CUSTOM AND THE DISSOLUTION OF MARRIAGE

“Marriage is a cultural phenomenon which sanctions a more or less permanent union between partners, conferring legitimacy on their offspring”. 1 It is an eternal bond that binds two souls together forever and each suffers for others lapses and derelictions”. 2 Marriage was supposedly the permanent bond among Hindus which was to last for seven lives. However, sometimes the bond was broken and the marriage was dissolved. The present chapter aims to study the two aspects of the end of marriage. The first was divorce and the other was the death of a partner and remarriage. However remarriage was not a universal phenomenon. In the present chapter the focus would be to study the two aspects from the perspective of women. The first section of the chapter deals with the custom of divorce and attempts to find out whether it existed across all the religions and tribes. The second section explores the custom of karwaa or remarriage of widows. The third section attempts to bring out the position of the state on these issues.

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Divorce is the final termination of a marital union cancelling the legal duties and responsibilities of marriage and dissolving the bonds of matrimony between the parties. 3 Rattigan stated that a marriage once legally performed between adults could not be repudiated except by the exercise of the power of divorce where it existed. It was legal among Muslims, Parsis, Christians, and Buddhists at the instance of either party. 4 Hindus did not usually recognize divorce and there was no such custom among them. It was also not followed by Sikhs and Jains. 5 Though the custom of

3 Wikipedia.
4 Census of India 1921. 151.
5 Census of Punjab 1931, 169; Customary Law Montgomery 1925 ;C.L. Sialkot 1895, 1920;C.L. Muzaffargarh 1925; C.L. Ambala 1887 & 1918; C.L. Hoshiarpur 1914; C.L. Dera Ghazi Khan 1898; C.L. Gurgaon 1910; C.L. Ferozepore 1916; 69; Attock District Gazetteer. 1930 73; C.L. Jhelum 1901; C.L. Shahpur1896.

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Though divorce or *talaq* was strongly condemned by Islam and it said that it should not be resorted to until both the parties could not live together in peace and harmony together. The Muslim law or Shariat recognized divorce and Muslims in many districts followed suit. Muslims of all classes could divorce their wife without giving any reason. According to the *Koran*, a wife was considered as a property of the husband so she could be divorced at a moment’s notice. This power was not given to Hindus and women unless a special custom existed. Even among Muslims it could be hardly said that they were authorised by custom in this matter and they said that they were ruled by Muslim Law in this matter. Yet it was not commonly practiced and there were hardly any widespread cases of divorce in the Punjab. Divorce was not customary in Gurgaon district except among Meos and Muslims. Even Muslim Rajputs of Jullundur did not recognize divorce. The Muslims of a Sirsa district did not divorce their wife commonly and there were very rare cases of divorce. The custom of divorce was also very uncommon in districts as Shahpur, Sirsa, Attock and among the Pathans of Muzaffargarh who did not practice it and there was no instance of dowry in them. Rajputs of Tahsil Sharakpur in Gujranwala could not divorce their old wife who was unfit to be married again. Muslim Rajputs of Raya tahsil in Sialkot district had no custom of divorce but Settlement officer reported that they were very much entitled to divorce their wife but they never did so. Divorce among Muslim *zamindars* was also very rare in Delhi.

Some Hindus followed this practice recognised in Muslim law in this respect. Even Kambohs of Nakodar tahsil recognized divorce in Jullundur. Divorce

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6 C.L. Ambala 1882, 1887, 1893 &1918, 10; C.L. Gujranwala 1914, 10; C.L. Kangra, 18; D.G. Gurgaon 1910, 58; Ferozepore D.G. 1915, 69.
7 C.L. Sialkot 1895 & 1920; C.L. Montgomery 1925; C.L. Jhang 1929; C.L. Gurdaspur 1913; D.G. Attock 1930, 73; C.L. Jullundur 1918, C.L. Muzaffargarh 1925.
8 D.G. Gurgaon 1910, 58.
9 C.L. Shahpur 1896, 29; C.L. Sirsa 1882, 100; C.L. Attock 1930, 73.
11 C.L. Sirsa 1882, 104.
12 Census Punjab 1931, 169.
13 C.L. Jullundur 1918, 17.
14 C.L. Shahpur 1896, 29; C.L. Sirsa 1883, 100; C.L. Attock 1930, 73; Pathans of Muzaffargarh.
15 C.L. Gujranwala 1914, 10.
16 C.L. Sialkot 1917, 10.
17 C.L. Delhi 1910, 23.
18 C.L. Lahore 1894, 16.
was permitted in the lower strata of a Hindu society. In Sirsa there was no regular custom of divorce but a husband sometimes expelled or divorced his wife. Jats and Sainis of Hoshiarpur might also abandon their wives. Hindus of Gurgaon could expel their wife if she was unchaste and this practice was called ‘tyag’ which practically meant divorce. Here, loss of chastity was the sufficient ground for expulsion.

There were various reasons responsible for the divorce among Muslims, but it was not essential that a reason had to be given for divorce. Change of religion by either side cancelled the marriage. Immorality on the part of woman was an important reason for divorce. In Muslims of Muzaffargarh Tahsil bad character, disobedience, blasphemy was the reason but husband could divorce and even without giving any cause. There was no dissolution of marriage on change of religion. Sayads of same Tahsil also added the reason of lunacy. However in some districts the man had to always give the reason for divorce. Amongst Muslim, apostasy on either side caused a cancellation of the marriage. It was held that the apostasy of either party to Christianity dissolved the marriage. There was no established custom of divorce in Sirsa. It took place according to the Muslim Law. The divorce was pronounced three times as per the Muslim law. The main ritual for divorce was utterance of ‘I divorce you’ three times to wife by the husband in the presence of two witnesses thrice. In Ambala publicity was also required. Among Rains and Gujars, the custom of written deed of divorcement was spreading. Among Sayads, wife could demand the written deed and payment of her dower.

