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3rd Year, BBA LLB.**PROTECTION OF HUMAN RIGHTS OF ABANDONED WOMEN**

**“WHAT WOULD LIFE BE IF WE HAD NO COURAGE TO
ATTEMPT ANYTHING?”**

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ABSTRACT

Marriage is the sole foundation of our society that binds people and families together. Many turn out to be loving and successful marriages, while some can be terrifying and difficult as well. Society makes it hard for women to speak or take action against marital injustices if they happen to face any. It is extremely necessary for a married woman to be aware of her legal rights. Certain steps are being undertaken at the local level in many countries to challenge abuse of widows, and change cultural perceptions of widowhood. The aim is that widowhood may have as little social or economic impact on widows as it does on widowers. Additionally, the lack of specific concern and recognition of the abuse of widows in the international human rights instruments, and recommends support for campaigns to remedy this. Widowed or abandoned women are among the poorest and marginalized people in Indian society. In an effort to empower these women to achieve a sustainable livelihood and overcome discrimination related, to marital status and caste, a local nongovernmental organization,

Kalantari, organized widows and abandoned women into microcredit self-help groups (SHGs) along the Southeast coast of India. Widows have always got a raw deal in our nature. Though things have changed from the times when the widows were asked to immolate themselves on her deceased husband's pyre. The orthodoxy is still finding it tough to recognize their share in property. This research paper will brief us about the malpractices and the legal rights, discrimination against abandoned widows.

Keywords – widow, injustice, discrimination, terrifying, human right²

INTRODUCTION

In a society like INDIA, when the spouse of a women expires, she is considered to be burdensome for the whole family and is compelled to pursue her life as a hermit. This is mostly seen when the women belong to a disadvantaged and marginalized community. Severe social traditions and ceremonies are forced upon them, and they need to hold themselves from various other regions. ³Violence against women is rooted in the widely accepted social norms that contribute to gender inequity, male entitlement, and the belief in men's right to domination and control over women's bodies. Human rights are simply the rights we have because we exist as human beings. Widowhood is the most neglected issue of all gender and human rights issues, and this issue neglect condemns countless millions of widows and their children whose lives are determined more often, by discriminatory interpretations of religious, customary and traditional law.

In continuation of the human rights violation against her, she is subjected to various forms of discrimination and violence. She is evicted from her marital home and rendered shelter-less. She is subjected to harmful stigmatization rites, which include brutal and life threatening and burial rights. In India a large portion of the widows are uninformed about their rights such as regarding property, coparcenary, inheritance etc.

The Ongoing Tragedy of India's Widows⁴

¹ Available at: <https://www.tandfonline.com/doi/abs/10.1080/13552070600747131>

² Available at: <https://www.tandfonline.com/doi/abs/10.1080/14616742.2011.611667?journalCode=rfjp20>

³ Available at: <https://blog.ipleaders.in/law-protecting-rights-widows/>

⁴ Available at: [The ongoing tragedy of India's widows - Women's Media Centre \(womensmediacenter.com\)](http://The ongoing tragedy of India's widows - Women's Media Centre (womensmediacenter.com))

- Widows in India have a pronoun problem. An estimation of around 40 million women widows in the country go from being called “she “to “it, the moment they lose their husbands. They become **de-sexed** creatures. Discrimination goes on further with epithets such as “**husband eater**” against them.
- In the northern Indian state of Punjab, a widow is been referred to as “RANDI” which means “PROSTITUTE” in Punjabi. In this region, they usually arrange for the widow to marry her deceased husband’s brother because being owned by a man is a way to avoid being raped.
- It is considered that “Widowhood is a state of social death, even among the higher castes”, says Mohini Giri a veteran activist in the fight for women’s right who was nominated for **THE NOBLE PEACE PRICE, 2005**. She is also an enthusiastic and active member of one of the well-known NGO “Guild for Service “. Widows are still being accused by the public and are expected to have a spiritual life with many restrictions which affects them both physically and psychologically.
- Whether young or old, widowed women leave behind their colourful saris, part with their jewellery, and even shave their heads, if they are in the more conservative Hindu traditions. All of this is designed to reduce and not encourage male for sexual desire, according to Meera Khanna, who is also a contributor of a book called “*Living Death: Trauma of Widowhood in India.*”
- Widows seem to follow rules based on tradition because they have internalized them. They keep doing what other widows do without asking, resigned to a kind of fate such as keeping restrictions on their own diets. Orthodox Hindus believe that onions, garlic, pickles, potatoes, and fish fuel, sexual passions by stimulating the blood, but these are the same foods necessary to avoid malnutrition or even death. For India as a whole, mortality rates are 85% higher among widows than among married women, according to research by the Guild for Service. In most of the Indian society across caste and religion a widow is often perceived by family members to be a burden and sexually threatening toward marriages.
- Widows are being shun and abandoned by their families due to **superstitions**.⁵

