

STUDY OF INDIAN LAWS FORMULATED FOR WIDOWS**Dr. Deepali Gajanan Bankapure***Department of Economics**Shri Siddhivinayak Mahila Mahavidyalaya, Pune.**Email Id: deepali.bankapure@siddhivinayakcollege.org***Abstracts**

Present paper is an earnest endeavor to study the important laws specially enacted for widows in India. Various studies and observations have revealed that widows in India for years together have experienced unusual difficulties and deprivation. Thus, it becomes imperative to study the laws formulated to protect their social and economic security. Further, it is essential to study and analyze that how to build the system to address their problems.

Key Words: *Widows, Protection, Social and Economic Security.*

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Introduction

The term ‘widow’ is referring for a woman who has lost her husband. Widowhood is a situation of social demise of her spouse. Unfortunately, till today many families treat widows as a family burden. The word ‘vidhva’ is normally used in many Indian languages for widow. It is derived from the Sanskrit word ‘vidh’, means to be destitute or insolvent. Undoubtedly, the loss of spouse is very big loss for the person. However, in Indian society if female lost her husband, it is treated as loss of every hope after the sad demise of her husband. It brings drastic change in women’s identity, status and perception.

To sustain in this widowhood with dignity, courage and confidence the support of society and family is essential. However, it has been noticed that many restrictions were imposed on their lifestyle. Many negative social attitudes were practiced. They were prohibited to matrilineal inheritance and patrilocal residence. In many cases gender inequalities are observed in division of labour also. Their negotiation power becomes weak. They have limited access to employment and business opportunities. They are forced to contribute in domestic or household work for big families. Thus it becomes imperative to have association of widows with the aim to share their problems, exchange experiences, and initiate a network of widows.

History

In Indian history hardly ever, we discovered women rulers. Those who have crowned, such power received to them under certain exceptional circumstances. Women did not have had access to priestly rituals training and performance also. These rights were reserved for men of the highest caste. Thus, females were cornered from

political, economic as well as social power. This could be the one of the probable reasons of prevailing masculine dominated society in the most part of the country. With the appearance of the caste system, consistent efforts were made to link those institutions with the gender hierarchy. This resulted into greater restrictions on high-caste women to ensure the ‘purity’ of the highest caste through the production of legitimate offspring. Such purity gradually brought restrictions on movement, cloths and communication with others and became severe for widows.

Literature Review

Many Researchers who have contributed in socio-economic research have considered the rehabilitation of Indian widows’ utmost important. Through their following research paper they have highlighted the need of laws specially made for them.

Rights mean the claims that are legally and socially recognized and enforceable by an external legitimized authority, be it village level institution or some higher level judicial or executive body of the state. However, in practice effective rights mean those rights which are not just in law but bringing them in reality. Further, ownership rights refer to not to just own that property but to use it, maintain it, and control it. Rights extends to women can substantially reduce women’s risk of financial insecurity and hardship. They will have access to economic resources and specific advantages associated with it. (Bina Agarwal, 1987)

Women Inheritance Rights in India; some Reflections (Sarita Kumar, March 2017): This paper is an attempt to understand whether Indian women had inheritance rights in sharing ancestral property. According to author the Indian women have received such rights recently. She also highlighted the need to have equal property rights for men and women to reduce gender gap and discrimination. She has pointed out that men have occupied large socio economic and political space. Thus, women hardly get opportunities to explore and grow. Therefore, various laws were introduced in India to achieve gender parity. This paper further pointed out that there was equitable division of work, responsibilities and right of owning and managing property in the primitive stage. The state and role of women in Indian society have critically disturb due to many social changes happened by foreign attacks. Thus, it became imperative for Indian women to follow the order of male members in family as a mighty and superior to them.

Objectives of the study

This paper is a sincere attempt to understand socio-economic conditions of widows in India. Following are the research objectives:

1. To study the legal aspects related with widows in India.
2. To understand various laws formulated for widows in India.

Research Methodology

Present paper is based on Descriptive Research. It is based on understanding of various Indian Laws specifically formulated for widows.

