



The Property Rights of Hindu Widows: A Study of Colonial and Post-Colonial Reforms (1856-1956)

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Abstract

The colonial laws enacted by the British government in India to reform the status of women, particularly widows, were primarily based on contradictions. Under Hindu law, women were excluded from legal ownership of joint family property. This paper argues that the colonial laws enacted to protect the rights of widows were silent on their economic position. For instance, the Hindu Widow's Remarriage Act (HWRA), 1856, passed to legalise Hindu widow's marriage, had an 'economic disability'. Section 2 of HWRA disinherited widows upon their marriage. The Anglo-Indian Courts applied Section 2 to many lower-caste widows who had a prior custom of remarriage. This provision brought women into litigation as the families of deceased husbands used Section 2 against the widows. However, almost after a decade, efforts were made to change the oppressive laws that deprived women of their rights in the estate.

During the 1930s and 40s, the legislative assembly was flooded with many liberal bills concerning women's inheritance, marriage and divorce rights. The Hindu Women's Rights to Property Act of 1937, resulted from these efforts by liberal social reformers like G.V. Deshmukh. Though the Act was remarkable in providing legal status to women on family property, it had glaring defects, which made it less effective. The Hindu Succession Act (HSA), 1956, was enacted during the post-independence era. Under HSA, women were granted absolute rights regarding all property. Hence, it successfully converted the women's limited estate into her absolute estate. However, Sections 6 and 30 of HSA still held discriminatory provisions against women which needed to be modified. With the help of these past legislations, this paper argues that both colonial and post-colonial laws were unsuccessful in securing women's rights concerning property. Even though the lawmakers tried to frame laws favouring women's rights, they largely failed to make it a reality as it remained unequal and discriminatory in nature and practice.

Keywords: colonial state, dayabhaga, mitakshara, property, widow

Introduction

Widows and widowhood in British India were subjected to various forms of exploitation. The colonial widow's vulnerable status in the late nineteenth century led the British government to initiate social reforms. Indian social reformers like Raja Rammohan Roy and Ishwar Chandra Vidyasagar urged the colonial state to pass progressive legislation to improve the condition of widows in India. For instance, the Sati Abolition Act of 1829 and the Hindu Widow's Remarriage Act (HWRA) of 1856 were the result of a long-fought battle in the history of reforms and statutory law in India. Undoubtedly, the colonial government's intention was positive and progressive while enacting these acts concerning women. Still, its contradictory position and policy of non-interference in Indian religion created gender biases and female inequality. The HWRA 1856 favoured inequality; even though it provided legal status to the widow remarriage, it took away widow's inheritance right upon remarriage. The Act 1856 suppressed women's rights and worked as an economic disability for them. This paper looks at the glaring defects in the Hindu Widow's Remarriage Act of 1856. Section 2 of the Act was mainly influenced by the textual tradition of the Hindu scriptures as it called for 'forfeiture' of a widow's right to inherit her deceased husband's estate upon remarriage.

Historians of gender studies have attempted to look at the discourse around widowhood and economic rights by analysing women's vulnerable status in family and society. Marty Chen and Jean Dreze have based their studies on surveys demonstrating intimate links between widows' plight and a wide range of patriarchal institutions such as patrilineal property, patrilocal residence, and the gendered division of labour.¹ Significantly, Jyoti Atwal examines the socio-economic structure of widowhood in colonial north India, particularly, the United Provinces (present-day Uttar Pradesh), to shift the focus from Bengal-centric historiography. Atwal demonstrates that the 'widow's oppression was rooted in the rural economy'. 'In rural areas', she argues, 'factors such as illiteracy, caste, the arbitrariness of property claims and maintenance rights of women as daughters, wives and widows place women in a vulnerable position.'² Mytheli Sreenivas argues that 'situated within the frameworks of colonial and indigenous patriarchies, the question of property was thus not posed in terms of women's equality, but more properly in reconciling the competing claims of a "tradition" supported by colonial law and agrarian elites with the demands of "modernity" that first developed from professional and mercantile interests'.³ Bina Agarwal examines how law effectively formed alliances with agrarian patriarchies, supporting the control by particular men as husbands, fathers and heads of families of resources within agrarian society.⁴

Many widows litigated long court battles in the late nineteenth century as the suit was brought against them by their husband's families using the provision of the HWRA of 1856. Nita Verma Prasad uses the term 'litigious' to describe these widows and her work discusses how the Anglo-Indian courts and their judgments

¹ Marty Chen and Jean Dreze, 'Recent Research on Widows in India: Workshop and Conference Report', *Economic & Political Weekly*, Vol. 30, No. 39, 1995, p. 2435.

² Jyoti Atwal, *Real and Imagined Widows: Gender Relations in Colonial North India*, New Delhi: Primus Books, 2016, p. 2.

³ Mytheli Sreenivas, 'Conjugalities and Capital: Gender, Families, and Property under Colonial Law in India', *The Journal of Asian Studies*, Vol. 63, No. 4, November, 2004, p. 957.