⁵ Available at: [The ongoing tragedy of India’s widows - Women’s Media Center \(womensmediacenter.com\)](https://www.womensmediacenter.com)

- ❖ “I used to clean vessels and wash clothes at other’s places for my survival, but the moment they heard I am a widow, I was thrown out from that area without any legal notice.” said 85-year-old lady living in Vrindavan, Uttar Pradesh.
 - ❖ “I used to sleep on the streets as even my family abandoned me after my husband’s death. I was married at the age of 16 and my husband was 40. My daughter died due to malnutrition as nobody wanted to help a widow.”
 - ❖ My children threw me out of the house after my husband died,” says Manuka. “I tried to earn money by singing devotional songs in temple and manage to get one meal for the day. I am just waiting to die so that I can be out of this life of misery.”
- The women often lived in acute poverty and are ostracised by society due to various superstitions even the shadow of a widow can wreak havoc and bring bad luck. Lack of education and any source of income forced them to beg on streets and many turn to prostitution for survival.

Historical Background ⁷

In earlier times women had high esteem in the society. They had the prerogative of right to education, liberty in the right of choices of the spouse. In their respect, their norms were flexible too. In ancient times, a widow had the opportunity to join the funeral of her dead husband. Another process for a widow called NIYOG was permitted – it is a procedure through which a widow could conceive another man’s child if she was willing to do so and hence spend the rest of her life nurturing her child, alternatively she could also opt for Brahmacharya that is rigid celibacy where she ceases perform any sexual activity. However, she also had an option of finding another spouse of her choice. Gradually⁸, during later Vedic age and the early medieval era, the sublime status of women went on a downslide. Traditions like “widow burning” and “sati” practice framed the patterns of social behaviour of Hindu society for widows. The conduct towards them became very disheartened, unjust and sadistic. Moreover, the widow was held responsible for her husband’s death. Even the shadow of a women was considered to be bad luck and inflict depredation. It was also believed that she was forced to wear white sari

⁶ Available at: [India's abandoned widows struggle to survive - BBC News](#)

⁷ Available at: [Widowhood in India | ProBono India \(probono-india.in\)](#)

⁸ Available at: <https://feminisminindia.com/2019/05/06/indian-widows-treated/>

throughout her life as a sign of lamentation. The physical appearance of widows in rituals, ceremonies and celebrations was considered unpropitious. Those coming from orthodox families forced women to shave their head after the death of the husband particularly done to make her look sexually unattractive. India has an estimated 40 million widows which is approximately 10% of the country's female population.

Rights of Widows

In India, there are certain regions where widows still have to fight for their rights and they have to go through a lot of problems during their widowhood. This situation is not only prevalent in India but in other countries and in other religions as well.

A. Property rights after remarriage: - ⁹

A law that came into power under the British rule had authorized the remarriage of the Hindu widows. Despite the fact that it was a milestone decision yet it denied widows, who remarried, from getting their share in the property of her spouse. As per Section 2 of the Hindu Widows Remarriage Act, 1856, all the rights and interests which any widow may have in her deceased spouse's property, shall cease once she gets remarried and the following beneficiaries of her deceased spouse or other individuals qualified for the property on her passing will prevail to the same. Now the widows who remarry have full legal right on the deceased property within the provisions of the Hindu Succession Act, 1956.

In 2015, *in Sanjay Purshottam Patankar Vs Prajakta Pramod Patil*, a two-judge bench decided that a widow even after remarrying, does have a right over her previous spouse's property. In this particular case, the petition was filed by a man against his previous sister-in-law, who had asserted the right over her deceased spouse's property after she wedded another man. In this,¹⁰ the brother relied upon the provisions under the Hindu Widows Remarriage Act, 1856, which expressed the constrained right and intrigue which a widow had in her expired spouse's property would cease to exist if she gets remarried without the explicit permission, and the following heirs of her deceased spouse or other people entitled for the property will immediately prevail to the same. The court in the following case decided that the provisions

⁹ Available at: [Widowhood in India | ProBono India \(probono-india.in\)](http://www.probono-india.in)

¹⁰ Available at: <https://www.theguardian.com/commentisfree/2010/jun/30/india-city-widows-discrimination>

under the Hindu Succession Act, 1956 would prevail over the Hindu Widows Remarriage Act, 1856 which has been repealed. There was no such provision mentioned under the Hindu Succession Act, 1956 which was *pari materia* with Section 2 of the Hindu Widows' Remarriage Act, 1856. The court additionally noted that considerably after remarriage she would qualify as an heir under Class I and the relative of the spouse would, in any case, be under Class II heirs. Further observing the court stated that a woman doesn't lose her rights over her deceased spouse's property, whether it may be movable or immovable even if she gets remarried.