Talaq-i- Mutlaq was the absolute divorce that involved the repetition of three words ‘Thou art divorced’ thrice. Talaq or oath of divorce was binding. Divorce was irrevocable if ‘I divorce you’ was said thrice by the husband. If the above words were said less than three times and husband

19 C.L. Jullundur 1918, 3.
20 C.L. Hoshiarpur 1914, 31.
21 D.G. Gurgaon 1910, 58.
22 C.L. Hoshiarpur 1914, 31; C.L. Moga 1890, Zira, C.L. Ferozepore 1890; C.L. Peshawar; C.L. Jullundur 1918, 20.
23 C.L. Gujrat 1922, 12.
24 C.L. Muzaffargarh 1925.
25 C.L. Delhi 1910; C.L. Gujrat 1922, 12; C.L. Montgomery 1925.
26 C.L. Gurdaspur 1913, 13; C.L. Ambala 1887 & 1918, 10; C.L. Muzaffargarh 1925, 22. C.L. Delhi 1911, 23.
27 C.L. Ambala 1893, 9.
29 D.G. Attock 1907.
reconciled, subsequently marriage sustained without new nikah.\textsuperscript{30} In Peshawar there was a strange custom where the husband cast three stones on the floor all together or successively by saying that he divorced his wife.\textsuperscript{31} Hence divorce was irrevocable. If it was said less than three times, marriage continued without fresh nikah.

However this was not the case amongst Hindus. The apostasy of a Hindu wife did not dissolve the marriage union.\textsuperscript{32} Marriage could also be cancelled if either party changed the religion.\textsuperscript{33} Change of religion was not validated as a reason for divorce in all the districts.\textsuperscript{34} Among Hindus a husband was permitted by society to be at liberty to turn his wife out of the house.\textsuperscript{35} It was not necessary among the Ghuman Jats for the husband even to state the ground of ‘divorce’. Whenever he wanted to divorce his wife he wrote a \textit{Tyag Patra} if he was a Hindu or \textit{Farkat Nama} if a Muslim. Even a Hindu could use the form of \textit{Farkat Nama}, then the woman was free to remarry.\textsuperscript{36} Chimah Jats of Sialpur also recognized this mode of divorce. He turned her out if she was found unchaste and did not even give maintenance to her.\textsuperscript{37} Wife could be divorced or turned out if she was immoral or even disobedient.\textsuperscript{38} Similarly a wife could be expelled if she was found to be unchaste or had changed her religion.\textsuperscript{39} In Gurgaon district the husband could dissolve his marriage with his unchaste wife by abandoning her. In Hoshiarpur district, 54 cases were cited where the wife was abandoned for the reason that she was immoral. In Kangra, the woman was not divorced but expelled if she was unchaste or had changed her religion. The Chief Court did not allow dissolution of marriage because of the fact that woman had changed her religion.\textsuperscript{40} About fourteen cases were reported in Kangra district where wife was either abandoned or expelled because of her immorality. Three cases were reported where the man sold his wife for Rs 300 and Rs 620 respectively because of unchastity. In Ambala, immorality and change of religion could be the reason for turning out wife. And some Rajputs were of the view that if a woman ignored \textit{pardah}

\begin{thebibliography}{99}
\bibitem{30} C.L. Delhi 1911, 23.
\bibitem{31} C.L. Peshawar, 8.
\bibitem{32} 32 P.R. 1870 Cr.
\bibitem{33} C.L. Delhi 1911, 23.
\bibitem{34} C.L. Gujrat 1922, 12.
\bibitem{35} D.G. Ferozepore 1916, 69.
\bibitem{37} C.L. Lahore 1894, 6.
\bibitem{38} C.L. Gurdaspur 1913, 13.
\bibitem{39} D.G. Gurgaon 1910, 10.
\bibitem{40} C.L. Kangra 1914, 19.
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it would be supposed as immorality. Hence, it is observed that women were considered no better than chattels. Her so called immoral behavior was also on the discretion of her husband, how he felt about him. In another exceptional incident a man transferred his wife to another man after receiving Rs 80 as marriage expenses. The other man made her marry a third man.

Most of the tribes held that a wife could never claim the dissolution of marriage. In Ludhiana, Rajputs were of the view that wife could never be released. In some tribes which allow widow marriage, if the husband changed his religion or suffered from somebody imperfection, she could leave him but only to marry some other member of the family. Among Rajputs, who did not recognize karewa, if the husband changed the religion the wife virtually became a widow, still there was no specific custom about it.\(^1\) If the expelled wife went and lived with some other man and bore him a son while the first husband was alive then he would be considered lawful and would have a share in the father’s property.\(^2\) Among Jats, Gujars, Meos if their wife ran away with another man and his efforts to bring her back failed, in that case the other man would pay an amount of Rs 50-200/- which was called jhagra and all connections with her first husband were severed.\(^3\) On a like note, among lower castes and Kanets in Simla a woman could get divorce from her husband any time by paying the husband cost incurred on marriage and jewellery given by him. This payment was called ‘rit tarnct’. Nevertheless, she remained the property of the husband until the payment was made, and even a child by her paramour belonged to the husband.\(^4\)

