

Widow's Right to Property Under Hindu Law: A Comparative Analysis with Other Personal Laws in India

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Abstract

In the ancient Hindu society where widows were subjected to the inhuman practice of Sati, there was no discussion over giving them property rights, and they would be divested of their husbands' properties. With the advent of the British colonial rulers in India, the widow's rights started being recognized, first with the Bengal Sati Regulation, 1829 which abolished Sati, followed by the Hindu Widow's Remarriage Act, 1856. However, widows were still far from getting property rights. Before 1937, the widow of a Hindu governed by Mitakshara and as well as Dayabhaga law had only a right of maintenance in respect of coparcenary property in which the husband had interest. This Paper aims at tracing the evolution of widow's rights in property from the ancient rules of Hindu Law through the Hindu Women's Right to Property Act, 1937 of British India and the Hindu Succession Act, 1956 which came up post-Independence of India. The analysis will be augmented by discussions around the recent jurisprudential developments in this regard. Finally, the Paper entails a comparative analysis of widow's right to property under Hindu Law and other Personal Laws of India.

Key Words: *Widow's Property Rights, Women's Rights in India, Hindu Widows' Rights, Hindu Widow's Right to Property after Remarriage*

I. Introduction

Property is generally considered to be a source of power, societal prestige and financial independence. In the ancient Hindu society where widows were subjected to the inhuman practice of *Sati*, there was no discussion over giving

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them property rights, and they would be divested of their husbands' properties. With the advent of the British colonial rulers in India, the widow's rights started being recognized, first with the Bengal Sati Regulation, 1829³ which abolished Sati, followed by the Hindu Widow's Remarriage Act, 1856.⁴ However, widows were still far from getting property rights.

Before 1937, the widow of a Hindu governed by Mitakshara and as well as Dayabhaga law had only a right of maintenance in respect of coparcenary property in which the husband had interest.⁵ In respect of separate property left by her husband, she had only the right of maintenance when the husband had left a son, grandson, or great-grandson.⁶ This made the widow dependent on the surviving coparceners or the male lineal descendants for basis sustenance allowances. A widow would often be left uncared for, as the death of her husband would leave her property-less and a destitute at the mercy of the intestate's relatives.⁷

Such unfortunate state of the widow gradually improved with the enactment of the Hindu Women's Right to Property Act, 1937,⁸ which gave her a life interest in a share of her deceased husband's property, but subject to reversion on her death. This was followed by the Hindu Succession Act, 1956 which finally gave the widows their due right of ownership over her share of the husband's property.⁹

II. Evolution of Widow's Property Rights through Early Legislations – The Hindu Women's Right to Property Act, 1937

The Hindu Women's Right to Property Act passed in 1937 brought about significant change in the property rights of Hindu Widows. The Act applied to

³The Bengal Sati Regulation (1829).

⁴ The Hindu Widow's Remarriage Act (1856).

⁵J. RANGANATHMISHRA, MAYNE'S TREATISE ON HINDU LAW & USAGE 375-378 (15th ed., 2003)

⁶S.A. DESAI, MULLA : PRINCIPLES OF HINDU LAW, (21st ed., 2010)

⁷Saxena, J. N. "Widow's Right of Succession in India." THE AMERICAN JOURNAL OF COMPARATIVE LAW 574-585 (1962).

⁸The Hindu Women's Rights to Property Act (1937).

⁹The Hindu Succession Act (1956).

Hindus governed by both the Mitakshara and the Dayabhaga schools. The changes made by the Act accorded a legislative recognition of the right of a widow. It was a progressive step that emboldened her right to her husband's property. Though being a revolutionary change in the face of opposition from the orthodox members of the Hindu society, the act was far behind in according widow's absolute right over their husband's properties.¹⁰ It gave widows a life interest in the property of her deceased husband.¹¹ The act governed the devolution of both separate property, as well as the undivided share of the deceased husband in coparcenary property.

The position prior to this act was that, the widow succeeded to the separate property of her husband only on failure of his male issue. However, section 2 of the act expressly repealed the pre-act customs and rules of laws that were contrary to the provision of this Act.¹² Section 3 of the Act provided that, when a Hindu governed by the Dayabhaga School of Hindu Law dies intestate leaving any property, and when a Hindu governed by any other school of Hindu Law or by customary law dies intestate leaving separate property, his widow, or if there is more than one widow all his widows together, shall, subject to the provisions of sub-section (3), be entitled in respect of property in respect of which he dies intestate to the same share as a son.¹³

When a Hindu governed by any school of Hindu Law other than the Dayabhaga School or by customary law dies having at the time of his death an interest in a Hindu joint family property, his widow shall, subject to the provisions of sub-section (3), have in the property the same interest as he himself had.¹⁴ Sub-section (3) stated that any interest devolving on a Hindu widow under the provisions of this section shall be the limited interest known as a Hindu Woman's estate, provided however that she shall have the same right of claiming partition as a male owner.¹⁵

¹⁰B. AGARWAL, A FIELD OF ONE'S OWN: GENDER AND LAND RIGHTS IN SOUTH ASIA (1994).