⁴ Bina Agarwal, *A Field of One's Own: Gender and Land Rights in South Asia*, Cambridge: Cambridge University Press, 1994, pp. 158-80.

favoured the ancient texts over the more fluid and dynamic local customs.⁵ The Anglo-Indian courts smashed those local customs which supported women's rights and applied the most misogynistic code to them. Section 2 of the HWRA was an example of such a restrictive code to be applied to widows by the courts.

During the colonial period and under Anglo-Hindu law, women's share in the joint Hindu family were minimal, having no economic security. A woman was not even recognised as a coparcener under both *dayabhaga* and *mitakshara* laws. Towards the turn of the twentieth century, it had been observed by many prominent and liberal leaders that colonial laws were very restrictive and discriminatory against women. Hence, a change was seen in the 1930s towards giving a woman, especially a widow, an equal share in property.

The early twentieth century marked the beginning of the women's movement in India. The educated elite women felt the need to establish their own independent 'feminine' space to discuss and initiate reforms concerning women and children. In 1917, the Women's Indian Association (WIA) emerged as Madras's most outstanding regional organisation through the joint efforts of three prominent women: Annie Besant, Margaret Cousins and Dorothy Jinrajadasa. In 1925 and 1927, two major organisations were formed to contribute to the progress of the women's movement in India, namely, the National Council of Women in India (NCWI) and the All-India Women's Conference (AIWC). These organisations aimed to fight social evils, such as child marriage, the *devadasi* system, lack of female education, and illiteracy. In 1917, the All-Indian Women's Deputation demanded female suffrage before the British government. Literacy and property were two essential qualifications for women to cast their vote. Therefore, Indian women's organisations soon indulged in lobbying the legislative assembly to pass progressive laws concerning the inheritance rights of women.

In the 1930s, some liberal Indian law reformers came up with specific bills to reform the condition of Hindu women. Hari Singh Gour, Harbilas Sarda and G.V. Deshmukh were the force behind some of the essential legislations in this direction and they emerged as the 'proponent of women's rights' in India. Harbilas Sarda on 26 September 1929, introduced the 'Hindu Widow's Rights of Inheritance Bill' to provide Hindu widows with a share in their husband's estate. However, the bill was only discussed widely when it was again introduced on 21 January 1930 by Sarda. The bill was principally proposed to make the widow entitled to a share of the joint family property as her husband would be at the time of his death. The bill further made this share her absolute estate. The bill failed to receive the support of the members of the legislative assembly. It was severely criticised and dismissed. Sarda proposed another enlightened bill entitled 'The Hindu Widow's Right of Maintenance Bill' on 29 August 1933 in the assembly.⁶ Sarda had argued that in the absence of any definite rule of law on the subject of the widow's right to maintenance, the amount to be fixed was left to the sole discretion of judges.⁷ Thus, Sarda's bill aimed to deal with this issue by proposing to make the law definite and fixing the minimum and maximum proportion of the income of the estate to be given to a widow. The bill of 1933 was attacked sharply by assembly members because it was likely to disrupt the joint Hindu

⁵ Nita Verma Prasad, 'The Litigious Widow: Inheritance Disputes in Colonial North India, 1875-1911', in Anindita Ghosh, (ed.), *Behind the Veil: Resistance, Women and the Everyday in Colonial South Asia*, Hampshire, UK: Palgrave Macmillan, 2008, pp. 163-164.

⁶ To read more on Harbilas Sarda's bill, 'The Hindu Widow's Right of Maintenance Bill, 1933', see, Atwal, *Real and Imagined Widows*.

⁷ Government of India, 'Hindu Widow's Right to Maintenance Bill', 1931, Home Department, Judicial, F. No. 78/31-Judl., The National Archives of India (NAI), New Delhi, India.

family system. Though the bill was ignored in the assembly and failed to become an Act, Sarada's efforts were well-spent. Soon the social reformers took the idea from his bill, which led to the passing of 'The Hindu Women's Right to Property Act' in 1937 by G.V. Deshmukh (or Gopalrao Deshmukh). This Act was the most effective legislation passed in the 1930s and was known as the Deshmukh Act.

The Hindu Women's Right to Property Bill was introduced in the assembly on 4 February 1937 before the Select Committee. The Deshmukh Act of 1937 entitled the widow to succeed along with the son and to take a share equal to that of the son. However, this would be her limited share in the deceased husband's property with a right to claim partition, known as Hindu Women's Estate. The Act was crucial in securing the widow's and predeceased son's widow's interest in the property. But it had severe implications for other Hindu women as daughters were excluded from its scope. The rights of daughters were grievously affected under this Act. It had been contended by the opponents of the bill that the Act placed the predeceased son's widow before the daughter in terms of succession. The daughter could not claim the maintenance or her marriage expenses from the predeceased son's widow. This would put a daughter in grave difficulties as her rights were not protected under the Act.⁸ Therefore, the Amendment Bill of 1938 was passed on 18 March 1938, called The Hindu Women's Right to Property (Amendment) Act, 1938. In this context, several bills were introduced in the legislative assembly to give female heirs a right to inheritance.