Scope of Study

Present paper is based on only Indian Legal Provisions made for Widows. The study has been made from Ancient Indian Laws to Modern Indian Laws both codified laws and Personal Laws. However, international laws were not considered for study.

Indian Laws Formulated for Widows

Females represent approximately half of the total population of the world. Therefore, all international conventions of Human Rights are committed to ensure equal rights to men and women. These rights include all economic, social, cultural, civil and political rights. The resolutions, declarations and recommendations adopted by UN and its specialized agencies are promoting the gender parity. The Article 1 of the convention on the elimination of all forms of discrimination against women states, “on the basis of sex which has the effect or purpose of impairing (harming) or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic social, cultural, civil or any other field.”

The Constitution of India also explicitly promotes social, economic, judicial and political equality as a constitutional or democratic right of every citizen of India. However, in reality the crucial role played by female in every walk of life is yet to be completely acknowledged by Indian society and her family members. The conditions of female become worst when she lost her spouse. Following are the laws which tried to protect the rights of widow women:

A. Ancient Laws

1. **Dayabhaga:** Dayabhaga is considered as the Hindu thesis which mainly deals with the inheritance system in India. It was the dominant authority for consideration in the modern British Indian courts in the Bengal region of India. The Indian Sanskrit scholar and notable writer of legal and religious treaties Jimutavhana from the early medieval period wrote the Dayabhaga. The Dayabhaga schools of law mainly applied in Bengal and Assam. The son has no power or right in the ancestral property. He can only claim his share in the property after his father’s demise. Hence, the father carries uncontrolled and unlimited power over his family property until his death. Under Dayabhaga system neither the female nor her children can claim the division of their family property.
2. **Mitakshara:** Mitakshara, on the other hand was written by Vijnaneswara, on the Yajnavalkya Smriti. The word Mitakshara is derived from the word ‘commentary’. The Mitakshara School had four sub divisions namely; the Benaras School, Mithila School, the Maharashtra School and the Dravida School. They help to operate the law of inheritance of the Hindu Joint family under the Indian Law. Here, the property is given to the male member of a family and his son, grandson and great-grandson. Thus, all men shared equal rights in a joint family. A person can claim his share of property during his father’s lifetime or his three immediate ancestors. Under the Mitakshara system, the female had no right to ask for her share from her family property. However, she may claim her share when division would happen between her husband and her sons.

Unfortunately, under both the systems, Indian women did not have any right to make any claim over the property. They were merely follower of the system or decisions taken for them by their male family members. Before the passing the Succession Act, 1956, Indian women were given nominal rights over certain assets. The word “Streedhana” refers women’s property. According to Smritikars, the “Streedhana” encompasses of those assets and materials. Normally, she receives those from her parents or relatives as

gifts at the time of her marriage. Sometimes it may include movable properties, like a house or a piece of land along with ornaments, jewelries and dresses.

B. Modern Laws

Before arrival of the British rule in India, major laws of inheritance were either based on custom, religion or personal laws. Religion has played a crucial role in deciding women's status in Indian society. The provision for widows in the Indian law has history of struggle and gender inequalities. The Widows in India have faced diverse problems like emotional distress, social stigma, and economic exploitation by their own family members and society. Under these circumstances it is very difficult to safeguards their rights and position in family as well as society. There has been a huge rise in the number of widows in India since 2001. The records made by census department has revealed that in 2011 India's population was 121 Crore. Out of this population 4.6% or 5.6 Crore were widows. Thus, it becomes imperative to have special provisions in Indian Laws for their protection. Following laws can be referred to understand various provisions made especially for Indian widows:

