



## Evolution In The Legal Rights Of Hindu Widows

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### Abstract

The 1980 UN report highlights a stark reality: women, constituting half of the global population, contribute to almost two-thirds of work hours, yet receive only one-tenth of the world's income and own less than one-hundredth percent of the world's property. This research paper navigates through various dimensions, starting with a mythological context and delving into the sources and schools of Hindu Law. It then explores the intricate relationships within the framework of the Karta and Coparcenary, tracing the evolution in the modern history of pre and post-independence eras. Legislative developments and significant case laws are presented as pivotal elements shaping contemporary Hindu law, ultimately leading to a conclusive summary.

Widowhood in India has carried enduring societal stigma and restrictive customs, from historical practices like Sati to discriminatory norms. This article meticulously examines the historical, mythological, and legal aspects surrounding widows in India, with a specific focus on key legislations such as the Hindu Succession Act, 1956, Hindu Minority and Guardianship Act, 1956, and Hindu Adoptions and Maintenance Act, 1956. Additionally, it scrutinizes influential case law decisions that have played a crucial role in shaping the rights of widows. Despite legal advancements, challenges persist, and societal attitudes continue to impact widows' choices, particularly concerning remarriage. The article emphasizes the ongoing need for concerted efforts to support and empower widows, fostering a more inclusive and equitable society.

**Keywords:** Widowhood, India, Hindu mythology, Hindu law, Widows' rights, Sati, Legal reforms, Remarriage, Gender equality, Societal stigma, Case law, Empowerment, Women's rights, Customary practices, Social change.

### Introduction

The definition of Widow is that a woman who has lost her spouse or partner by death and has not remarried. But in Indian context the meaning is harsh; the society and pop-culture has not just overexaggerated it but made controversial remarks to a Widow reducing her into a living dead body. From wearing white saree to not wearing a Mangalsutra a widow is expected to renounce life after the death of her Husband/Spouse by taking the very essence of enjoying life, social boycott, Stigma surrounding Widow remarriage, obligations towards in-laws and Non-involvement in social rituals are very common.<sup>1</sup>

Not less than 100 Years back, a Pratha meaning a Practice was followed across India that is Sati wherein Woman was expected, asked, ordered to jump in the burning funeral Pyre of her Husband during the cremation ceremony. We have come a long way since the society has abolished the practice physically but mentally the agony still sustains.

### Mythological Context

In the Hindu mythology the story of Shiva and Sati is a famous one. A King named Daksha, Son of Brahma held a swayamvar (where girl of age chooses whom to marry out of all the bachelors arrived for the ceremony) for her youngest daughter Sati and wanted a Rich noble to marry his daughter. Sati was a devotee of Lord Shiva which angered Daksha in fit of rage he used magic and placed a statue of Lord Shiva at the entrance to welcome guests. As the ceremony went ahead, Sati moved passed each man and, in the end, stood in front of the statue of Lord Shiva; she put the varmala (ceremonial garland for officiating wedding) on the Statue and to everyone's surprise Shiva took form and shape and marriage of Lord Shiva and Sati was completed. King Daksha later had a Yagya (ritual) at his palace and everyone was invited apart from Lord Shiva and Sati. Sati in spite of refusal from Lord Shiva went to the palace stating she is the youngest and most loved daughter of Daksha. Upon her arrival to the Yagya, King Daksha insulted Sati and Lord Shiva, this angered Sati by which she jumped into the burning Yagya Kund. Lord Shiva resting at Mount Kailash is informed about this he enraged and in fit of anger pulls out his matted

<sup>1</sup> THE STUDY OF WIDOWS UNDER HINDU LAW IN INDIA UNIVERSITY OF MICHIGAN NEWS, <https://news.umich.edu/the-study-of-widows-under-hindu-law-in-india/> (last visited Aug 19, 2023)

hair and throws it into the burning Kund this gives birth to a powerful entity named VeerBhadra embodiment of death itself the entire Hindu Pantheon comes to the aid of Daksha unknowingly, that the entity is one created by Lord Shiva himself; as the fight comes to an end. Shiva carries the body of Sati on his shoulders and every place where a remain of her fell is today known as ShaktiPeeth.<sup>2</sup>

### **Sources of Hindu Law<sup>3</sup>**

The Sources of Hindu Law are divided into two parts mainly Ancient and Modern and they are further divided into multiple classes.

