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**IJLAR**

+91 70421 48991  
editor@ijlar.com  
www.ijlar.com

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## **Introduction**

Welcome to the Indian Journal of Legal Affairs and Research (IJLAR), a distinguished platform dedicated to the dissemination of comprehensive legal scholarship and academic research. Our mission is to foster an environment where legal professionals, academics, and students can collaborate and contribute to the evolving discourse in the field of law. We strive to publish high-quality, peer-reviewed articles that provide insightful analysis, innovative perspectives, and practical solutions to contemporary legal challenges. The IJAR is committed to advancing legal knowledge and practice by bridging the gap between theory and practice.

## Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

## **Description**

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

## **WIDOW'S CAPACITY TO SUCCEED TO THE PROPERTY OF DECEASED HUSBAND**

AUTHORED BY - S.GOKULNATH & B. HARISH KARTHIK

### **Abstract**

Property ownership is really important for women to be independent and secure in any society. When a woman's husband dies it is very important for her to have access to the property he left behind so she can take care of herself and her family. This article looks at the laws that govern what happens to a woman's property when her husband dies in communities in India. In India people follow laws based on their religion. So this article explains how women can get the property that belonged to their husbands under Hindu law Christian law, Muslim law and the Special Marriage Act.

- \* Under Hindu law women have rights when it comes to inheriting property from their husbands.
- \* The Hindu Succession Act of 1956 says that women can get the property that their husbands left behind and this is still true even if the woman gets married again.
- \* Hindu law also says that women have the right to make decisions about the property they inherit and to use it to take care of their families.

Christian law used to be different it changed after a court case called the Mary Roy decision. Now Christian women in India have the rights to inherit property as men.

- \* Muslim law says that women can get a part of their husbands property when he dies.
- \* If the man did not have any children his wife gets one-fourth of his property.
- \* If he had children his wife gets one-eighth of his property.
- \* The Special Marriage Act is different because it lets women get all of their husbands property if that is what he wanted.

This article shows that the laws in India try to balance what is good for women with what's good for their families and the property that the man left behind. The laws are different they all say that women should have property rights and be able to take care of themselves. Women's property rights are really important for women to be independent and secure in India. So it is very important to understand the laws that govern property ownership for women, in India.

## **Introduction**

Property is not about the things we own. It is about the power and respect we get from society and being able to take care of ourselves financially. For women property is connected to their role in the family. If a woman is a daughter, wife, widow or mother it affects what property she can own. The kind of property also matters: the land that has been in the family for a time has different rules than the things a woman buys herself and a house is different from other kinds of wealth.

In India we need to pay attention to the situation of widows. Most women in India depend on their husbands for money and marriage is an important part of our society. Being married does not mean a woman has control over her own money. When a woman's husband dies she is in a position. People often do not. Respect families with only one parent. Women who are divorced or widowed are often made fun of, which is a problem in our culture.

What a widow gets to keep after her husband dies is very important for her to survive and be treated with dignity. It depends on how her husband got his property and what rules apply to his community. To understand what a widow is allowed to own we need to figure out if the property was bought by her husband himself or if it has been in his family for a time. Then we can look at what kind of arrangement the husband and wife had regarding their property before he died. This paper looks at the laws and rights of widows in religious communities, in India and what property they are allowed to inherit.

## **Widows Under Hindu Law**

The Hindu Succession Act of 1956 fundamentally changed how widow inheritance works in India. Under this law, when a Hindu man dies without leaving a will, his wife has a legal right to inherit

his property. This principle, known as intestate succession, protects widows by giving them a defined claim on the deceased husband's estate.

### **Key Legal Provisions**

The Hindu Widow Remarriage Act of 1856 led to an important legal principle. The Bombay High Court made a decision in a case about a woman who got married again after her husband died. A man, who was her husband's brother did not think she should get anything from her first husband's property. The High Court said she was still a Class-I heir and had the right to inherit everything. This means that if a woman gets married again she does not lose her right to her husband's property.