In 1941, the government formed a four-member Hindu Law Committee also known as the Rau Committee. The Committee was headed by B.N. Rau, a Judge of Calcutta High Court, to look into the defects of the Deshmukh Act of 1937 and to set up a code of succession and marriage, which came to be known as the Hindu Code Bill (HCB). The Rau Committee recommended codifying the Hindu law to improve the position of women in terms of marriage and inheritance rights. The HCB aimed to establish a common law of intestate succession for all Hindus in colonial India. The HCB met with great hostility from the orthodox Hindu members who opposed it because the Hindu society would receive a moral setback if women were granted the right to divorce and inherit property.⁹ Rajendra Prasad was one of its opponents. The Hindu orthodox groups declared the HCB as against the interest of Hindus or anti-Hindu. Subsequently, they pressed the demand for a uniform code.

Interestingly, the all-Indian women's organisations such as the WIA, AIWC and NIWC extended their support to the Hindu law reform. Flavia Agnes has argued that this was a 'significant political move since an uncompromising demand for a uniform code would have meant an alliance with the most reactionary and anti-women lobby and would have caused a further setback to women's rights' (Agnes 1999: 79). The AIWC turned out to be the most active women's organisation in the 1930s and 1940s. It played a vital role in securing women's interest in the HCB and helped in its smooth passage in the assembly through public meetings, participation of women members in legislative debates and lobbying the legislatures. Jana Matson Everett has argued that the women's movement's inability to mobilise mass opinion weakened their cause. This was because the women's organisations as an elite group represented a small fraction of Indian women.¹⁰

⁸ Flavia Agnes, Sudhir Chandra and Monmayee Basu, *Women and Law in India*, New Delhi: Oxford University Press, 2016, p. 133.

⁹ Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India*, New Delhi: Oxford University Press, 1999, pp. 78-79.

¹⁰ Jana Matson Everett, *Women and Social Change in India*, New York: St. Martin's Press, 1979, p. 163.

Moreover, Indian women representatives were largely missing from the Hindu Law Committee even though Renuka Ray and Radhabai Subbarayan were the only two women members in the legislative assembly. Both women supported the Hindu law reform.

The first Law Minister of independent India, B.R. Ambedkar, was made in charge of reforming the Hindu law. Ambedkar was known for working effortlessly for the rights of Dalits and women in India. He was sympathetic towards the vulnerable condition of widows and was willing to reform the same by proposing progressive changes through legislation. The first change was that the widow, the daughter, and the widow of a predeceased son were given the same rank as the son in the matter of inheritance. The second change proposed was related to the number of female heirs recognised as greater than both *dayabhaga* and *mitakshara*. The third change was to abolish the discrimination against female heirs (which was earlier prevalent in Hindu law). The fourth change was related to *dayabhaga* where the father comes before in preference to the mother was altered and Ambedkar made mothers come before the father.

After facing initial resistance and opposition from the orthodox forces, finally, during 1955-56, the Hindu Code Bill was passed. The bill prepared by Ambedkar was divided into four main bills and passed the Hindu Marriage Act, 1955; the Hindu Succession Act, 1956; the Hindu Minority and Guardianship Act, 1956; and the Hindu Adoption and Maintenance Act 1956. The most significant change brought forward by Ambedkar through the Hindu Succession Act (HSA), 1956, was that women were granted absolute rights regarding all property. Hence, it successfully converted a women's limited estate into her absolute estate.

Though the HSA of 1956 proved crucial in changing the legal status of women in terms of succession, it had certain provisions like Sections 6 and 30 which were discriminatory and biased towards women. For example, Section 6 did not recognise daughters as coparceners. Section 30 deprived the daughter and wife of the share in property as a Hindu coparcener had testamentary power to will away his estate to whoever she wished. Therefore, the Hindu Succession (Amendment) Act of 2005 was passed to remove this inequality and discrimination. Nearly fifty years after the passage of the HSA, an amendment was brought which made daughters also the coparceners in Hindu undivided family property.¹¹ In the new millennium, daughters have the same rights and responsibilities as the son under the amendment.

Historical Overview: Colonial Approach to Hindu Law and Reforming Widows

In the eighteenth century, when the British established their control over India, they met with the task of governing the natives. They were amazed at the diversity of India, and to administer such a large population was quite a challenge. Though the British administrators tried not to interfere with the personal laws of different communities, they choose to modify Indian laws to ease their administration. Warren Hastings, the Governor of Bengal, declared in 1772 that ancient texts and scriptures should be the exclusive source of Hindu law.¹² The codification of Hindu and Mohammedan laws became the priority for British officials in the eighteenth century. Flavia Agnes has called it the 'anglicisation of scriptures'. 'Since scriptures were unequivocally accepted as the source of both Hindu and Muslim family laws, the British government set the

¹¹ Flavia Agnes, 'Know Your Rights', *The Times of India*, March 25, 2006, p. B6.