#### ***Ancient Law***

While ancient law is developed around 600 BC and extends till the Mughal invasion of India.

**Shruti**-The term Shruti in literal sense means what has been heard. It contains the words of the god. This source is considered to be the most important source of all. Shruti's are the sacred words that has been embedded in the Vedas and the Upanishads. They have religious connection with a person and helps him/her in a way to attain the knowledge of salvation and incarnation. It is considered to be the Ancient source of knowledge and it contains knowledge of law & Society. The basis of the term is "shru," which means "to hear." It is considered to be the language of the divine revelation through the sages and is the fundamental and most important source of Hindu law.

**Smriti**- The word "Smriti" comes from the root "smri," which means "to remember". Traditionally, Smritis contain those parts of the Shrutis which the sages forgot in their original form and the idea where they wrote in their own language with the help of their memory. Hence, the basis of the Smritis is Shrutis but they are developments made by humans. There are two kinds of Smritis viz. Dharmasutras and Dharmashastras. Their subject matter is mostly the same. The Dharmasutras are written in prose and in short maxims known as Sutras and the Dharmashastras are composed in poetry. We also find Shlokas in Dharmasutras and Sutras in the Dharmashastras.

**Customs**-Customs is the tradition that has been practiced in society since ancient times without any gap. It is the type of practice in which there is continuous observation by the people has been followed by the people and which is not oppose to public decency and morality or unlawful.

**Digest & Commentaries**-The third ancient source of Hindu law is commentaries and digestives. Commentaries and digestives have expanded the scope of Hindu law. It has played a major role in developing the very concept of Hindu law. It helped in the interpretation of the smritis. One individual interpretation of the smritis is called as a commentary and different interpretations of the smritis are known as digest. Dayabhaga and Mitakshara are considered to be the two most important commentaries.

#### ***Modern Law***

The Modern Law Era begins as Britishers enter India with more liberal approach.

**Principles of Equity and Good Conscience**-Justice equity and good conscience are the basic rules of law. This rule of law applies when an existing law doesn't apply in a case. The court before deciding a particular matter, apply its rationality and the concept of justice equity and good conscience. This is also related to Principles of Natural Justice.

**Precedent**- Judicial decisions are regarded as the most essential element of modern resources. The doctrine of precedents was introduced and applied in cases where the facts and circumstances are similar to those of a case that has already been decided. A judicial decision is authoritative and binding which has been enacted in the Indian Constitution.

**Legislation**- The statute is regarded as the most significant source of Hindu law. Given that the majority of the codification of Hindu law has occurred since India's independence, it is regarded as the foundation of Hindu law in the modern era. It has been claimed that codifying the law became necessary in order to adapt to the emerging social norms. The year 1955 and 1956 played a key role in development of Hindu Law wherein 5 new statutes were enacted, we shall mainly study the Succession Act, Hindu Minority and Guardianship Act and Hindu Adoption and maintenance Act.

#### **Schools of Hindu Law**

##### **MITAKSHARA**

Mitakshara is one of the most prominent schools of Hindu law in India. It is applicable all over the country except in West Bengal & Assam. The jurisdiction of the Mitakshara varies from one part of the country to the other due to different custom rules. The Smriti is a continuous commentary on the Hindu law written by Yajnavalkya. Some of the comments made in the Smriti include:

*Benaras Hindu law school Madras law school Punjab law school Mithila law school Maharashtra law school Daybhaga*

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<sup>2</sup> Kamala Chandrakant, Chandrakant, Kamala. Sati and Shiva: Perfection Rewarded. India: Amar Chitra Katha Pvt. Limited. (2017)

<sup>3</sup> Sources of hindu law: Notes The Law Communicants, <https://thelawcommunicants.com/sources-of-hindu-law-notes/> (last visited Aug 20, 2023)