¹¹S.A. DESAI, MULLA : PRINCIPLES OF HINDU LAW, (21st ed., 2010).

¹²The Hindu Women's Succession Act, §2 (1937).

¹³The Hindu Women's Succession Act, §3(1) (1937).

¹⁴The Hindu Women's Succession Act, § (3)(2)) (1937).

¹⁵The Hindu Women's Succession Act, § (3) (3)) (1937).

These provisions resulted in conferring on the widow a right similar to the right of a son in some respect, such as the right to claim partition of the coparcenary property. However, the difference between the rights of widow and her son lay in the fact that while the son took an absolute interest, the widow got a limited interest. This limited interest in the coparcenary property created an anomaly of sorts. As per Section 3(2) of the Act, the widow had, subject to the provision of limited interest under sub-section (3), had the same interest as her deceased husband had. However, such a substitution of the widow in the place of her deceased husband in the coparcenary did not make her a coparcener - her position was unique. The objective behind the Act was to protect the rights of widows, so that after the demise of her husband, a Hindu widow, should not have to be dependent on others for the sustenance out of her husband's property.

¹⁶ Prior to the enactment of the act of 1937, it was an ironical situation where the widows were at the mercy of other relatives of the husband for maintenance out of the very property which she should have had a right upon. The Act aimed at making a widow economically strong, capable of looking after herself.

However, the drafters of the Act had left some ambiguity regarding the mode of acquisition of the share by the widow. The mode of devolution of the property in the widow's favour was later evolved, through various interpretations of the respective sections by the honorable High Courts. The provision only provided vaguely that the widow would be entitled to the 'same interest' that her deceased husband had had. According to the rule of coparcenary, it is a birth right that the coparcener gets in the property. The expression 'same interest he had' had to be interpreted to resolve the issues with respect to her status, the quantum of the interest since the husband's interest in the undivided coparcenary was a fluctuating interest. ¹⁷ The judicial opinion in the case *Seethamma v. Veeranna*, the Madras High Court held that although she took the husband's interest, she could not be given the status of the coparcener but would be considered as a member of the joint family. ¹⁸ The widow's share was a fluctuating interest, till she ascertained it by seeking partition. Thus, if she died without asking for partition, the interest would revert back to the surviving

¹⁶P. P. SAXENA, FAMILY LAW LECTURES : FAMILY LAW II, 331 (3rd ed., 2011).

¹⁷*Ibid.*

¹⁸*JonnagadlaSeethamma&Anr. v. JonnagadlaVeeranaChetty*, AIR 1950 Mad 785 (India).

members of the coparcenary by the rule of Survivorship.¹⁹ The issue regarding the quantum of share, the judicial view was that her share could be ascertained when she claimed partition.²⁰

Another point of ambiguity was the question of chastity of the widow as a ground for disqualification. Under classical Hindu law, an unchaste widow was disqualified from inheriting the property of her deceased husband. Mitakshara law relating to this bar is mentioned in Chapter II, section II, placitum 2, which states, "Let the widow succeed to her husband's wealth, provided she be chaste."²¹ The Act did not explicitly mention anything in this regard, and the courts interpreted section 2 of the act to come to form conflicting opinions. The point of contention was that it did not abrogate the entire pre-Act law relating to inheritance, but repealed the customs and rules that were contrary to the provisions of the act, so the position was uncertain as there was no provision in the first place on this issue of chastity in this act. The question that lay before the court was thus, whether in the absence of any express provision to the contrary, would an unchaste widow be entitled to inherit the separate property or an undivided share in the Mitakshara coparcenary? Stating the authority from Mayne's Hindu Law, the Bombay High court observed that, "*In the Hindu Women's Rights to Property Act, 1937, the bar of unchastity seems to have been removed even with regard to the widow inheriting her husband's property, because it says that its provisions shall apply notwithstanding any rule of Hindu law or custom to the contrary, and as observed in Mayne's Hindu Law, 10th edn., at p. 722, 'as the Act confers upon the widow a right of succession notwithstanding any rule of Hindu law, an unchaste widow will not be disqualified from inheritance.'*"²² Contrary to this view, the Madras High Court held that section 2 repealed only those rules of custom and of Hindu law, for which a contrary provision had been enacted under the 1937 Act.²³ The Court observed that, "*When the enactment is in the nature of an amending provision, that is to say, a provision which amends the general law on the subject in any particular it should not be interpreted so as to alter completely the character of*

¹⁹Inheritance and Succession, rights of women and daughters under personal laws

²⁰Kallian Rai v. Kashinath, ILR (1943) All 307 (India).