¹² Everett, *Women and Social Change*, p. 144.

task of translating the ancient texts as an essential precondition to good governance'.¹³ The British officials did not have any difficulty with the Muslims as many of the officials who were to administer the law to them could read Persia and Arabic. The real issue was with the Hindus and reading the ancient texts in Sanskrit as it was an unfamiliar language to Englishmen. This often made the British depend on intermediaries or Brahmin Pundits. However, soon the Englishmen found a solution to the problem and decided to learn Sanskrit themselves. Ludo Rocher has pointed out that the vulnerability of the British in reading the Hindu scriptures and the corrupt attitude of Brahmin Pundits led these Englishmen to learn Sanskrit.¹⁴ Sir William Jones, an Englishman and a Judge in the Supreme Court of Judicature in Calcutta had studied Sanskrit. In 1794, Jones published an English translation of the *dharmasastras* attributed to Manu entitled, *Institutes of Hindu Law: Or the Ordinance of Manu*. Henry Thomas Colebrooke's translation of *dayabhaga* and *mitakshara* became the two most valuable and persistently used sources of Hindu law in cases concerning inheritance issues. At this time, several Sanskrit scholars had attempted to write treatises to meet the British demand. However, predominantly, the work of English authors on Hindu shastric law came to be trusted and used in preference even to the genuine Sanskrit shastric works.¹⁵ This became the basis of 'Anglo-Hindu Law' administered in the colonial courts of British India.

In the patrilineal Hindu family system, women were often seen as dependent upon male members. Under Hindu law, women were entitled to maintenance but not to inheritance. Though it is generally believed that the ancient Hindu law was particularly harsh towards women and denied them economic freedom, Flavia Agnes has called it a 'historical misconception'. She has argued that Manu was the first lawgiver who laid down comprehensive principles such as women's separate property. Narada's dictate says that the husband must provide his first wife with one-third of his property in his second marriage.¹⁶

In 1810, Colebrooke's *Two Treatises on the Hindu Law of Inheritance* standardized the Anglo-Hindu law.¹⁷ The schools of law were based on two different commentaries, namely Jimutavahana's *dayabhaga* and Vijnanesvara's *mitakshara*. Under the *mitakshara* law, the male member had a birthright to acquire property from a joint coparcener. Women did not have the right to joint ownership. She should not be a coparcener. Hence, she could not demand partition. But women had the right to maintenance, including the right to residence. The widow inherited if the deceased husband had no male heir. Upon the widow's death, the property returns to the husband's male heirs, not to her relatives. Everett has pointed out that this provision of Hindu law was intended to prevent the property from passing out of the male line.¹⁸

The other major school of law *dayabhaga* was practiced in Bengal. Under this school, upon the death of the male member of the family, the property was equally divided between the legal heirs. Women in the family, such as widows, mothers and daughters could get a share in the property. Inheritance mainly depended on the spiritual benefits and the ability to perform rituals for the deceased. Since the males had the privilege

¹³ Agnes, Chandra and Basu, *Women and Law*, p. 43.

¹⁴ Ludo Rocher, 'Law Books in an Oral Culture: The Indian Dharmasastras', *American Philosophical Society*, Vol. 137, No. 2, 1993, p. 255.

¹⁵ Madhu Kiswar, 'Codified Hindu Law: Myth and Reality', *Economic & Political Weekly*, Vol. 29, No. 33, August 13, 1994, p. 2146.

¹⁶ Flavia Agnes, *Family Law*, Vol. I, *Family Laws and Constitutional Claims*, New Delhi: Oxford University Press, 2011, pp. 30-31.

¹⁷ Henry Thomas Colebrooke, *Two Treatises on the Hindu Law of Inheritance*, Calcutta: A.H. Hubbard, 1810.

¹⁸ Everett, *Women and Social Change*, p. 143.

and birthright to perform such rituals, the property was inherited by them. Hence, females were left with a limited estate. *Stridhana*, under Hindu law, is an absolute property that a woman receives during her lifetime. It includes all movable; immovable gifts a woman gets before or during marriage. Under the *dayabhaga*, *stridhana* was attributed to gifts and movables. While the *mitakshara* laid down that property possessed by a woman through succession, partition and purchase comes under her *stridhana*. 'The *mitakshara* has expanded the scope of *stridhana* to include property acquired by a woman through every source, including inheritance and partition. During colonial rule, judicial decisions changed this concept and laid down that inherited property was not *stridhana*. These judicial decisions constrained the scope of *stridhana* property'.¹⁹

The late nineteenth and early twentieth centuries marked the beginning of 'social reforms' for women in colonial India. At this juncture, the woman's question became a highly contested issue within the colonial and national discourse. The colonial state observed the engagement of the Hindu religion with the *shastras* which make the Hindus 'cruel' and 'savage' in their practices. Partha Chatterjee has argued that the civilising mission led by the colonial state identified the Indian social customs as 'degenerate' and 'barbaric'. The colonial texts condemned the treatment of women in India by identifying a scriptural tradition.²⁰

Widows during the colonial period were the most affected victims of social evils practised in Hindu society. *Sati pratha* was highly prevalent among the Hindus, especially the upper-caste Hindus. Sati as a practice signifies burning a wife on the funeral pyre of a deceased husband. The textual representation of Hindu women, symbolising pain and suffering, has become a subject of much debate among historians and political scientists. Lata Mani examines the official and indigenous discourses on sati in Bengal by establishing an intimate connection between women and Brahmanic scriptures.²¹