Among Hindus, no formalities were generally observed. The husband simply turned his wife out of the house.\(^5\) The formalities of divorce included the execution of a deed of release. Bagri Jats in the presence of assembly of brotherhood tore his white loin cloth into two parts and placed half on her head and said that he had given her up, this ceremony was called Dhola Urna.\(^6\) In another case it was held that among the Jats of Sialkot an oral abandonment or repudiation did not lead to divorce

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\(^1\) C.L. Ambala 1893, 9.
\(^2\) D.G. Gurgaon 1910, 58.
\(^3\) IBID.
\(^4\) D.G. Simla 1904, 28.
\(^5\) C.L.Sirsa 1882, 104.
\(^6\) D.G. Ferozepur 1915, 69.
and it must be in writing.\textsuperscript{47} In the same way some tribes as Ghuman Jats insisted that the divorce must be in writing and were unilateral.\textsuperscript{48} In all the districts surrounding Jullundur there had been a well recognized custom under which the husband could dissolve the marriage by turning out or abandoning his wife, and in such case the wife was free to remarry. As per the CL of Sialkot district divorces among Hindus must be in writing and in absence of such writing the oral relinquishment by a Jat of his wife would not be sufficient under the custom binding on his tribe.\textsuperscript{49} The wife could not be remarried to her former husband after the divorce. As per Muslim law, the husband could not remarry his divorced wife unless she had married another person and got divorce from him or if second husband had died.\textsuperscript{50} Sayads of Dipalpur did not marry their divorced wife.\textsuperscript{51} If the husband said ‘I divorce you’ once or twice only, then the wife could be remarried to her former husband, but if he had spoken these words thrice, in that case divorce was irrevocable and she could not be remarried to her former husband.\textsuperscript{52} In Hindus, Jats and Sainis might abandon wife by executing deed to that effect.\textsuperscript{53} A Hindus wife could be taken back by the husband after turning her out provided she had not changed her religion.\textsuperscript{54} In Ambala, if a wife had been turned out for immorality the man took the advice of panchayat whether to take her back or not. It was on his discretion to follow their advice or not and he ended up deciding himself.\textsuperscript{55} In Sirsa also Hindus could take back their expelled wives but this did not amount to remarriage.\textsuperscript{56} The tribes in Kangra district did not mind taking back the expelled wife if she remained chaste. Nobody objected if a wife once expelled was taken back and custom said nothing against the validity of such a reunion. The main reason given was that marriage was indissoluble.\textsuperscript{57}

Dissolution of marriage was not very common but took place among all groups in the Punjab region. Among Muslims this was a formal procedure of divorce, while among non-Muslims it was a giving up or turning out or abandonment of the

\textsuperscript{47} Basant V/s Bhagwan A.I.R. 1933; Lah. 755 ; Paras Diwan. \emph{Customary Law}, 83.
\textsuperscript{48} Paras Diwan, \emph{Customary Law}, 83.
\textsuperscript{49} A.I.R. 1933 Lah. 755; 146 I.C. 541.
\textsuperscript{50} C.L. Sialkot 1895, 8; C.L. Jullundur 1918, 17; C.L. Ludhiana 1911, 33.
\textsuperscript{51} C.L. Montgomery 1925, 11.
\textsuperscript{52} C.L. Muzaffargarh 1925, 22.
\textsuperscript{53} C.L. Hoshiarpur 1914, C.L. Gurdaspur 1913.
\textsuperscript{54} C.L. Montgomery 1925, 11; C.L. Ludhiana 1911, 33.
\textsuperscript{55} C.L. Ambala 1887 & 1918, 8 & 9.
\textsuperscript{56} C.L. Sirsa 1882, 100.
\textsuperscript{57} C.L. Kangra, 21.
wife. Some social categories however, did not believe in divorce in theory such as Rajputs, though most recognised abandoning an unchaste wife, at the same time a wife was not permitted to divorce or give up a husband. Once separated, remarriage was usually not permitted among Muslims, while Hindus allowed the taking back of an abandoned wife on specific conditions since the marriage was not formally dissolved. The reports on CL underline that dissolution of marriage was limited, some Muslims also did not recognise it as in Jallandhar, Gurgaon and Sirsa Districts. Where the customs existed no clear evidence was necessary and the husband could divorce his wife on the flimsiest excuse, even on payment in some places. Permanent separation was usually but not always formalised in a written deed.

On dissolution of marriage ties, the position of the wife varied with respect to payment of dower or mehr, which was the nuptial gift which a Muslim undertakes to make to the wife and is an integral part of Muslim marriage. It may also be defined as “a sum of money or other property which the wife is entitled to receive from the husband in consideration of marriage”. Mehr is an obligation imposed by the law on the husband as a mark of respect for the wife as is evident from the fact that non specification of dower at the time of marriage does not affect the validity of marriage. Dower may be settled at any time either before or at the time of marriage. It may even be fixed after the marriage. Mahr-i-tafweez is the one fixed by mutual consent after marriage and when fixed by arbitrators or by judge it was known as Mahr-i-Takkim. The amount of mehr could be increased after the marriage. When mehr is not settled, the law, nonetheless, implies it. The dower when specified by the parties is known as specified dower. When dower is not specified, it is implied in the marriage and fixed by the court; in such a case it is known as proper dower. The specified dower is classified into two: prompt dower, or Mahr-al-mujjal, and deferred dower, or Mahr-al-mu wajjal.