The Daybhaga school is practiced in the state of Assam and the state of West Bengal. The Daybhaga school was created to get rid of all ambiguities, absurdities and artificial principles in inheritance. The first advantage of this digest is that it eliminates all the ambiguities and limitations in the earlier principles and includes many cognates in the list of inheritors, which was limited by Mitakshara school. In the Daybhaga school various commentaries were made as follows:

*Dayataya Dayakram-sangrah Virmitrodaya Dattaka Chandrika*

### **Karta**

A centralized form of power, a common saying in Hindi language for this; is He is my Karta Dharta, which means he looks after my everything (wellbeing, maintenance, assets, liabilities etc). In a Hindu joint family, the senior-most male ascendant, known as Karta, serves as the family's leader. Karta is the manager of the family. He takes care of the family and its property. The relationship of Karta with the other members of the family is not that of a fiduciary relationship with the members of the family. The Karta of the family has liability which is unlimited, also he is not responsible to any member of the family except in case of misappropriation or fraud.

### **Coparcenary**

When the father is still living, according to Dayabhaga School, the sons do not have coparcenary rights; instead, they do upon the father's passing. The portion of each Coparcener is specified and can be disposed of in the Dayabhaga.

All Joint family members are granted coparcenary rights during the father's lifetime under the Mitakshara law school. The coparcener's portion is not specified and cannot be sold at the Mitakshara School.

### **Historical overview of the Pre and Post-Independence**

#### ***Before India's Independence:***

Imagine stepping back in time to ancient and medieval India. In those days, the world was quite different, and so were the roles of men and women. Picture a society where women often found themselves in the shadows of their husbands. Widows, in particular, faced a challenging fate. They were expected to lead lives of self-denial and often had limited say in matters of property.

Think of customs and practices that shaped their lives. One haunting practice was "sati," where a widow was expected to end her life on her husband's funeral pyre. It's a heartbreaking reminder of how limited their options were.

As the British arrived on Indian shores, they brought their own set of ideas and values. They wanted to change some of the old practices. **The Widow Remarriage Act of 1856** allowed widows to find happiness again through remarriage. The Hindu Widows' Remarriage Act of the same year aimed to give widows more say in matters of inheritance. It was a time of slow change, influenced by a blend of British legal principles and Indian customs.

#### ***After India's Independence:***

Fast forward to post-independence India. A new era had dawned, and changes were happening at a faster pace. The year 1956 marked a significant shift. **The Hindu Succession Act** was introduced, giving widows a legal right to their husband's property. It was a step forward, although their rights were still somewhat restricted compared to men.

Imagine being a widow under this new law. You had a right to your husband's property, but it wasn't quite the same as owning it outright. It's like having access to a beautiful garden, but knowing that you won't be able to plant any new trees. This "limited estate" concept meant that you could enjoy the fruits of the garden during your lifetime, but the garden itself would ultimately belong to others.

Time marched on, and changes continued. In 2005, the law was amended. Imagine the joy and relief for widows when they were granted the same rights as sons. Now, they could fully own and manage property, just like anyone else. This was a big leap forward in breaking down the barriers that had limited their autonomy for so long.

However, societal attitudes don't change overnight. Even with these legal changes, many traditions and beliefs lingered. Think about the challenge's widows faced in asserting their rights in the face of age-old norms.

In the midst of all this, picture the strength and determination of women who stood up for their rights. They pursued education, joined the workforce, and defied stereotypes. Their stories are a testament to the power of change and the human spirit's ability to overcome even the toughest challenges.

### **THE HINDU SUCCESSION ACT, 1956<sup>4</sup>**

#### **1. Inheritance Rights of Widows (Section 15):**

- Section 15 of the Hindu Succession Act deals with the inheritance rights of widows. It provides that when a Hindu male dies intestate (without a will), his widow has the right to inherit his property equally with his other heirs. This means that widows are recognized as legitimate successors to their deceased husband's property.

