followed by the community till the 20th century, when these were legalized both in Travancore and Cochin with the passage of legislations to the effect. The demand for the legislations must have been felt as a result of contestations between the two parties involved and the slow rise of this class as a landed one. Land by then had become the most importance means of economic prosperity for this community who was investing in land. It was only in 1911 a six member committee was appointed by the Maharaja of Travancore to look into the matters of dowry and inheritance. It is to be noted that the committee in its report says that the witnesses examined by them were selected by the Bishops and Missionaries. (RTCC, 1912: 2) This would be due to the fact that by doing so the Report and its suggestions would be acceptable to the different factions as the witnesses were suggested by them. Thus the church was able to influence the outcome of the Report by selecting witnesses for the Committee. The Travancore Christian Succession Act of 1916 laid down that daughters had only the right to dowry which could be either equal to the value of one fourth of the property or Rs. 5000/ whichever was less. Her share in intestate property was only in the absence of male heirs. The Cochin Christian Succession Act of 1921 laid down that the share of the daughter was one third of that of the son. These acts legalized the already existing practices of the community and so women had no recourse to any relief from the judiciary until the land mark judgment that literally jolted the community that is the now famous case *Mary Roy Vs the State of Kerala* case judgment. This judgment of the Supreme Court of India in 1986 overturned the inheritance provisions that governed the community. *Mary Roy* had moved the court claiming that the provisions of the Travancore Christian Succession Act 1916 and the Cochin Christian Succession Act of 1921 were discriminatory as it violated the funda-

mental right of equality. But the court struck down the two acts by stating that these acts ceased to exist with the coming of the Indian Union as they were passed by the native states of Travancore and Cochin.

Circumventing Equality

This judgment of the Supreme Court of India created disquiet within the community and soon the community created ways to circumvent this judgment which would give equal right to the women in her natal property if the father died intestate. The community started writing wills to prevent this eventuality. A study of the wills and codicil exemplify this. In case of intestate properties brothers started getting the power of attorney from the married sisters. Many who had written wills earlier at times wrote a codicil to clarify as can be seen in the following case of Thomas Avaran of Cochin.⁴ The first will registered as, Will No. 43 of 1981 was written bestowing all the landed properties to his sons. But on 12-5-1989, he registered a codicil, to further clarify the division of his properties among his sons and in his own words **“to avoid quarrels and misunderstandings among my children.”** (*emphasis mine*) In the codicil he specified that dowry and ornaments were given to all his three daughters at the time of marriage thereby ending all their rights to their natal property. In the case of the daughter who had joined the nunnery, he said that her patrimony was given at the time of her joining the nunnery thereby ending all her rights too. Thus the community started writing wills in which it was specifically written down that the daughter at the time of marriage was given her share as dowry and ornaments and thereby ending all her rights to her father’s property. All Christian wills are now written in this format thereby specifically and clearly giving no scope for further litigations.⁵ The women too do not ask for further share as she is conditioned by patriarchal set up to accept this pattern of inheritance. Further she does not want to break the mutuality by asking for an equal share. In such cases the women feel that the brothers will help her at times of her need if they can.

Conclusion

Thus we see that dowry as sociologists argue is what secures the entrance of a woman to the household of her husband and at the same time it disinherits her with respect to the property of her natal home. (Visvanathan, 1993: 1342.) The church one can see played a crucial role in this exchange. As it was one of the main sources of income for the church in the form of *Pasarm*, *Nadavazhakkam*, *kaimuttuvaravu*, and other dues. The percentage of this is still given by the people to

the church but percentage differs from parish to parish. In the Synodal Decrees, one sees that church tried to give a right to the daughter who otherwise was not given a share in her paternal property. Thus a tone of moral indignation can be heard from it as the upholder of equality. It also pleads for the women by asking her brothers to give her equal rights. At the same time it also extends a custom of giving a portion of dowry to the church to the community as a whole. Though the former attempts at reform were not very successful the later extension helped towards being a steady and sizeable income to its coffers. The discussions on the provisions of the *Nomocannon* and the Hudaya Canon also can be seen during this period through the discussions of it in the public sphere by the members of the community. This was because the community was very conscious of its historical roots from the Middle East which they had always upheld. But these canons were never followed in toto by the community which had its own customary practices. In keeping with these codes and the usages of the community were neither uniform nor rigid. It was at best vague and dictated by circumstances. The discussions amongst the community from the latter half of the 19th century were instrumental in shaping the dowry and inheritance practices of the community. By the time of the 19th century, in the laws of 1879 we see that the church had given up the rhetoric of equality and talks of only the '*legitima*' that is to be given to the daughters after which the rest of the property was to be equally divided among the sons. This *legitima* was soon specified and legalized by the native states when they passed The Travancore Christian Succession Act of 1916 and The Cochin Christian Succession Act of 1921. Thus these acts legally made possible the disinheritance of women from ancestral property of her natal house. It was with the Supreme Court judgment of 1986 that the Syrian Christian women attained equality in matters of inheritance in case of intestacy. The community as seen above still continues in majority of the cases to use dowry as a mode of disinheritance even today.

Notes

1. In East (Antiochan) jurisdiction dowry was double the bridal gift.
2. Pasaram meaning tithe or pathavaram of the amount received as dowry that was given to the church. Though it is said to be 1/10th of the amount the amount varied from parish to parish and also between the different sects.
3. Based on discussions with Fr. Ignatius Payyappilli, who has researched the palm leaves of both these churches.

4. Here the details of one of the many wills registered with Adv. A V Thomas is being cited.
5. Based on discussions with advocates A V Thomas and Saju Thomas practitioners at the High Court of Ernakulam. Now a days the trend is changing with parents giving a small amount in cash or jewellery of the mother to the daughters or any self-earned property of the father is also given but the chunk of the wealth and the ancestral property still is given to the sons.

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