A separated woman could claim her dowry, but to avoid this she was treated badly so that she could sue for divorce herself where she could claim nothing. In Ambala itself, different customs were reported. General view was that wife could claim maintenance if she had been divorced without good reason. Whereas some

60 Paras Diwan, Customary Law, 92.
61 WM Bourne, Hindustani Musalman and Musalmans of East Punjab, 2.
62 C.L. Ambala 1893.
Muslim tribes reported that she could claim maintenance until her dower had been paid, but others denied it if she had been divorced for immorality. A wife could not make any claim against her husband except the dower which she could claim even if she was divorced for adultery. A superseded wife was entitled to maintenance a specific share of husband’s property. If the Muslim religion was deliberately disclaimed by the wife it dissolved the marriage and prevented husband to obtain decree for restitution. Amongst Hindus a wife might be superseded for sterility and certain other causes, but she would still be entitled to her right of inheritance as a widow on the death of her husband.

Among Muslims dower was always mentioned in the marriage ceremony but was never paid. Dower (mahar or mehr) had no existence in custom. It was only mentioned because it occurred in the marriage ceremony of the Muslim law. The husband got the wife to free him from the obligation (bakhsh dena) before witnesses and sometimes by telling her that he had given away its value in charity. Generally a sum of Rs. 40 or Rs. 50 was mentioned. Some Muslims were of the view that if the husband did not get the wife to let him off the dower during her life time, the burden would hang over him until the last day when she might claim it from him. If the husband died without being freed from the obligation, then very often the widow formally renounced her right to it before witnesses. No instance was recorded where dower had been paid to divorced wife.

It was customary among certain sections to fix dower of an extravagant amount. Very often it was found that a husband who could not earn sum of Rs. 600 agreed to pay Rs. 60000. Such dowers were mainly fixed to ‘enhance the importance of the bride’s family and to testify to the exalted nature of the connection which the bride groom is forming.’ Khattars of Attock district used to fix dower at very high amounts but there was no intention on the part of the husband to pay these amounts

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63 *IBID*, 9.
64 C.L. Muzaffargarh 1925, 23.
67 C.L. Sirsa 1882, 105.
68 *IBID*

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nor was it expected by the wife that she would be paid such. 70 These Khattars had no intention to carry the contract into effect.

The succession to unpaid dower of a deceased female among Muslim Rajputs was governed by the agricultural custom of the province. It must be determined according to the Muslim Law in the absence of proof of special custom to the contrary. 71 The Arains of Gurdaspur district did not allow the parents to inherit the dower payable to their daughter in the presence of her husband. 72 Likewise Arains of Batala in Gurdaspur district said that the husband generally succeeded to all the movable property in the possession of wife at the time of death, if she died childless and in the lifetime of her husband. 73

Where a Muslim widow is in possession of the property of her deceased husband, having obtained such possession lawfully, and without force or fraud, and her dower or any part of it is due and unpaid, she is entitled as against the other co-heirs of her husband to retain possession of such property until her dower debt is paid. It is immaterial to such widow’s right to retain possession that such possession was obtained originally without the consent of the other co-heirs. 74

In practice the widow was not given the right under Muslim Law to retain possession of her husband’s property until satisfaction of the dower debt did not carry with it the right of selling, mortgaging or transferring the property. 75 It was held that even partition of the estate of a deceased Muslim should not be allowed until the widow’s dower had been paid. 76 Where ancestral land was transferred by a Muslim husband to his wife in lieu of dower without objection by his collaterals it became self acquired property of the wife which she was at full liberty to alienate the way she wanted to. It was held that the courts had a discretionary power in awarding dower, and were not bound to decree the same fixed at the time of marriage. This decision was based on the old Punjab Civil Code which had ceased to have any legal force and

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70 19 P.R. 1914; Kaikhosru J Rustmonji, A Treatise On Customary Law in the Punjab, 272.
71 19 Lah. 428.
72 1932 Lah. 626.
73 1934 Lah. 355.
74 16 All. 225.
75 1927, 101 I.C. 683 Oudh.
76 P.L.R. 1900. 333.
it could no longer be relied upon as an authority. There existed no custom of dower among Hindus.

The number of widows was fairly large in the Punjab. There were still about 30,000 widows in Punjab between age group 1-19 years. In the year 1897, about 30,000 widows were present in Punjab between the age group 1-19 years. They were in a pitiable condition and many cases were reported of adultery and abortion. The Census of Punjab 1901 reported 1363 widows in 10000 females (13.63%) as against 623 widowers in 10,000(6.23%) and this proportion of widowed females was much higher in the age group 15 years and above. In 1923-24, still there were more than 300,000 Hindu widows under fifteen years. In 1930 still 82% widows were present among Hindus and 54% among Muslims above 30 years of age in Attock. The figure of remarriage of widows was negligible even in 1931 because of the presence of huge number of widows of marriageable ages. The main reasons attributed to a large number of widows in the province included early age of marriage, difference in the age of marriage between husband and wife, and thirdly the most significant reason being the prejudice against remarriage of widows. This practice was forbidden by high castes as the custom was considered as a mark of ‘social respectability’. Jai Chand, secretary of Arya Pratinidhi Sabha, Punjab observed that widow remarriage was prohibited.

The problem of widows was mainly that of higher caste Hindus because they married young and were never allowed remarriage. However, lower castes which were about 80% of Hindus did not face the problem because they did not practice child marriage and also allowed remarriage of widows. Even this discrimination was common among those Muslims who were in close contact with their Hindu neighbors.

