

Rights of Hindu Widow: A Critical Analysis

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I. BACKGROUND

The women play a significant role in the life of every individual human being. Securing her better birthrights would mean giving better future to our own society, family and to every individual. Prior to commencement of the Act of 1956 the property held by a Hindu female was classified under two heads: (1) Stridhan and (2) Hindu Women's estate.

The former was regarded as her absolute property over which she had full ownership and on her death it devolved upon her heirs. The later was considered to be her limited estate with respect to which her powers of alienation were limited. Such property on her death devolved not on heirs but upon the next heirs of the last full owner.

But section 14 of the Act abolished the later classification and conferred absolute ownership on her with respect to every property acquired by her through lawful means. In this Research we have discussed about the various rights of a Hindu widow and have also discussed whether a widow claim rights in her husbands property. Analysis on whether a widow can gift. This research is a doctrinal type of research to give a brief description about the various rights of Hindu widow.

II. OBJECTIVES

- This research aims to study the rights of Hindu widow through case studies.
- The purpose of the study is to analyze how women can claim there rights and till what extent.
- This paper will extensively focus on the powers of the widow women.
- This research also aims to put some light on the adoption by a widow.

III. RESEARCH QUESTIONS

1. Whether a Hindu widow can claim her rights in her husband's property?
2. Whether a Hindu widow can adopt a child?
3. Whether Alienation of Property by a widow valid?
4. To answer the above research questions, conceptual method will be the most appropriate method. In order to achieve this a doctrinal research will be carried out.

IV. LITERATURE REVIEW

- Widow Remarriage Act of 1856: “All rights and interests which any widow may have in her deceased husband's property shall upon her remarriage cease; and the next heirs of her deceased husband, or other person entitled to the property on her death, shall there upon succeed to the same.
- Hindu Succession Act, 1956: widows who choose to remarry do have a right on their deceased husband's property.
- Legal necessity was held by the Hindu law as a condition where the widow had to sell her deceased husband's property. These were conditions where she needed money for making donations or performing ritual's in memory of her late husband. Daughter's wedding expenses also formed a legal necessity.

V. RIGHTS OF HINDU WIDOW

the Widow Remarriage Act of 1856 “All rights and interests which any widow may have in her deceased husband's property shall upon her remarriage cease; and the next heirs of her deceased husband, or other person entitled to the property on her death, shall there upon succeed to the same.”

However, this Act has been repealed. Under the provisions of the Hindu Succession Act, 1956, widows who choose to remarry do have a right on their deceased husband's property.

The Bombay High Court (HC) ruled that a widow who remarries does not need to give up her right over her deceased husband's property. This came to the fore when a man (brother of the deceased) relied on Section 2 of the Widow Remarriage Act 1856 (quoted above) and asserted that his sister-in-law who had remarried should not be allowed to inherit her former husband's property. However, the HC ruled that she still is grouped under the Class-I heir of her deceased husband and should inherit.

1. *Whether a Hindu widow can claim her rights in her husband's property?*

Where immovable property was purchased by a Hindu widow in possession as such of the estate of her dead husband out of the income of the estate, such property does not necessarily become an accretion to the husband's estate. The widow has full power to dispose of it during her life time, and it is only when she manifest during her life time a clear intention to treat it as an accretion to her husband's estate, or allows it at her death to remain undisposed of, that such property will become part of that estate. A Hindu widow in possession as such of her husband's estate is not liable to account to anyone but is at liberty to do what she pleased with the property during her life time, provided only that she does not injure the revision. The widow of a separated Hindu succeeded as such to the business of her deceased husband carried it on for a series of years

with reasonable prudence on the same lines as it had been conducted in his life time. The business was that of a banker and money lender and involved from time to time. The purchase and resale of immovable property. It was held that as regards immovable property not inherited from her husband but purchased in the course of the business by her, the widow was competent to sell again outright without proof of any legal necessity being requisite, the 'legal necessity' being that the property was sold in the course of a business which was entitled, if she chose to do so, to carry on. Neither was it, in individual instances, a proof of absence of 'legal necessity' that the property was sold for less than the widow had paid for it. In the event of a man dying with more than one widow, the widows could invoke law for acquisition and partition of property, which was not a mere struggle for their share for maintenance. Their right to informally partition the estate amongst themselves was recognized by the Court. Whatever limitations there may be upon the power of alienation of one of the two Hindu widows succeeding as such to a life interest in their husband's estate, so long as the property remains undivided; there is nothing to prevent them effecting a partition of such estate. Although Hindu widows taking a joint interest in the inheritance of their husband have no right to enforce an absolute partition of the joint estate between them, yet where the widows cannot go on peaceably in the enjoyment of the property they could by mutual agreement or otherwise separately hold the property, although they have no right to partition in the proper sense of the term, and the share of one will go by right to survivorship, to the other notwithstanding the separation

2. Whether a Hindu widow can adopt a child?

There were disputes over authority to adopt when the husband had given the widow the instruction to do so. The adoption by a Hindu widow acting in accordance with authority given to her by her deceased husband is an adoption not to herself, but to her husband, and was therefore considered valid according to Hindu law. A Hindu father can by word or writing nominate a guardian for his children. The nomination took place after his death. He is unrestricted in the choice of a guardian, and may exclude even the mother from guardianship.