At the end of the nineteenth century, the colonial government brought crucial legislation to outlaw some oppressive social practices. Liberal social reformers, such as Ishwar Chandra Vidyasagar and Raja Rammohan Roy, initiated progressive legislation concerning women. *Sati pratha* was prohibited in 1829 with the efforts of Rammohan Roy. Likewise, Vidyasagar was a pioneering force behind the passage of the HWRA of 1856. Other equally important laws were the prohibition of infanticide in 1795 and the Age of Consent Act in 1891. Significantly, the colonial approach to the woman's question in India was based on contradictions. The British claimed to liberalise women in India by introducing liberal laws, yet they professed inequality by claiming a policy of non-interference in Indian religion. It has been argued that the issue of female inequality was used to legitimise foreign rule in India. British imperialism and sex inequality were closely bound together.²² The most appropriate example of this colonial contradiction was the HWRA of 1856. The Act was enacted to legalise Hindu widow's marriage, which previously was prohibited. But the Act proved grievous

¹⁹ Agnes, *Family Laws and Constitutional Claims*, p. 32. In a recent judgment, the Calcutta High Court, on hearing a plea by a widow, Nandita Sarkar, ruled that 'depriving a woman of her stridhana or any other economic or financial resources to which she is entitled constitutes domestic violence under the Protection of Women from Domestic Violence (PWDV) Act, 2005' ('Depriving Woman of Her Stridhana', *News18*, December 27, 2022). Significantly, the Karnataka High Court on 6 June 2022 passed a judgment calling 'stridhana' a women's absolute property in the case of Ganesh Prasad Hegde vs Surekha Shetty ('Husband's Family Cannot Retain Stridhana on Annulment of Marriage', *The Hindu*, June 14, 2022).

²⁰ Partha Chatterjee, 'Colonialism, Nationalism and Colonialised Women: The Contest in India', *American Ethnologist*, Vol. 16, No. 4, November, 1989, pp. 622- 631.

²¹ Lata Mani, 'Contentious Traditions: The Debate on Sati in Colonial India', *Cultural Critique*, No. 7, The Nature and Context of Minority Discourse II, 1987, pp. 119-156.

²² Joanna Liddle and Rama Joshi, 'Gender and Imperialism in British India', *Economic & Political Weekly*, Vol. 20, No. 43, 1985, p. WS73.

to widows who choose to remarry as its Section 2 had a provision of disinheriting widow upon her marriage. This provision was an economic disability for widows who remarried under the Act.

Hindu Widow's Remarriage Act (HWRA) of 1856: An Economic Disability

The HWRA of 1856 was passed to provide legal status to the marriage of Hindu widows. Section 2 of the Act dealt with the forfeiture of the right to inherit her deceased husband's estate upon remarriage. Many families, at this time, used the provision of the Act 1856 against the widows. Flavia Agnes pointing to the economic aspects of the Act shows how the Act unfolded itself upon women from lower castes. Even though the lower-caste women had the custom of remarriage before the HWRA, the colonial courts applied Section 2 of HWRA to many such widows. Agnes has argued that the rationale for denying Hindu widows their right to retain their property was based on judicial interpretations of Hindu law.²³

The colonial government's intention to bring changes in the laws of Hindus resulted in the construction of statutory law. As noted by Lucy Carroll, the HWRA 1856 is the best example of statutory social reform.²⁴ The newly-established British Indian Courts sought to administer ancient Hindu law (*dayabhaga* and *mitakshara*). The English Justices consulted Brahmin Pundits to decide the cases concerning marriage, succession, and adoption. The reliance was based on interpreting textual Hindu law in delivering the judgments. Despite the customary right to remarriage among lower-caste, the cases of such widows were determined by the applicability of Section 2 of HWRA. For instance, in 1923, the Calcutta High Court in the case of *Santala Bewa v. Badaswari Dasi*, gave a judgement against the widow.²⁵ The widow, the second wife of her deceased husband, inherited his share. During her widowhood, she kept a *dangua*, a kind of second husband. The deceased husband's daughter from his first wife brought the case to court because the widow allegedly contracted a remarriage. Hence, the widow had forfeited the inheritance. The lower court, the Munsiff of Siliguri held that Rajbansis are not Hindus and to be governed not by Hindu law but by custom. The lower court further held that amongst the Rajbansis, a widow kept *dangua* and could not be divested of property. The Deputy Commissioner of Darjeeling, however reversed this decision because Rajbansis are Hindus and subject to Hindu law. In its final decision, the Calcutta High Court declared that the widow was governed by Hindu law and hence forfeited her inheritance rights.

In another case of a lower caste widow, the Bombay High Court in *Vithu v. Govinda* applied Section 2 of the HWRA, despite the custom of remarriage permitted by the caste. The widow, Shivu, inherited the estate on her son's death. The infant son died unmarried and childless in 1873 and the widow married again in 1875. Since then, the widow and other defendants took possession of the estate. The Subordinate Judges established that the widow had a custom of remarriage. She did not forfeit her interest in the late husband's property.²⁶ Still, later, the full bench of the Bombay High Court based their judgement on the applicability of Section 2 and held that it 'extends to all Hindu widows irrespective of caste to which they belong and to the

²³ Agnes, Chandra and Basu, *Women and Law*, p. xv.

²⁴ To read more on the Hindu Widow's Remarriage Act, 1856 and its applicability by the Colonial Courts. See, Lucy Carroll, 'Law, Custom, and Statutory Social Reform: The Hindu Widow's Remarriage Act of 1856,' *The Indian Economic & Social History Review*, Vol. 20, Issue 4, 1983, pp. 363-388.