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77 81.49 P.R. 1876; Kaikhosru J Rustonjii, A Treatise On Customary Law in the Punjab, 277.
78 Sant Dhami Parcharak Jullundur, 8 October 1897, 920.
79 Census of Punjab 1901, 218.
80 Williams Rushbrook, India in 1923-24, Government of India Publication Branch, Calcutta, 1924 , 220.
81 D.G. Attock 1907, 73.
82 Census of Punjab 1931,188.
83 Census of India 1921, 155.
84 IBID
85 Census of India 1921, 20; Carroll, Lucy, Law Custom and Social Reform; The Hindu Widow’s Remarriage Act of 1856.
In Punjab there existed the customary practice of remarriage within the husbands’ family which was called karewa. Karewa means taking into wedlock of the widow by the brother of a deceased or near relation such as first cousin.\textsuperscript{85} Karewa could be defined as the remarriage of widows or deserted or expelled wife who had been previously married by full ceremonies of a caste marriage (byah or shadi).\textsuperscript{87} The ceremony was called Chadar Andazi. The other names given to it were karao, natu, karewa, karawa, dharewa, jhanjhara which all meant widow remarriage.\textsuperscript{88} The term chadar dalna was not used in Delhi. Karao of Muslim women was called nikah sani.\textsuperscript{89} All these terms meant widow remarriage but was not accompanied with celebrations and religious rites. It was neither preceded by betrothal nor any marriage ceremony.\textsuperscript{90}

Remarriage aimed at controlling both women’s labour and women’s sexuality which was otherwise considered malignant according to Arya Samaj norms.\textsuperscript{91} Karewa took place mainly from the causes which had regard to men only, even if it might sound otherwise.\textsuperscript{92} Karewa never took place where child was born to the deceased husband, and there are certain instances where woman made even third marriages which were called therewa.

Nevertheless the general feeling of people was against widow marriage. When a girl’s horoscope showed that she might become a widow at an early age she used to go through mock ceremony of marriage before her real marriage.\textsuperscript{93} There were certain reasons that prohibited widow remarriage. The logical outcome of the theory that marriage was a religious sacrament was that a Hindu widow could not take a second husband and it was generally observed among higher castes and twice born castes in Punjab.\textsuperscript{94} Another theory was that widow remarriage was thought of as a form of concubinage which made higher classes against it.\textsuperscript{95} Certain Muslim castes as Sayads and Pathans looked down upon it though they did not prohibit it completely.\textsuperscript{96} Other

\textsuperscript{85} Census of Punjab 1931.
\textsuperscript{87} C.L. Gujranwala 1914 , 11; C.L. Sirsa 1882.
\textsuperscript{88} Census Punjab 1901 , 218; D.G. Delhi 1912 , 61.
\textsuperscript{89} D.G. Delhi 1912, 61.
\textsuperscript{91} D.G. Rohatkar 1883-84, 51; C.L. Sirsa 1882.
\textsuperscript{93} AH Bingley, \textit{Sikhs}, Language Department Punjab, Patiala, 1970. 76.
\textsuperscript{94} Census of Punjab 1911, 261.
\textsuperscript{95} \textit{IBID}.
\textsuperscript{96} Census Punjab 1901, 218.
\textsuperscript{96} As in country towns and villages of Arabia widow marriage was not appreciated.
reason for prohibiting widow remarriage was to restrain the practice of *niyoga*. Remarriage was also forbidden to avert any possibility of polyandry. ‘Hardly any sentiment can have greater force among the people than this prejudice of certain castes against widow marriage.’

Hindu widow could remarry in *karewa* after ‘*Kriya Karam*’ (last rites) of her first husband. *Karewa* could be performed anytime after death of first husband in Jullundur and Gurdaspur district. On the contrary in some places time gap was necessary. Usually she could not marry by *karewa* until a year after the widowhood. No time period was fixed for Utradhi Aroras of Tahsil Pakpattan and all Hindus of Dipalpur tahsil. Whereas at least one month and a quarter must have been relapsed after first husband’s death in case of Ambala district. Among Muslims *karewa* was performed after lapse of period of *iddat*. The *iddat* period varied with the districts. It was 3 months in Sialkot, 4 months and 10 days in Ambala, Jullundur and Hoshiarpur district.

Usually the agricultural population did not attach any stigma to marriage with a widow. Among Jats widow remarriage was a regular institution. All clans of Jats married their widows commonly, and *chadar andazi* in which the ceremonial had been reduced to the very minimum was one of the recognized forms of marriage. Jats justified practice of *karewa* as it kept widow’s dignity intact and more importantly there was no break up of family or properties which lead to a unified family. Castes that did not permit widow remarriage taunted the Jats with the proverb ‘*A ja beti, le le phere, Eh mar jae aur bahure*’. It was confined mainly to tribes such as Ahirs, Jats, Gujars, Mullas, Pathans and Rangars. Rajputs did not tolerate remarriage of widows which distinguished from Kanais. A woman in Muslim dominated districts as Attock, Jhelum; Rawalpindi always married if she was not very old. *Karewa* did not take place if there were children from the deceased husband.

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97 It permitted Hindu husband to call a man and beget son on his behalf.
98 C.L. Jhang 1929, 10, 11; C.L. Sialkot 1895, 11.
99 AH Bingley, *Sikhs*, 76; C.L. Rohtak 1911; C.L. Delhi 1911; C.L. Hissar 1913.
100 *iddat* is the period of waiting a woman must observe after the death of spouse or after divorce during which she may not marry other man.
101 D.G. Attock 1907, 62 & 1930, 73.
102 D.G. Ludhiana 1888-89, 58.
103 C.L. Lahore 1929, 706.
105 D.G. Rohtak 1910, 90.
husband. Hindus practiced widow remarriage very scarcely and more rarely among higher Hindu castes.