1. **The Hindu Widows' Remarriage Act 1856:** This Law came into force from 16.07.1856. It was drafted by Lord Dalhousie and enforced by Lord Canning. It was applicable in all jurisdiction of Indian under East India Company rule. It had provided legal safeguards against loss of certain forms of inheritance rights from her deceased husband. Section 2 of this Act states that all the rights and interests which any widow may have in her deceased spouse's property shall ceased once she gets remarried. However, for this marriage she has to sacrifice her inheritance rights from her deceased husband. Thus, following beneficiary of her deceased spouse or other individuals get qualified for the same. Law further explained that widows who remarry were entitled to all the rights and inheritances that a woman who marries for the first time would have. However, this act has been repeal. According to the Hindu Succession Act, 1956 widow can claim her right on her deceased spouse.
2. **Indian Succession Act, 1865 later replaced by Indian Succession Act, 1925:** It is one of the important personal laws. The laws of successions refer to those laws which govern the devolution (transfer) of property. They deal with the transfer of property from the owner of the property to his legal successors because of his death. The laws dealing with inheritance in India are not uniform. This diversity is the outcome of religion, marital status of the parties or the religion of spouse. The Indian Succession Act 1925 broadly deals with the two categories of succession. Namely:
 - I. Testamentary Succession: under this written will is available for property distribution.
 - II. Intestate Succession: When there is no will the properties of the deceased needed to be distributed as per the religious laws.
 - a. **Christians Succession Act:** In case of Indian Christians the laws of Indian Succession Act, 1925 is applicable to both testamentary and intestates' succession. Indian Christians are guided by section 32 to 49 of this Act. According to this law property has to be dived equally among sons and daughters. It is the only law in which the share of the widows has to be given to her first. It is one-third. After this share other descendants get their share. If there are no lineal descendants, the share of the widow is increased

to ½ of the property and other half to the kindred. If there are no kindred, all the property belongs to the widow.

b. **Parsees Succession Act:** The Parsees are directed by section 50 to 56 of the Indian Succession Act 1925. The widow and each son get a share which is double the share of each daughter. If the son dies leaving behind his parents, the father receives half the share of a son and mother receives half the share of daughter. In the case of a male Parsi dying intestate (without making will) the widow and each child gets a share. The rights of females to succeed properties of Parsis are mentioned in Parsees Succession Act. However, shares are only half of the males' counterparts.

c. **Muslim Succession Act:** In the case of Indian Muslims, the Indian Succession Act, 1925 is not applicable for both testamentary and intestates' succession. The majority of Indian Muslims are belonging to the Sunni sect are governed by the Hanafi School of Sunni Law. A small percentage of Shiites are governed by the Ithna Ashari School of Shia Law. Under the Hanafi School, the heirs are broadly divided into three major categories:

1. Agnatic Heirs: who are all males
2. Colonic Heirs: who are all females
3. Distant kindred (relatives): include all blood relations.

This law does not make differentiation between ancestral property and self-acquired property. The share of particular heirs under Hanafi School is as follows:

1. A daughter who is as an only child receives half of share.
2. If there are two or more daughter and no sons, they jointly get two thirds share which is equally divided among them. Presence of a son provides her only half of what he gets.
3. A widow receives only 1/8 or ¼ of the property depending on whether or not there is a child or son's descendants.
4. If there is more than one widow, their collective share is 1/8 or ¼ shared equally among them.

The Shia Law does not exclude female from their inheritance in immovable property right. Cognates and agnates are provided equal weight age. However, Female share is half in comparison to those of males

d. **The Succession Act for Sikhs, Jains and Buddhists:** The Indian Succession Act, 1925 is applicable to the testamentary succession in case of Sikhs, Jains and Buddhists. However, in the case of intestate succession of them the Hindu Succession Act, 1956 is applicable.

e. **The Hindu Succession Act, 1956:** In the case of intestate succession for Hindus, the Indian Succession Act, 1925 is not applicable due to the existence of the system of Hindu Undivided Family (HUF) as per the Hindu Law. Thus, the Hindu Succession Act, 1956 came into existence. For Hindu, Buddhist, Jain, and Sikh the Hindu Succession Act, 1956 is applied for the division of wealth of an individual dying without leaving a will. Section 8 and 9 of this act provides guidelines for the distribution (dissemination) of the property of a Hindu male. Accordingly, that property would be hand over to heirs of Class- I who take property all the while to the exclusion of all other heirs. A widow (wife of deceased) is considered

to be an heir of Class-I category. Thus, she holds a lawful right in the property of her spouse who died without a will. The widow possesses a synchronous (contemporary) right in the property along with other heirs of class I. A widow/ widows together take one share which the living son, daughter and mother will get one share each.