²⁵ *Santala Bewa v. Badaswari Dasi* (1923) I.L.R., 50 Cal., 728.

²⁶ *Vithu v. Govinda* (1896) I.L.R., 22 Bom.

special customs of such caste. It reads as a law of universal applicability'. Thus, the court called for the forfeiture of the widow's rights.

The Allahabad High Court took a liberal and dissenting stand in this respect and consistently held that Section 2 of HWRA did not apply to those lower caste widows who had a prior custom of remarriage. While other High Courts held a contrary view, the Allahabad High Court was unique and exceptional in its ruling as it consistently argued that Section 2 of HWRA was not meant for all Hindu widows. For example, the landmark judgment of the Allahabad High Court in 1889 in the case of *Har Saran Das v. Nandi* held that the widow belonging to a sweeper caste, in which remarriage was permitted, did not upon her remarriage forfeit her interest and Section 2 did not apply.²⁷ The Court thus decided in favour of the lower caste widow, Nandi, based on customary law. Likewise, in another case, the Allahabad High Court preferred more fluid customary laws over rigid Statutory and Hindu laws. In 1933, the Allahabad High Court in the case of *Bhola Umar v. Kausila* held that 'a custom of remarriage does not necessarily carry with it, a further custom of forfeiture upon marriage. The proof of a mere custom of remarriage would not be sufficient to involve forfeiture. It would be necessary for the party claiming that the widow's estate has been forfeited on account of remarriage to prove that there is a custom of such forfeiture in such contingency'.²⁸ The other high courts of Calcutta, Madras, Bombay or Hyderabad did not follow the decision of the Allahabad High Court. These High Courts continued to apply Section 2 to lower-caste widows which entails forfeiture of rights. A conflict of opinion was seen among these high courts and the Allahabad High Court on the interpretation of Section 2 of the HWRA.

However, in rural Punjab and Haryana, the HWRA had no significance as a form of widow remarriage was recognised which was not only observed but also legally recognised under the customary law of the land operable in the courts.²⁹ The colonial contradictions were once again seen in handling customary laws in India. On the one hand, the colonial courts overruled the presence of customs and customary practices. On the other hand, the colonial state sanctioned the local custom of widow remarriage, popularly known as *karewa* in which the deceased husband's younger brother accepts the widow as a wife in the Punjab and Haryana region. Prem Chowdhary has argued that the custom of *karewa* or levirate marriage among the peasants was the most effective way to prevent widows from exercising their inheritance rights, as remarriage within the family transferred the control of the deceased husband's property from the widow to his brother.³⁰ The HWRA of 1856 also successfully retained the property by taking away from the widow her limited right over it in case of remarriage. To sum up, the HWRA of 1856 was silent on the economic position of women upon her remarriage.

²⁷ *Har Saran Das v. Nandi* ILR (1889) 11 All.

²⁸ *Bhola Umar v. Kausilla* ILR (1933) 35 All.

²⁹ Gurmit Kaur, 'Customary Law and Widow Remarriage: Its Implications and Effects on Colonial Punjabi Women', *Proceedings of the Indian History Congress*, 2011, Vol. 72, Part-I, p. 832.

³⁰ Prem Chowdhary, 'Conjugalities, Law and State: Inheritance Rights as Pivot of Control in Northern India', in Srimati Basu and Rajeshwari Sunder Rajan, (eds.), *Dowry and Inheritance*, London: Bloomsbury Academics, 2005, p. 171.

Hindu Women's Right to Property Act, 1937: A Progressive Legislative Effort

Hindu widows have been historically excluded not just from mainstream society but also from familial space. Their widow status determines their social position and is considered to be responsible for their self-isolation. They were forced to live a life of seclusion as socially marginalised individuals. In such a social milieu, property rights were predominantly male, and women were excluded from inheritance rights. During the colonial period, a widow's right to inherit her husband's estate was vividly debated among Hindu jurists. Hindu widows whose lives were surrounded by many taboos, acquiring property had been challenging in a traditionally male-dominated society. Moreover, it was no less than a controversial issue.

A progressive attempt was made by H.B. Sarda, who came up with a bill titled 'The Hindu Widow's Right of Maintenance Bill' in 1933. He aimed to ensure a fixed amount of maintenance for Hindu widows as there was no precise standard to provide maintenance.³¹ It proposed to give a share to a Hindu widow in the family. A sonless widow was entitled to get as maintenance from the entire income which her husband's share in the joint family estate would, as on partition, yield.³² Opponents of this bill argued against its introduction, claiming that it was undesirable to give a widow the right to have a partition of family estate. Sarda believed that this bill needed to be circulated as the provision of giving a sonless widow a share of her deceased husband's share in the joint family estate amounted to compulsory partition.