The tribes that did not recognize *karewa* were Khatris, Brahmans and Aroras of Gujranwala. Rajputs both Hindus and Muslims also did not recognize *karewa*. Similarly was the case of Brahmin, Khatris, Kalals, Rajputs (especially of high degree) of Hoshiarpur; Tagas, Rajputs, Brahmans, Kayasths, Khatris, Baniyas of Delhi; Rajputs of Kaithal, all Hindus of Jhang, Rajputs, Brahmans and Mahajans of Hissar; Hindus of Jhelum, Rawalpindi, Attock, Hindu Tagas and Brahmans of Delhi, Khatris and Brahmans of Jullundur; Khatris and Aroras of Pakpattan; Moghuls, Pathans, Sayeds of Dipalpur Tahsil. Widows could never marry among Rajputs, Brahmans and Tagas of Panipat Tahsil and Karnal; Baniyas, Rors, Brahmans, Bodlas, Chishtis, Joiyas, Bhattis and Bhurs of Sirsa. The Hindu law forbade it. However, among some tribes widow remarriage was sanctioned by custom, as for example among Sartora Rajputs of Kangra. Jains had the highest proportion of widows at all ages, next came Hindus and almost the same proportion of widows was among Muslims and Sikhs. Proportion of widows among Jats was 125 per mille of total females as against Brahmans who had 198 per mille. Khatris had only 224 cases, Brahmans had 792 cases of *karewa*. Among Muslims, only 11 per mille of married males were polygamous whereas Hindus and Sikhs were 6 per mille.

‘Widow remarriage was not a question of caste, but of status within caste.’ Though Jats almost always allowed widow remarriage but still some families of high social standing did not allow it. Similarly, Ahirs who favored *karewa* immensely did not allow it in some parts and on the other hand Brahmans and Khatris in some areas practiced it. Strangely, Khatris and Chuhras had same proportion of widow’s up to 20 years of age though they were opposite to each other in social scale.

Hindus did not approve of widow marriage in the districts of Dera Gazi Khan and Attock. Still a variation lay among the two tahsils of the former district itself while those of Sangarh tahsil did not give any share in property to the sons born of remarriage but those of Jaunpur and Rajanpur tahsil gave them the share in property.
Some Rajputs of Delhi were so strict that they didn’t intermarry with those Rajputs who allowed the Karewa marriages. The widow remarriage was also very rare in Multan and was considered unlawful among Rajputs (both Hindus and Muslims), Aroras and Bhatias.

Widow remarriage was not forbidden by Koran but it was considered undesirable by higher classes as a result of the influence of Hindu customs. Gradually in many families marriage of widowed girl who had not attained maturity was allowed. Proportion of widows was high among Muslims also, more because of the fact that Muslims followed Hindus in this respect. As in 1891, percentage of women over 15 years who were widows in all regions was 24.8% in 1881 and 23.2% in 1891. Among Hindus the percentage in 1881 was 25.8% and in 1891 it was 25.7%. While in case of Muslims this percentage was 21.3% and 21.1% respectively for 1881 and 1891. There was a negligible decline in the number of widows.

In fact Jains put more restrictions on remarriage of males and females both. Their males were also allowed to marry only once. While the proportion of widows in Jains was as high as 188 per mille, the proportion of widowers was also 109 per mille.

Among the Muslims those who did not allow widow remarriage were those of Makhdums and Sayads of Multan, Dipalpur and Pakpattan tahsils in Montgomery district, Pathans of Hissar; Rajputs, Sayeds, Pathans, Sheikhs and Mughals of Nakodar and Nawanshar Tehsil and all the principal Mohamdan families of Attock, Rawalpindi, Jhelum and all the Muslims of Muzzafargarh district. Makhdooms and Sayads of Multan district discouraged it. Rajputs of Ludhiana were expelled out of caste if they resorted to this practice. If Rajputs of Hoshiarpur district remarried children born out of such wedlock were not considered illegitimate.

Generally this practice was accepted by almost all the Hindus of Delhi, Amritsar, Gurdaspur. In Hissar only Hindus practiced karewa. Hindu Jats, Lavanas, Churas, Lohars, Tarkhans, Kalas of Sialkot district; Jats, Labanas, Behrupia Rajputs and Bhatia Rajputs of Gujranwala; Rajputs of Chak Rawatan, Palewal, Majari.

\[115\] D.G. Rohtak 1910, 90.
\[116\] Census of Punjab, 1891, 226.
\[117\] C.L. Hissar 1913, 15-16.
Bichhoi, Rajkhwal in Tehsil Garshankar and some Rajput Ghots of Tehsil Dasuya; and all tribes except Rajputs of Ludhiana district Jats, Ahirs, Gujar, Chamars of Sirsa practiced this custom. Though it was less common in Jhang district but it was recognized. Jats, Lohars, Jeevars Tarkhans and Mehtams of Jullundur district; Jats, Labanas, of Shakargarh and Gurdaspur Tehsil; Sainis, Lohars and Tarkhans of Gurdaspur Tehsil; Jats, Ahirs, Gujar, Chamars, Baniyas, Roras, Brahmins, Bodlas, Chishtis, Joiyas, Bhattis and Bhurs of Sirsa. With time some change in the attitude of certain tribes regarding the remarriage of widows can be seen. Earlier all tribes except Rajputs of Ludhiana district practiced this custom but later in 1911, Rajputs also admitted performing this custom. Similarly Rajputs of Thanesar in Karnal district started remarrying their widows and were omitted from the list of those tribes who did not marry their widow, whereas earlier they did not marry their widows. In Ambala district also most Hindu tribes as Jats, Gujar, Ahirs of Delhi practiced this custom, where as earlier only Jats practiced widow remarriage in Ambala District but later in 1923-24 general people favored remarriage. Even Brahmins and Khatri of Amritsar recognized this custom in the 1940’s.