#### **2. Interest in Coparcenary Property (Section 6):**

- Section 6 was introduced through an amendment to the act in 2005 to provide daughters, including widowed daughters, the same rights as sons in ancestral property. This amendment made daughters coparceners in their own right and granted them an equal share in the ancestral property. This is significant for widowed daughters who, after the amendment, have a rightful claim to their father's ancestral property.

**3. Class I Heirs and Succession (Section 8 and Schedule I):**

- Section 8 of the act outlines the order of succession among Class I heirs. This includes the widow of the deceased, along with other close relatives. The widow is considered a primary heir and has a rightful claim to the deceased's property as per the rules of succession laid out in the act.

**4. Partition and Distribution (Section 23 and 29A):**

- Section 23 of the act allows coparceners to ask for partition of the family property. This could be relevant to widows who are also coparceners, as they have the right to request a partition of the property, and upon partition, they are entitled to their share.

**5. Amendments for Gender Equality:**

- The Hindu Succession (Amendment) Act, 2005, played a crucial role in changing the landscape of inheritance rights for women, including widows. This amendment sought to remove gender-based inequalities in property rights and ensured that daughters, regardless of their marital status, have equal rights to their father's property.

**THE HINDU MINORITY AND GUARDIANSHIP ACT, 1956<sup>5</sup>****1. Guardianship and Custody (Sections 6 and 7):**

- Sections 6 and 7 of the act deal with the appointment of guardians for minors and their custody. If the natural parents of a minor are no longer alive or are unfit to be guardians, other relatives, including widowed mothers, can be appointed as guardians to take care of the minor's person and property. This recognizes the role that widows can play as guardians for their children or other minors within the family.

**2. Powers of Natural Guardians (Section 8):**

- Section 8 outlines the powers of natural guardians of a minor. In the case of a legitimate minor, the natural guardian is usually the father. However, in cases where the father is deceased, the mother (including a widow) becomes the natural guardian and has similar powers for the minor's care and property as the father would have had.

**3. Rights of Guardians of Property (Section 13):**

- Section 13 addresses the rights of guardians of a minor's property. This includes the right to custody and management of the minor's property. In the absence of a father, a widowed mother can become the guardian of a minor's property and manage it for the minor's benefit.

**4. Removal of Guardianship (Section 25):**

- Section 25 outlines the circumstances under which a guardian can be removed by a court. If a guardian, including a widowed mother acting as a guardian, fails to discharge their duties or is found to be unfit, the court can remove them and appoint a new guardian.

**HINDU ADOPTIONS AND MAINTENANCE ACT, 1956<sup>6</sup>****1. Adoption by Widows (Section 9):**

- Section 9 of the Hindu Adoptions and Maintenance Act, 1956, pertains to the capacity of a female Hindu to adopt. This section allows any female Hindu—whether she's unmarried, divorced, widowed, or has never been married—to adopt a child. Widows, in particular, are granted the legal right to adopt under this section.

**2. Maintenance of Widows (Section 18):**

- Section 18 deals with the maintenance of widows. According to this section, a Hindu wife, including a widow, is entitled to be maintained by her husband's estate. This means that if a widow is unable to support herself financially, she can claim maintenance from her deceased husband's estate.

**3. Maintenance of Aged Parents and Children (Section 20):**

- Section 20 of the act addresses the responsibility of a Hindu to provide maintenance to children and aged or infirm parents. This is relevant to widows who may have dependent children or parents to support.

<sup>4</sup> THE HINDU SUCCESSION ACT, 1956

<sup>5</sup> THE HINDU MINORITY AND GUARDIANSHIP ACT, 1956

<sup>6</sup> HINDU ADOPTIONS AND MAINTENANCE ACT, 1956

<sup>7</sup> 1959 AIR 577.