- f. **The Hindu Women’s Right to Property Act, 1937:** According to this Act, the widow of a deceased coparcener of Mitakshara undivided family will have a similar intrigue (scheme) which her spouse had while he was alive. Before this enactment, the undivided interest of a coparcener on his demise was passed by survivorship to the next coparcener. Section 3 (3) of this Act stated the widow’s right to the division of property. Thus, she will have same option to claim a partition as a male owner. However, under both the school’s coparcener cannot start with females.
- g. **The Hindu Adoption and Maintenance Act, 1956:** After ratification of this act the status and position of widows got changed. Before the enactment of this act, the widows did not have rights of adoption without the consent and explicitly expressed authority of her deceased spouse or in a few situations without the permission of her relatives. The said law has removed all such obstacles which stop a widow from taking an adoption. Further, in past females used to adopt child for her spouse. However, after this enactment women take adoption for themselves. Now they will be called adoptive mother of the children adopted in their own right.

Section 19 of this act further explained that if widowed daughter-in-law after the death of her husband can claim maintenance if she cannot maintain herself out of her earnings, other property of her spouse, parents or kids. Section 21(iii) of this act further state the term ‘widow’ as dependent till time she does not marry. If she did not receive any share in the deceased individual’s property, then the lawful beneficiaries of the deceased person are bound under section 22 to keep up the dependent. The obligation is on each individual who is sharing the property. However, this law is silent about the amount maintenance is entirely at the discretion of the court. Under the Muslim law, maintenance is provided for the continuance of marriage, dissolution of marriage, divorce (till her remarriage), and separation due to cruel nature of husband or non-payment of dower a woman can claim the maintenance. However, she is not entitled to claim maintenance during widowhood. Under the Christian Law the widow is entitled to get a 1/3 share of the husband’s property and rest is to be distributed among the children equally.

1. Hindu Succession (Amendment Act, 2005)

Indian Constitution has provided right of gender equality. However, in practice it is not followed in regards to the right to inheritance of property for Hindu women as it is seen in the Hindu Succession Act, 1956. Thus, barrier on intestate succession in the framework of Mitakshara has been changed through the Amendment of 2005. It had facilitated Hindu women equivalent status with men. It has provided liberty in relation to the right of inheritance property to women from the masculine dominated traditions. However, before the enactment these various alterations were introduced in states like Andhra Pradesh, Maharashtra, Karnataka, and Tamil Nadu in 1986, 1989, 1994, 1994 respectively. Kerala canceled joint family property inside and out in 1975.



2. According to the provision made as per section 6 (1) of this act, a daughter has received equivalent status like a son as a coparcener. Before this Act, just male individuals descended from a common predecessor, e.g., sons, grandsons, and great grandsons could be the coparceners and had an interest in coparcenaries property by birth. However, the enactment to this law has offered a privilege to daughters to be coparceners like sons. If in HUF, there is a deceased person's widow, their 2 sons and a daughter in that case 2 sons and a daughter would become the current coparceners and the widow would be a member. According to Mitakshara, since widow is only member and not coparcener, she cannot become Karta or Supervisor of the HUF.
3. **The Indian Constitution:** According to Article 15 of The Constitution of India forbids gender discrimination. It further ensures equality of opportunity in matters of public employment as per Articles 16. Article 15(3) permits special provision in favor of women to empower them. These provisions are made with the understanding that without participation of females in equal terms with males no country can achieve social, economic or political development.

Limitations

Present paper is silent about the adequacy of the existing law to facilitate redresses to the various problems faced by widows in India. It was only an attempt to study them. Hence, there is definitely future scope to study various problems of widows in detail and analyzed the position of existing laws to provide remedies on them.

Conclusion

Widows in India expects decent and goal – oriental living from their family and society. Up to certain extent the mindset of the people towards widows' issues has definitely changed. However, today also in certain cases we observed the humiliation and exploitation of them in many ways. The rights of the widows in India are often ignored. These include the right to equality before law, right to maintenance, right to claim property, right to opt for remarriage, and right to have adequate way of living. Many laws have been enacted to provide relief to widows. Along with the judicial system of country the society and family members of the widows have crucial role to reduce their hardship.

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