Khatri and Aroras of Shahpur; Hindus of Multan district, Brahmins, Khatri, Kalals did not usually marry widows but there were several examples of such remarriages. All Hindu tribes except Rajputs, Brahmins, Tagas of Panipat Tehsil and Karnal; Rajputs and Brahmins had not recognized Karewa under any circumstance in 1887, but by the 20th century they gave in to this custom.

However in many cases clans practicing widow remarriage had to face social punishment. There were two examples where men were excluded from caste in Rajputs of Kharar and two examples of Naraingarh where issues by widow remarriage inherited. In Ludhiana, Muslim Rajputs disallowed remarriage of widowed women and expelled men who practiced it. However, if it was celebrated according to Muslim law then only social punishment was awarded and marriage was also validated. Some Rajput Chauhans of Delhi district also took this custom but since stricter Rajputs didn’t intermarry so those Rajputs practicing widow remarriage were not called Chauhans but only Rajputs, which implied their degradation. Likewise, Gare

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118 C.L. Ambala 1887, 13.
119 IBID 11.
120 IBID 11.
121 C.L. Ludhiana 1885.
Rajputs of Karnal were degraded because they married their widows. Relaxation in this custom was also visible in Ambala where some prominent families of Rajputs and Brahmans practiced widow remarriage though they were not penalized yet they were censured. Kanets and low caste widows were free to marry in or out of husband’s family. Similar was the case with Soods, Baniyas, Vohras and inferior Rajputs. Singh Sabha Sikhs freely recognized widow remarriage. Khatri, Bedis and Sodhis of Gurdaspur Tehsil allowed Karewa into even different castes. While the court recognized the marriage by chadar andazi of the widows and also those by poor Khatri classes in village Nooronwali but it was not valid by custom tribe in Khatris of village Hoshiarpur. The practice of Karewa was very common among Hindu Jats of all gots in Ludhiana district, though the Gil jats disliked it but still admitted its validity and that it was a common practice. Karewa was almost a universal custom in Ferozepore. The proportion of widows among Hindu and Sikhs was equal to the widowers but among Muslims the number of widows exceeded those of widowers considerably. The Labana Sikhs of Muzaffargarh also practiced karewa with time.

Muslims practiced karewa very commonly. In Jhang, karewa was practiced more commonly by Muslims than Hindus. Jats and Tarkhans of Sialkot practiced Karewa. Sayads of Ambala did not recognize karewa but admitted that it was allowed by Muslim law and that they freely practiced it. All tribes of Muslims practiced karewa except Rajputs. If any Rajput contracted such marriage with a divorced or widowed woman, he was expelled out of caste. But marriage could not be invalid if according to nikah. Sometimes only social punishment was given. The remarriage of widows was almost unknown in Shahpur district even among the most common classes. The custom of chadar andazi and karewa marriage did not exist. So the percentage of widows would be high in Shahpur district in comparison with other districts.

122 Census of Punjab, 1921, 282.
123 C.L. Ludhiana 1911.
124 D.G. Ferozepore 1916, 62.
125 C.L. Muzaffarpur 1925; D.G. Multan 1923-24; C.L. Shahpur 1896; C.L. Gujrat 1922.
126 C.L. Ludhiana 1885 & 1911.
127 C.L. Ludhiana 1885 & 1911.
Many a time’s mere cohabitation approved them as man and wife. ‘This custom represented social consent for cohabitation’. The cohabitation had to be in the man’s house for its acceptance as marriage. Eg. Folklore goes

_Dewar bhabhi ka pyar ho sai_

_Is me kai takrar ho sai_

(Meaning the love of _dewar_ and _bhabhi_ is unquestioned). In many cases, _dewar_ was only a child. Also she was sexually exploited by elder family members. There was a case where daughter in law conceived from her father in law, such offspring’s inherited the ancestral property. Custom also validated such marriages.

The right of the widow to remarry at her own choice when she was not claimed by her late husband’s brother was not universally accepted. _Karewa_ could not be performed when the girl was minor and her consent was necessary. Among Hindus the girl, if underage, was not asked for her consent and she was forced to remarry the person that was selected by her in-laws family. The widow was retained within the family to control her property, labour, sexuality and reproductive capacity and also control her options regarding her choice of husband. If she was grown up she could not be forced to marry her husband’s brother or cousin and could remain as a widow in her family, but if she decided to remarry it had to be her husband’s brother or some other member from his family. In Ambala also, though she had all authority to marry any man of her choice but custom compelled her to marry anyone from first husband’s relations if ‘available’. If she was marrying outside it could be never without the consent of heirs of first husband.