The bill never received acceptance in the legislative assembly because it was met with more criticism than appreciation. One of the major criticisms came from the Law Members who believed that the provision to provide widows with a share in the joint family property was inconsistent with the Hindu law of inheritance. Another view was that under the *dayabhaga* law, a sonless widow was entitled to inherit a share of her husband's property in the joint family. Therefore, it was felt that the proposed bill was unnecessary and irrelevant to parts of India where the *dayabhaga* law was followed. During the legislative assembly debates, one member, S.C. Sen, criticised the provision that if a sonless man died, his widow would be entitled to the whole sum her husband left as his share in the joint family.

It has also been noted that H.B. Sarda's bill prejudiced the members of the Hindu community who were not in favour of giving inheritance to Hindu widows. They saw its incorporation into Hindu law as an attempt to diminish the principles of Hindu law. Many influential members of the Hindu community were against the introduction of this bill into Hindu law.³³ They believed that the conventional Hindu law needed no reform concerning Hindu widows and that providing inheritance to widows from her deceased husband's share in the joint family estate as proposed in the bill was unreasonable. Hindu widows could not entail property because a widow remain dependent on her relatives throughout her life. After much discussion and severe criticism, the bill failed to get acceptance in the legislative assembly.

But Sarda's efforts did not go unnoticed. It caught the attention of some reformers who wanted to ensure the maintenance rights of Hindu widows. In 1936, a bill titled 'Hindu Women's Right to Property Bill' to amend the Hindu law governing Hindu women's property rights was circulated widely for public opinion. This bill was introduced by G.V. Deshmukh in the hope to achieve legal equality between men and women.

³¹ Agnes, Chandra and Basu, *Women and Law*, p.129.

³² *Ibid.*, p.130.

³³ Atwal, *Real and Imagined Widows*, p. 135.

After much consideration, the provision of the bill to grant women the absolute property right was withdrawn and widows were only granted a limited right of inheritance.³⁴ Despite opposition to this bill from orthodox members, Deshmukh was backed by some liberal voices who advocated positive changes in the Hindu law.³⁵ Thus, the bill became the Hindu Women's Right to Property Act of 1937. This Act dealt with the inheritance rights of Hindu women. It made radical changes in all the schools of Hindu law. A widow is entitled to a limited share of the property as that of a son. The property in this limited estate is held by her during her lifetime and it reverts to her husband's heirs. She had no right of disposition of such property. She could not sell, will or gift such property.³⁶ Due to some defects, this Act was amended in 1938. A bill was introduced for the amendment of the 1937 Act in a subsequent year. This bill identified the flaws in the 1937 Act.

Hindu Succession Act, 1956 and Its Amendment: Women as Absolute Owners

The laws enacted before were found to be flawed and defective in many respects and became controversial. In 1941, B. N. Rau Committee was set up to suggest changes and unify the laws governing the Hindu community. This Committee drafted two revolutionary bills that changed the legal landscape for Hindu women. It dealt with Hindu marriage and Hindu intestate succession. After a recommendation by the two houses of the central legislature, a joint committee gave a charge of codification of Hindu law to the Rau Committee. Rau Committee circulated the two bills for public opinion and toured the country to elicit opinion on codifying the Hindu law. In 1944, the Committee was reconstituted to prepare a Hindu Code Bill. Evidence and opinions were collected from diverse lawyers and women's representative organisations. All-India Women's Conference (AIWC) carried out a nationwide campaign in favour of unifying Hindu laws and sent letters and telegrams to the law member.³⁷

The Hindu Code Bill was introduced in 1946 and reintroduced in the Constituent Assembly in 1947. The bill met with strong opposition from orthodox sections of Hindus; these conservative members were hostile to the passage of this bill. Due to this opposition, a draft code with little modifications was referred to a select committee in 1948 headed by B.R. Ambedkar, then Law Minister. The Hindu Code Bill proposed certain changes concerning Hindu succession rights. Ambedkar highlighted a fundamental difference between the *mitakshara* and *dayabhaga* schools of Hindu law. Under *mitakshara*, the property goes to the remaining members of the deceased male, not to his heirs. Whereas under *dayabhaga* law, the property is held by the heir with an absolute right of disposition be it gift or will or other. The HCB adopted the rule of *dayabhaga* school under which the property was to be inherited by the wife and children as personal property with an absolute right to dispose of the property on their own chosen terms. It proposed giving the widow, the daughter, and the widow of a predeceased son the same status as the son in the matter of inheriting property.

Though the right of inheritance was already given to female heirs under the Hindu Women's Right to Property Act of 1937, daughters were not given this right. A widow inherits a limited inheritance that is 'the

³⁴ Agnes Flavia, 'Politicisation of Personal Laws: A Study of Colonial India', in Bharati Ray (ed.), *Women of India: Colonial and Post-Colonial Periods*, New Delhi: Sage Publications, 2005, p. 19.

³⁵ Everett, *Women and Social Change*, p. 146.

³⁶ Asmita Yadav, 'Coparcenary Rights and Gender Justice: A Reading of Dr. Ambedkar's Hindu Code Bill', *Proceedings of the Indian History Congress*, Vol. 78, 2017, p. 1167.