The Hindu Succession Act of 1956 says the thing: a woman who gets married again after her husband dies still has the right, to his property. Whether or not she is married does not affect what she inherits. This is very important because it stops families from forcing widows to give up their property if they want to get married. Hindu law also understood something called 'legal need'. This is when a widow really needs to use her husband's property. For example she might need money to pay for a ceremony to honor her husband or to pay for her daughters' weddings. The law recognized that widows need money to take care of their families. The Hindu Widow Remarriage Act of 1856 and the Hindu Succession Act of 1956 protect the Hindu Widow Remarriage Act of 1856 rights of the Hindu Widow Remarriage Act of 1856 which's the widow.

### **How Widows Control and Use Inherited Property**

When a Hindu widow receives property from her deceased husband's estate, she gains broad powers over how to use it during her lifetime. If she purchases property using money from her husband's inheritance, that new property is not automatically considered part of the inherited estate. Instead, the widow gains absolute ownership and control. She can do what she wishes with this property throughout her life without needing anyone's permission.<sup>6</sup>

However, there is one important condition: if the widow clearly intends to treat the property as part of her late husband's inherited estate, or if she leaves the property undisposed when she dies,

it may then pass as part of the inheritance to the next generation. Otherwise, the widow's absolute right to the property remains clear.

When a widow manages her husband's business affairs—for instance, continuing a family business in banking or moneylending—she has the right to do so without having to account to anyone else. She can make reasonable business decisions as she sees fit, continuing to operate the business along the lines her husband established. This recognizes her capacity as a manager and decision-maker.

A practical legal issue arises when a man leaves multiple widows. If a husband has more than one wife (a situation that existed historically), the surviving widows can ask the court to partition the property among them according to their respective shares. The widows do not each receive the entire property. Instead, the court facilitates a fair division. The widows can either arrange the partition among themselves or request court intervention. If they mutually agree, they may share the property equally.

### **Special Situation: Remarried Widows**

Hindu law treats widows depending on when they get married again. If a widow gets married before she gets the property that belongs to her it is a story than if she gets the property first and then gets married. If a woman is not married when the property is being divided she can still keep what is hers even if she gets married on. But if she gets married before the property is divided she has to let go of the property that belonged to her husband who passed away. This is why widows try to figure out what they get from their husbands property before they get married again. Hindu law and the property of the husband are very important, in this situation so the widow and the property of the deceased husband have to be taken into consideration. The property of the husband is the key factor here so the widow has to think carefully about what she wants to do with the property of the deceased husband.

## **Widows Under Christian Law**

Christians in India have laws about what happens to a persons property when they die and this depends on where they are from. A time ago Christians in the old State of Travancore were governed by a law called the Travancore Christian Succession Act of 1092. This law was very unfair to women, widows. A widow or mother could only use the property. Get money from it while she was alive but she could not sell it. If she got married again she would lose this right. Daughters were treated badly under this law. They could not get any of the property they only got a small amount of money called Sreedhanam.

Something big happened that changed this situation. There was a court case called Mary Roy v. State of Kerala and the Supreme Court of India said that the old Travancore Christian Succession Act was no longer valid. The Court said that all Christians in India including those from the Travancore region should follow the Indian Succession Act of 1925. This change happened for cases that had already happened. The Mary Roy judgment said that Christian women should have the rights as Christian men when it comes to getting property.

Now under the laws after Mary Roy, a Christian widow gets a share of the property depending on whether the person who died had children. If there are children the widow gets one-third of the property. The children share the rest. If there are no children the widow gets half of the property. The law says that a wife must get least Rs. 5,000. If a widow does not get money to take care of herself while her husband is alive she can get a divorce, which means she gets her own rights.

The Mary Roy decision was very good for daughters too. Before this daughters had no rights to get property. Now daughters have the rights, as sons. Even though the law is fair now many Christian families still follow the old tradition of giving dowry. Because of this most Christian families give property through a will of following the normal rules of inheritance so they can still follow the dowry tradition.