²¹AkobaLaxmanPawar v. Sai Genu LaxmanPawar, (1941) 43 BOMLR 338(India).

²²*Ibid.*

²³RamaiyaKonar v. MottayyaMudaliar, AIR 1951 Mad 954 (India).

the principal law, unless clear language is found indicating such intention.” Since the act was silent on the disqualification aspect, it meant that the general law relating to the disqualification of a widow were applicable even after 1937, and they disqualified an unchaste widow from inheriting the property of her deceased husband.²⁴

Due importance should be given to the fact that the Act applied to property other than agricultural and impartible estates.²⁵ Therefore, it should be seen to have replaced the widow’s right to maintenance with that of limited life interest in the property. Families where the only property available was either of the two exceptions, the widow retained her rights to claim maintenance.²⁶

III. Widow’s Right to Property Under the Hindu Succession Act of 1956 and the Recent Developments

The Hindu Women’s Right to Property Act, 1937 had many ambiguities and the interpretations arising out of these were difficult to reconcile. As pointed out by the Judicial Committee in *MoniramKolita v. Keri Kolitani*, “The whole estate is for the time vested in her absolutely for some purposes, though in some respects for only a qualified interest.”²⁷ Apart from the ones mentioned above, the nature of the widow’s limited interest in the property of her husband created a problem not only for her and the coparcenary but also the creditors to whom her deceased husband owed debts. Under Hindu law, it was the pious obligation of the son to repay the debts of his father, but the wife was not bound by any such obligation. In addition to this, there was ambiguity regarding the widow’s right to alienate her interest in the property. Also, the law made the widows vulnerable to loss of the interest. All such anomalies were put to rest by the introduction of the Hindu Succession Act, 1956.

The Hindu Succession Act, 1956 enlarged the limited estate to an absolute estate and removed the impediments of moral conduct, chastity and to a limited degree

²⁴*Id.*, P. P. SAXENA, FAMILY LAW LECTURES : FAMILY LAW II, 339 (3rd ed., 2011).

²⁵*Kotaya v. Annapurnamma*, (1945) ILR Mad 777(India); *Udham Kaur v. Prakash Kaur*, AIR 1945 Lah 282 (India).

²⁶P. P. SAXENA, FAMILY LAW LECTURES : FAMILY LAW II, 339 (3rd ed., 2011).

²⁷*MoniramKolita v. Keri Kolitani*, ILR 5 Cal. 776 (India).

re-marriage, which improved the widow's condition. According to this Act, a widow is included in Class I of Schedule I, and she inherits the separate property of her husband as his primary heir and the quantum of her share are ascertained with respect to the presence of the son, daughter, or mother of the intestate, since the 2005 amendment to the Hindu Succession Act gave the daughter equal share as the son in the coparcenary as well as separate property. Most significantly, section 14 of the Hindu Succession Act, 1956 provided that, "*Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.*" The explanation to this section further clarifies that "property" includes those property acquired by a female Hindu by inheritance or devise, or at a partition or in lieu of maintenance or arrears of maintenance, among other modes of acquisition. This section removed the difference between a man's and a woman's estate and enabled the widow to acquire property as full owner which meant that they were handed over all interests in the property, life as well as vested interests, that included the power to alienate the property at her will. Hence, the widow's share of the property would no longer revert back to the surviving coparceners, but could be transmitted by her to her own heirs, thus abolishing the concept of reversionary.

With regard to the issue of re-marriage, this act had removed the disability of remarriage for the widow of the intestate but had a clause of remarriage reserved for some other categories of widows under section 24.²⁸ However, with the removal of Section 24 by the 2005 amendment to the Hindu Succession Act, the disability of remarriage has been removed completely from the acquisition of property by the Hindu widows.²⁹

In a recent judgment, the Supreme Court reiterated that the right to maintenance of a Hindu widow is not a mere formality but a spiritual and moral right which

²⁸AbhayNevagi Associates, *A Widow Who Remarries Has Rights In Her Former Husband's Properties*, THE LEGALLY India, <http://www.legallyindia.com/views/entry/a-widow-who-remarries-has-rights-in-her-former-husband-s-properties>

²⁹Kemi Gupta, *Section 24 Of The Hindu Succession Act, 1956: Consequences Of Its Deletion From The Statute Book*, IJLLS, <http://ijlls.in/section-24-of-the-hindu-succession-act-1956-consequences-of-its-deletion-from-the-statute-book-kemi-gupta-nalsar-university-of-law-hyderabad-ii-year-ba-llb-hons/>.