B. Right of Inheritance: -¹¹

The fundamental structure for inheritance varies on the basis of religion in India and not on the nature of assets. There are mainly 2 types of properties namely, ancestral and self- acquired. The ancestral property is one that is acquired up to four ages of male ancestry with no division, and the right to share in it arises by birth. Whereas, the self- acquired property is the one that has been bought by the individual from his own assets or by any property procured from his share in ancestral property. In a self-procured property, the Hindu father keeps on enjoying unrestrained discretion to will it to anybody as per his wish. As per Section 6 of The Hindu Succession Act, 1956 applies to the delegation of the coparcenary property of a Hindu male who dies after the initiation of the Hindu Succession Act, 1956. According to the Section 8 of The Hindu Succession Act ,1956 the section applies to the delegation of a self-obtained property by Hindu males. the section applies to the delegation of a self-obtained property by Hindu males.

A wife is entitled to an equivalent portion of her spouse's properties like other living and entitled beneficiaries. In the event that there are no other sharers, the wife has the full option to acquire the whole property of her deceased spouse. As per Section 10 of the Hindu Succession Act, the appropriation of property happens among all heirs, including the widow of the deceased person. ¹²If the husband is a Christian, then the wife's religion doesn't restrict her from acquiring. If the husband has left behind his widow as well as lineal heir, the widow is

¹¹ Available at: <https://blog.ipleaders.in/law-protecting-rights-widows/>

¹² Available at: http://www.fao.org/gender-landrights-database/country-profiles/countries-list/national-legal-framework/en/?country_iso3=IND

entitled to get one-third of the share in his domain, while the two-third will go to the latter. In the event that there are no lineal descendants, yet other relatives are present, then the one-half of the bequest goes to the widow and the rest to the related.

C. Right to Adoption: -¹³

Section 8 of the Hindu Adoption and Maintenance Act, 1956 provides the capacity to a Hindu female to adopt a child. The section specifically says that a Hindu female who is not of an unsound mind, who is a major, and is unmarried or even if she is married, the marriage has been dissolved or whose spouse is dead or has fully renounced the world or has ceased to be of Hindu religion or if he has been declared of an unsound mind by a court of competent jurisdiction, has the ability to adopt either a son or daughter. After the Hindu Adoption and Maintenance Act, 1956 was passed, the status and position of the widows got changed. Earlier, the widows did not have any such rights of adoption without the consent and explicitly expressed authority of her deceased spouse or in a few situations without the consent of her Sapindas, but the Hindu Adoption and Maintenance Act, 1956 has removed all such obstacles which restrain a widow from taking an adoption. Similarly, in the early days, a woman used to adopt only to her spouse but the situation has changed, today a woman takes an adoption for herself. Now, she will be called the adoptive mother of the child adopted in her own right. By this, the 'relation back' theory has been abolished expressly.

In the case of K. *Laxmi Narayan Subudhi Vs K.Padmanav*, the vital issue which was raised was whether the widow of a Hindu male could adopt a son while her own son has died leaving behind his widow. Now, according to the traditional Hindu law, such a widow is not qualified for taking an adoption on the basis that no sooner her son left behind his own widow, the authority of the elder widow to adopt a son comes to an end. But, in the following case, Hon'ble Justice Mishra did not comply with the following view and held that there is no argument that the widow has a statutory right to adopt. Even if the contention that in law that the capacity of the widow to adopt to her spouse was extinguished under the old law, by the righteousness of the right conferred under the Adoption Act, she was completely allowed to make the adoption.

¹³ Available at: <http://www.legalserviceindia.com/legal/article-234-rights-of-muslim-women-an-analysis-under-personal-law.html>

D. Right to Maintenance: - ¹⁴

In a recent judgment delivered by the Supreme Court of India in the case of *Ajay Kumar Vs Latha @Sharuti*, the Supreme court maintained the choice of the lower court and directed the brother-in-law to maintain his brother's widow. The two-judge bench held that, in a situation of a Hindu Undivided Family where the widow was not permitted to live in the house after her spouse's demise. For fortifying and securing the right of the widow, the court referred to *Section 2(q) of the Protection of women from Domestic Violence Act, 2005* which stated that relief can be looked for against the relatives of the spouse also. There are other different Acts that guarantee the rights of widows. Such as under section 8 of The Hindu Succession Act 1956 a widow is qualified to claim her share in the property of her deceased spouse. The arrangement protects her financial security and status significantly after the passing of her spouse. *Section 19 of the Hindu Adoptions and Maintenance Act, 1956* talks about the maintenance of widowed daughter-in-law after the death of her husband by her father-in-law, in the event that she cannot maintain herself out of her own earnings or other property or, where she has no property of hers, she is not able to obtain the maintenance from the estate of her spouse, parents, or kids.