## **Widows Under the Special Marriage Act**

The Special Marriage Act of 1956 is for marriages that're not Hindu, Christian, Muslim or Parsi. It is also for couples who're from different religious communities and they get married under this law. The Special Marriage Act of 1956 says that a widow can get all of her husband's property when he dies if he leaves a will. If a couple gets married under the Special Marriage Act of 1956 the husband can leave all of his property to his widow in a will. This is okay, by law. The Special Marriage Act of 1956 gives widows the security when it comes to the law.

## **Widows Under Muslim Law**

Muslim law has a lot of rules when it comes to what a widow gets to keep after her husband dies. Muslim law does not say that widows cannot get anything all. In fact a widow is considered an important person and gets a certain part of what her husband left behind. This is because of what the Quran says. The amount of money or property she gets depends on if her husband had any children.

If a Muslim man dies and does not have any children or grandchildren his widow gets one-fourth of his property. First they have to pay for the funeral and any debts he owed. If the man had children or grandchildren the widow only gets one-eighth of his property. This is what Sunni Muslim law says and most Muslims in India follow this law. Shia Muslim law is similar. It has some differences in how it treats relatives who are not very close.

There is one situation where a widow does not get to keep anything. If a man marries a woman when he is very sick and then he dies without getting better or without the marriage being complete the widow does not get anything. If the sick man divorces his wife and then dies the widow still gets to keep what is hers until she marries someone else. Muslim law is very specific about what happens to a widow's inheritance rights in these situations. A widow has rights, under Muslim law and these rights are protected in most cases.

## **Inheritance Through a Will**

Muslim law has two types of inheritance. One is inheritance by will. The other is inheritance when there is no will. Under Sunni Muslim law, which most Indian Muslims follow a widow cannot get any share of her husband's property through a will. This is unless the other heirs agree after he dies. This is a limitation because other heirs may not agree and the widow gets nothing. Muslim law and Shia Muslim law are different. Shia Muslim law gives security to widows. A widow can inherit at least one-third of her husband's property by will even if the other heirs do not agree. There are some cases where Muslim communities follow their own customs instead of Islamic law. In these cases a widow may be able to inherit all of her husband's property by will. These exceptions show that inheritance practices are not the same, for all Muslims. They depend on traditions.

## **Inheritance Without a Will**

When a Muslim man dies without making a will his property is divided according to the Quran. Both Sunni and Shia Muslims agree that the widow should get a share.

\* Under law if the husband dies and has no children or grandchildren his wife gets one-fourth of his property. If he has a child or grand child she gets one-eighth. This way the widow gets a share and other family members also get something. The Muslim man leaving behind a will is not required for inheritance to occur the Quranic principles are followed. The widow is given a share, in both Sunni and Shia Muslim law. The share of the widow depends on whether the husband has children or not. If there are no children she gets one-fourth; if there are she gets one-eighth. This system helps make sure the widow and other family members are taken care of.

## **Conclusion**

The rules about what a widow can get from her husband's property are really different in India. This is because each group of people like Hindus, Christians, Muslims and those who get married under the Special Marriage Act has its way of doing things when it comes to a widow getting property. It is really important for widows and their families to know about these differences because it affects women's rights to own property and have money.

Hindu law is pretty good to widows it gives them a lot of control over the property they get. Christian law has also changed to make things more fair for women after the Mary Roy judgment. Muslim law says that widows have a right to a part of the property but how much they get depends on if the dead husband had kids. The Special Marriage Act is the flexible it lets people leave all their property to whoever they want through a will.

All these different laws have one thing in common they think that widows need to have money and own property to be safe. The laws know that if a widow can get the property that belongs to her she can take care of herself and her kids and people will respect her. Something a woman named Malli said in 1987 is really true if a widow can just get a piece of land it can be a big help to her. Even though the laws, in India are different they all try to make sure that widows are not left with nothing they try to make sure that widows can get the property they need to take care of themselves and their families after their husband dies.