Widow's right over husband's estate valid even if the adoption of a son was found invalid or valid later In a complex case : after adopting a son to her deceased husband a Hindu widow in a suit by an alleged reversioner against her to set aside the adoption on the ground that she had no authority from her husband to make the adoption alleged in her written statement and stated in the Court, through her pleader that she had authority to make the adoption and that it was valid. The suit was dismissed because the plaintiff was found not to be a reversioner. The widow then brought a suit against the adopted son to set the adoption aside pleading that she was not vested with authority from her husband to adopt and denied having made the adoption. The adopted son contested the suit and it was decided by the Courts on the evidence on that issue that the adoption was valid. In a suit by an alleged reversioner to the estate of her husband against the adopted son for a declaration

that the adoption was invalid and for possession of the estate. It was finally decided by the High Court that notwithstanding the personal estoppel which bound her, the widow represented the estate on the question of fact as to whether the defendant (respondent) had or not been validly adopted. The appellants were not parties to the widow's suit against the adopted son. The principle of res judicata had been applied by the Courts in India so as to bind reversioners by decisions in litigation fairly and honestly given for or against Hindu females representing estates. The Court could not decide that a Hindu lady, otherwise qualified merely owning to personal disability or disadvantage as a litigant, although the merits of the case were tried and fair and honest.¹

3. Whether Alienation of Property by a widow valid?

The construction of a deed of sale executed by a Hindu widow of property held by her as heir of her husband in favor of the appellant, she conveyed her absolute interest in such property, and not only the limited interest of a Hindu widow. This decision was conditional upon the fact : (a) that the husband did not leave property the produce of which was sufficient to meet her necessary expenses, (b) that she had been obliged to borrow money to provide the ordinary necessities of life (c) that there were ancestral debts still unpaid, and creditors pressing for payment and (d) the only way to discharge them was to sell a portion of the property of her deceased husband, recitals which were necessary if the executants were disposing of her absolute interest but serving no purpose if the object was to convey merely the limited interest of a widow, were held to show that the circumstances were such as to give her power to dispose of her absolute interest and from which the inference could reasonably be drawn that it was her intention so to dispose of it. The Judges were of the opinion that all the parties to it meant that the absolute interest in the property should be conveyed to the purchaser. The interest had been understood as meaning the right to and interest in the property which had in the particular circumstances, powers, to sell and dispose of, that is absolute interest and not merely meaning the right and interest which a widow normally took in the immovable property which her husband owned at his death and left after him.

A Hindu dedicated whole of his property in favour of an idol. It was provided in the deed that the settler should apply for mutation of names in favour of the idol, and that he should use the income of the property for the expenses puja and rajbhog and for the repair of the temple. The first settler was the man himself, after him his wife, and thereafter his children and their descendents. The man died after six months and his widow succeeded him. The widow brought a suit for a declaration that the property was endowed property. The Court noted that she was not maintaining any accounts relating to the administration of the property and was only spending one tenth of the total income on the idol. The Court did not agree to declare the property as endowed on the grounds

¹ Risal Singh Vs Balwant Singh, 1918, I.L.R. 40 All. 593.

that the widow was aiming to create perpetuity in favour of the descendents of the settler's daughter.²

VI. CONCLUSION

The Act put the widow of a member of a joint family in the place of her deceased husband, and the husband's interest or right to a share in the joint family property in all schools, except the Dayabhaga, vested upon his death in the widow, which she could enforce by claiming a partition in her own right and independently of any partition taking place between the sons or not. The rule that the widow succeeds to her deceased husband's property only in default of his male issue, that is, son, grandson or great grandson, was abrogated by the virtue of section 3 of the Act. She was to be entitled to the same share as a son along with or in default of the male issue. Even though this Act widened the scope of rights of the Hindu widow, the Act the widow a limited estate which was to be held by her only during her life time and then reverted back to her husband's heirs.

² Sri Thakurji Vs Sukhdeo Singh, I.L.R. 42 All.395