Under Section *21(iii) of Hindu Adoption and Maintenance Act, 1956*¹⁵ the term 'widow' has been defined as 'dependent' in so far as she doesn't remarry. In the event that the dependent has not gotten any share in the deceased individual's property, at that point, 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. The order of the Supreme Court in the previously mentioned case associates Section 19 perusing Section 21(iii) to hold that the relatives, apart from the father-in-law can likewise be directed to maintain the widow. The amount to be paid for maintenance is one of the most significant questions to be determined, since a deficiency in itself is unjustified. The entire sum is purely at the discretion of the court. In Section *23 of Hindu Adoptions and Maintenance Act 1956*, various grounds for determination have been provided such as the background of the dependent, relationship with the deceased, reasonable wants, present condition, provisions in the will, the net value of the

¹⁴ Available at: <https://blog.ipleaders.in/law-protecting-rights-widows/>

¹⁵ Available at: <https://indiankanoon.org/doc/68009942/>

estate of the deceased, any debt, number of dependants entitled to maintenance, etc. The significance of this section can be comprehended by its adaptability which assists the court in finding out the sensible measure of maintenance. Under Muslim law, maintenance is provided for the continuance of marriage, dissolution of marriage, maintenance to Muslim Divorced Woman until Her Remarriage, or if the wife is living separately due to the cruel nature of her spouse and non-payment of dower. But the wife is not entitled to claim maintenance during widowhood. Under Christian law, the widow is entitled to get a one-third share of the husband's property and the rest is to be distributed among the children equally.

Can Widow be the Karta of her Deceased Spouse's Family?¹⁶

A Hindu widow is a member of the Hindu Undivided Family of her spouse she cannot be a coparcener. as only a coparcener can turn into a Karta of the family. Before *the Hindu Succession (Amendment) Act 2005*, just male individuals descended from a common predecessor, for example, sons, grandsons, and great-grandsons could be the coparceners and had an interest in coparcenary property by birth. However, by the righteousness of the *Hindu Succession (Amendment) Act 2005*, daughters are also coparceners in their own privilege in a same way as sons. If in a Hindu Undivided Family, there is a deceased father's widow, their two sons, and a daughter, in that case, the two sons and the daughter would become the current coparceners and the widow would be a member. As per the Mitakshara law, only the coparcener can be the Karta or supervisor of the Hindu Undivided Family. Thus, since a Hindu widow is just a member of the HUF and not a coparcener, she cannot become a Karta of her spouse's HUF.

PROBLEMS FACED BY WIDOWS: -¹⁷

A. Economic Problems: -

Money has been the most major issue in the life of widows. Today also, there are a lot of widows who are unaware of their rights regarding maintenance, property, etc. due to which they go through various financial problems. A large number of widows find difficulties in

¹⁶ Available at: <https://blog.iplayers.in/law-protecting-rights-widows>

gaining the basic needs for themselves and children. By taking the undue advantage of their innocence and unawareness the family also doesn't support them.

B. Savagery and Mistreatment: -¹⁸

Widows have always been seen with doubt by the general public. There have been cases, when they are viewed with doubt of having killed their spouses, because of their property and wealth. There has been commonness of various types of violence and abuse against widows. They are either obnoxiously and physically abused, harassed and are denied of getting engaged in weddings and other functions, and sometimes even get thrown out from houses. Chopping off the hair of widows and abstaining them from wearing any makeup or jewellery is another type of mistreatment done to a widow. The widows even lost their right to getting custody of their kids and are not permitted to meet them, in some instances.

C. Blind Eye and Deaf Ear to the Rights of the Widows: -

The rights of the widows are often ignored. Such as the right to equality before the law and equal protection of the law, right to maintenance, right to equality as for marriage, option to claim property and right to an adequate way of living, etc. In certain cases, widows are not even permitted to speak with their own children. Usually, the male children get proper training and education by different individuals from the family and they generally get occupied with the performance of employment obligations. The hardship of rights makes the life of widows miserable.

CONCLUSION:

In India, widows have the right and concern to procure a decent living and become goal oriented. They are leading a miserable life and to eliminate that it is necessary to look after their ill treatment and welfare of neglected, abandoned and destitute widows. The real voice

¹⁸ Available at: <https://blog.iplayers.in/law-protecting-rights-widows/>

for change must come from within and the first step would be the change of the credulous mind set of the people that denies widows the right to live and equal status in the family. We, as citizens of the country must try to understand their hardships and try to sensitize the issue. Widows from various must be given the opportunity to interact with other members. This will help them to share their feelings and struggles. The awareness of their struggles must be raised so that immediate steps can be taken for their welfare. It is crucial to open doors for widows to set up something for themselves, create golden chances that would rebuild their personality with confidence and self-respect.



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