<sup>8</sup> Mrs. Sujata Sharma vs Shri Manu Gupta on 22 December, 2015 - Indian kanoon,

<https://indiankanoon.org/doc/44964360/> (last visited Aug 21, 2023)

<sup>9</sup> 1974 AIR 665

<sup>10</sup> 1977 SCC (3) 99

<sup>11</sup> 1978 SCC (3) 383

<sup>12</sup> 1996 AIR 182

#### 4. Rights of Adopted Children (Section 12):

- Section 12 discusses the rights of adopted children. If a widow adopts a child, that child is considered the legitimate child of her deceased husband and holds all the rights that a biological child would have within the adoptive family.

#### 5. Consent and Capacity (Sections 7 and 8):

Sections 7 and 8 outline the requirements for a valid adoption. These sections are important if a widow decides to adopt. They ensure that the consent of all necessary parties is obtained and that the person adopting has the capacity and the right to do so.

#### Case Laws

The Hindu Succession Act, 1956 (HSA) improved the pre-existing rights of Hindu women but some gross features of discrimination still continue to exist, notably the retention of Mitakshara coparcenary, and the continuance of discriminatory laws relating to devolution of tenures and special provisions relating to dwelling houses. To the extent the HSA seeks to remove the inequities based on gender, the apex court adopted a progressive and liberal construction. **Section 14 of the HSA** states that 'any property possessed by a female Hindu shall be held by her as a fullowner thereof. In **Kotturuswami v Verravva**<sup>7</sup> the Supreme Court gave the wide connotation to the word 'possessed' as including actual and constructive possession.

In **Sujata Sharma v Shri Manu Gupta**<sup>8</sup> Delhi High Court enlarged the scope of Section 6 of Hindi Succession Act, 1956 and stated that a female can also become the Karta of the family.

The widow prior to the HSA parted with her limited estate by gift or sale, the traditional law applies and the reversioners would be entitled to recover the property from the alienees of the limited estate. In **Dhan Singh v Daya Kaur**<sup>9</sup>, the question arose whether reversioners were to be ascertained according to the law prior to HSA or according to the HSA. If the former construction is adopted, the agnates of the last male holder would be entitled to the property; if it is the latter, the daughter of the last male holder would be entitled to the property after the limited owner's death. The apex court held that the reversioners are to be ascertained according to HSA and thereby buttressed the rights of women.

In **Tidasamma v Sessa Reddi**<sup>10</sup> it was held that if the widow gets property under a pre-existing right of maintenance, her restricted estate turns into an absolute ownership notwithstanding a decree or order of court, gift or will which prescribe a limited estate. Thus, widest scope had been given to section 14(1) enlarging the rights of female Hindus.

It was held in **Gurupad v Hirabai**<sup>11</sup> that the widow would be entitled to her successional share as well as her share under notional partition. The decision serves to protect the share of a female member from being defeated either by postponing the partition till the death of the female member where a partition cannot take place as there is only one male member in the coparcenary. Thus, within the boundaries of legislation and applying traditional rules of interpretation, the apex court liberally construed the HSA and thus aided the process of enlargement of the property rights of Hindu women.

The female heir cannot seek the partition of the dwelling house unless the male members of the family choose to divide the property. In **Narasimha Murthy v Susheela Bai**<sup>12</sup> the Supreme Court considered this aspect. Whether the restriction in section 23 of HSA be applicable even if there is a single male heir. The court was of the view that restriction on partition will be applicable even if there is a single male heir. In practical terms the decision is inimical to women's rights in view of the adoption of the small family norm. In a good number of families, the nucleus consists of a son and daughter and the decision has an adverse effect on the rights of the daughter in the dwelling house.

#### Conclusion

Despite the changing attitudes, challenges persist in certain rural and conservative areas. Traditional beliefs and cultural norms can still stigmatize widows and hinder their remarriage prospects. Family pressures, societal judgment, and financial concerns can also affect widows' decisions regarding remarriage.

NGOs, social activists, and government initiatives have played a role in promoting the well-being of widows and advocating for their rights, including the right to remarry. Awareness campaigns, legal support, and financial assistance programs have been implemented to address these issues.

In recent years, stories of widows who have remarried and led successful lives have gained attention, contributing to a more positive narrative and challenging stereotypes. However, it's important to note that the acceptance of remarriage for widows varies widely across regions, communities, and individual families.

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