³⁷ Aparna Basu and Bharati Ray, *Women's Struggle: A History of the All-India Women's Conference 1927-2016*, New Delhi: Manohar Publishers & Distributors, 2018, p. 67.

woman's estate' that she cannot sell or will or gift. After the widow's death, the property goes to the reversioners of her husband. This bill converted this limited right into an absolute right over inheritance. It also abolishes the right of reversioners who claim the estate after the death of the widow. During 1954-56, Parliament passed a series of Acts that came to be known as the Hindu Code Bill: The Hindu Marriage Act, the Hindu Succession Act and the Hindu Minority and Guardianship Act.

The Hindu Succession Act granted the right to inherit and hold property to women on the same terms as men. Previously, women, particularly widows, had very limited right over inheritance. Also, the daughters were excluded from the right to have a share in their father's estate. But this Act gave exclusive inheritance right to daughters and divided the property equally between daughters and sons. It also granted widows, unmarried women, and married women deserted by or separated from their husbands the right to reside in their father's home. The Act was considered a groundbreaking development in terms of women's inheritance rights, entitled them to the absolute owners of properties. Section 14(1) of the HSA refers to property possessed by a Hindu female, including her daughter, to be held by her as full owner, not as a limited owner. It made female Hindus an absolute owner of property by giving them the right to alienate the property.³⁸ But certain provisions of this Act were still discriminatory and biased. Section 6 of the HSA dealt with the devolution of interest in coparcenary property left by the deceased Hindu male, discriminated between sons and daughters. A son became a coparcener with a right by birth over the father's coparcenary interest whereas a daughter was not considered a coparcener. This provision is biased against daughters. This Act was later amended to remove this gender-discriminatory provision.

The HSA was amended in 2005 to grant daughters equal rights to inheritance and make them coparceners on an equal footing with sons in the family. Section 6 of the HSA was amended to include daughters as coparceners by birth, the same right that was granted to sons only. The Hindu Succession (Amendment) Act of 2005 made daughters coparceners, a remarkable development for Hindu females.

Conclusion

The paper examined the property laws enacted by the colonial and post-colonial governments and the role both played in the marginalisation of women by favouring males' privilege while maintaining female inequality. How colonial decisions and patriarchy affected women's claims to property rights are central to this paper. For over a century, Hindu women were governed by the ancient Hindu law (*mitakshara* and *dayabhaga*). Under Hindu law, the rights of women were extremely limited and restricted. The colonial courts entirely relied on the interpretation of Hindu scriptures. Even the Anglo-Hindu law was nothing but the Brahminisation of laws which made the women's interest in property limited.

Further, the colonial state's enactment of statutory law: The Hindu Widow's Remarriage Act of 1856 proved grievous to many widows who chose to remarry as it had a provision, Section 2, which disinherited the widow upon her remarriage. Hence, the HWRA 1856 was silent on the economic status of Hindu women and remained an economic disability. The Anglo-Indian courts applied Section 2 to upper-caste women and

³⁸ Bijayalaxmi Nanda, Savita Sinha and Venika Menon, 'Access to Housing Rights and Property Rights for Women: Select Study in Delhi and NCR Regions', *Indian Journal of Public Administration*, Vol. 65, No. 2, 2019, p. 483.

even to lower-castes with a prior custom of remarriage. This was grievous and deprived many lower-caste women of their rights. But the Allahabad High Court was the only exceptionality in this regard as it stood firm in its decision that Section 2 of HWRA did not apply to those lower-caste widows who had a prior custom of remarriage. Allahabad High Court's liberal outlook towards widows changed the direction of litigation in the late nineteenth century, preventing many from losing their cases.

The enactment of the Hindu Succession Act (HSA) of 1956 was significant to Hindu women. For the first time, it gave equal property rights to a daughter by placing her on equal footing with son. The Hindu Succession (Amendment) Act of 2005 was remarkable, making daughters coparcener in the family property. Under Section 14(1) of HSA 1956, women are entitled to absolute ownership right of properties which was a ground-breaking evolution. Many female heirs, particularly daughters, have benefitted from this provision of the Act as now they are declared the absolute owner of the estate even by the courts in judgments.

To sum up, the laws in India (from colonial to post-colonial period) are often directed and made in respect to privilege male interest. The colonial and post-colonial reforms were unequal and subjected to some form of bias and discrimination towards women. For many years, under Hindu and colonial laws, Hindu women were deprived of their rights in the family property. Likewise, even after the enactment of the HSA of 1956, many of its provisions encouraged female inequality and differentiated women in terms of succession. However, compared with the colonial era, undoubtedly post-independence period was seen as more progressive in terms of women's rights. With the enactment of the Hindu Code Bill in 1955-1956, the age-old laws were abolished and new advanced changes were brought in to transform women's rights from 'limited' to 'absolute'. This has been the most crucial modification in the women's economic empowerment. However, a significant change was seen at the close of British colonial rule when serious efforts were made by liberal social reformers and lawmakers to reform the status of Hindu women. For instance, liberal social reformers and enlightened men like Harbilas Sarda and G.V. Deshmukh initiated and moved many bills concerning women's rights in property, marriage and divorce in the legislative assembly during the 1930s and 40s. However, the real intentions of the colonial and post-colonial states to give women the right to family property on equal terms with men were largely missing. The Hindu Succession Act of 1956 changed women's status in family by turning them into legal heirs. But still, there is a need to locate legislation and courts to a larger extent to explore the dynamics of women's property rights and laws in India.

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