can be judicially enforced upon and went on to state that, “...in whatever form a limited interest is created in her favour who was having a pre-existing right of maintenance, the same has become an absolute right by the operation of Section 14(1) of the Hindu Succession Act.”³⁰

IV. Widow’s Right to Property under Hindu Law as Compared to Other Personal Laws

Widow’s right to property under Hindu law when compared to other personal laws brings forth some clear points of distinction. In India, Muslims are governed by the Sunni or the Shia laws, depending on the particular school they follow. The Indian Succession Act, 1925³¹ governs the succession rights of citizens apart from Hindus, Muslims, Buddhists, Sikhs or Jains. In other words, it governs the Christians, Parsis, Jews and those marrying under the Special Marriage Act 1954.

A Muslim widow, under both Sunni and Shia law of inheritance is considered as a Quranic sharer. Her share is one-fourth when the husband dies, leaving no child or child of a son how low so ever under Sunni law, or a lineal descendant under Shia law. Her share is reduced to one-eighth when there is a child or child of a son under Sunni law, or a lineal descendant of the husband under Shia law.³²

In the Indian Succession Act, 1925, Chapter II of Part V is applicable to all persons other than Parsis, while Chapter III is applicable to only Parsis.³³ In case of interstate succession other than a Parsi, when the intestate dies leaving behind him a widow, the widow gets one-third of the property if there are lineal descendants, or, one-half of the property in the absence of lineal descendants,

³⁰*JupudyPardhaSarathy v. Pentapati Rama Krishna &Ors*, (2016) 2 SCC 56; The Economic Times, *Widow can claim absolute right on 'maintenance' property: Supreme Court*, THE ECONOMIC TIMES, <http://economictimes.indiatimes.com/news/politics-and-nation/widow-can-claim-absolute-right-on-maintenance-property-supreme-court/articleshow/49770455.cms>.

³¹The Indian Succession Act, Part II, Section 4 (1925).

³²P. P. SAXENA, FAMILY LAW LECTURES : FAMILY LAW II, 519 & 543 (3rd ed., 2011).

I. MULLA, COMMENTARY ON MUHAMMEDAN LAW (2006).

³³The Indian Succession Act (1925).

the other half going to the distant kindred of the intestate.³⁴ Under the Act, when a male Parsi dies intestate leaving behind him a widow along with children, the share of the widow and the son shall be double the share of the daughters, if any.³⁵ If the intestate has no lineal descendants but some other heirs, the widow is entitled to inherit half of the property. In case he leaves behind no lineal descendant, but a widow of any lineal descendant, the widow of the intestate shall receive one third of the property.

Therefore, the above discussion reveals that the widows in other Personal laws inherited the property of their deceased husbands, unlike under Hindu law, where the widows only had right to maintenance. However, through legislative pronouncement, a widow's status of property inheritance has been brought at par with other personal laws, where she can exercise absolute right over the property.³⁶

The other primary difference that still remains is with respect to the quantum of the widow's share in the property. While Chapter II of the Indian Succession Act, 1925 allows a widow to inherit a fixed (one-third or one-half) and quite substantial share in the property of her husband, Parsi and Hindu law makes her share dependent on the number of lineal descendant and parents left behind by the intestate, and only in their absence is her share half under Parsi law and full under Hindu.³⁷ However, a Hindu widow's quantum is more favorable than that under Muslim Personal law, which fixes her share to one-fourth or one-eighth of the husband's property, as the case may be.³⁸

V. Conclusion

The widows were previously in a very deplorable condition, where they became near destitute over-night on the death of their husbands. However, the legislative

³⁴The Indian Succession Act, Part V, Chapter II(1925).

³⁵The Indian succession Act, Part V, Chapter III(1925).

³⁶JavedRazack, *Inheritance and Succession, Rights of Women and Daughters under Personal Laws*, Lexorates, <http://www.lexorates.com/articles/inheritance-and-succession-rights-of-women-and-daughters-under-personal-laws/>.

³⁷Saxena, J. N. "Widow's Right of Succession in India." *The American Journal of Comparative Law* (1962): 574-585.

³⁸*Ibid.*

reforms which came about most significantly with the Hindu Women's Right to Property Act, 1937 and the Hindu Succession Act, 1956 ameliorated the conditions of the widows. On a comparative analysis of a widow's rights to property in various Personal laws in India, it is observed that a widow is eligible for different shares in their husbands' property through intestate succession, fluctuating at varying degrees. On a note of similarity however, under the present legislations, widows under all the Personal Laws in India are entitled to absolute right over the share in their husband's separate as well as coparcenary property, which enables her to enjoy the life interest as well as the right to alienate it.