In Rohtak too, a widow could not be compelled to remarry but the influence of family was so strong that she had to yield to their wishes. The remarriage had to be either with brother or cousin of the deceased husband. The main reason for the marriage with a relation within the family was to transfer control of the deceased

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129 IBID. 4.
130 IBID. 5& 6.
131 IBID. 7.
132 AH Bingley, _Sikhs_. 76.
134 Prem Chowdhry, _Sexuality, Unchastity and Fertility_. 8.
135 C.L. Ludhiana, 1885 and 1911. 40.
136 C.L. Ambala, 1887. 12.
husbands land from widow to his brother or some other relation within the family. More likelihood was there if the younger brother was unmarried or had no children.\textsuperscript{137} In Kangra also, an adult widow could not be forced to remarry without her consent.\textsuperscript{138} Generally she was married with the younger brother of the deceased. Though there was no rule to prevent remarriage to elder brother but younger brother was always considered more suitable.\textsuperscript{139} Similarly in Sirsa while remarrying with deceased husband’s brother or some near relation the consent of the widow was suffice but if she was marrying out of family consent of former husbands relations had to be obtained, if she cohabited with a stranger without family’s consent, tribal panchayat was called and the boy was forced either to give her up or pay price for her.\textsuperscript{140} Rains of Sirsa could marry husband’s agnates but she could opt to remain unmarried in her husband’s house in possession of his estate. She could choose to go to her father’s house but only after giving up the property. There she could decide to marry someone else with the consent of the father and there was no need to take the consent of the agnates.\textsuperscript{141} Generally, the widow was forced to marry her deceased husband’s brother whether older or younger, but younger brother was usually preferred.\textsuperscript{142}

Custom permitted the Hindu widow only to marry the nearest collateral relation of the late husband who could be entitled to succeed to her husband’s property on his death or on her remarriage.\textsuperscript{143} The younger brother of husband was called \textit{dewar} (\textit{duvi+ var}) which meant second bridegroom.\textsuperscript{144} So much so that if man died before bringing wife home by \textit{muklawa}, his brother might go and bring widow in same manner as deceased would have.\textsuperscript{145} “The women devolved like land on the surviving brother and failing him to cousins just as land would do. She was considered family property”\textsuperscript{146}

In Lahore the widow was forced to forfeit all her claims on her late husband’s property if she remarried outside her collateral relations and other implication was

\begin{itemize}
\item Rohtak 1883-84, 51.
\item C.L. Kangra, 35.
\item Census 1901 of Punjab, 209.
\item C.L. Sirsa 1883, 102.
\item \textit{IBID}.
\item Census of Punjab 1921 , 282.
\item C.L. Lahore 1894, 7.
\item Nonica Datta, \textit{Forming an Identity: Social history of Jats,} 102.
\item C.L. Ludhiana 1885, 51.
\item D.G. Ambala 1923-24 , 53.
\end{itemize}
loss of support of her in-laws for all times to come. Similarly, in 1916 also in this
district widow had to abandon her dead husband’s property and live away from his
relations if she did not marry anyone from collaterals. In Jullundur, very often the
brother of the deceased would prosecute his sister in law and any second husband she
might take for bigamy. Most often the widow married the deceased husband’s brother.
Labanas married husband’s brother if any, otherwise someone in brotherhood.

In Rohtak also the widow was married to brother or cousin of the deceased
husband. The main reason was to transfer control of dead husband’s land from
widow to his brother or other new relations. Jats regarded it a great dishonour and
financial loss to marry a widow into a strange family. Sikh Jats in Sirsa district did
not remarry their widow with a stranger and if she did not marry her husband’s
relations she was to remain as a widow in his house. The tribes favored to maintain
power of husbands family over actions of widow in this matter. In Jullundur also, all
inferior castes and shudras did not allow their widows to go out of their family but
was claimed by one of the brothers as she was regarded as belonging to family as
‘money was spent on her’. Though in Jullundur the widow was allowed to marry
anyone but as a rule she could only marry first husband’s brother especially after they
had been on very intimate terms which usually was.

Still there were cases where the widow married a stranger without the consent
of husband’s relations and her sons succeeded to the father’s estate. Very often,
widow in Rohtak severed ties with husband’s land to marry man of her choice.
Ahirs did not allow marriage with elder brother or his elder cousin. Muslim Gujars of
Ludhiana were so strict that if widow married someone other than husband’s brother,
then her new husband had to pay a fine of Rs 150-200/-to her first husband’s family
or give a girl in marriage (nata) and even Courts recognized such custom. If anyone
but a relation of the deceased husband was married he had to pay something to the

147 C.L. Lahore 1894. 7.
148 IBID. 42.
149 C.L. Rohtak 1911,18.
150 C.L. Ludhiana 1885 & 1911,40.
151 C.L. Sirsa 1882.
152 D.G. Jullundur 1904, 57.
154 D.G. Rohtak 1911, 90.
155 C.L. Ludhiana 1885 &1911, 40.
husband’s family. Strangely, the Suthar Khatris in Sirsa allowed remarriage of widow but it could not be the brother of the deceased and had to marry outside the family. Tribes in Hoshiarpur district followed same prohibitions in Karewa as were in force in case of first marriage. Most of the tribes did not marry outside their tribe as it was regarded unlawful and there were many examples where off springs of such marriages were not allowed to succeed. Jats might marry woman of their tribe by Khunjarara. Generally a man married widow of his tribe but Thakars of Nurpur could marry Rajput widows also. Earlier Jats married by Karewa with lower social groups as Ahirs, Gujars, Koormis etc but under the influence of Arya Samaj Jats started having Karewa with only Jat women and not with lower social groups. A violation of law of endogamy and widow remarriage was not respected. In Karnal a Gujar could marry Jats or Rors widow or of lower caste, than such woman was known as heri hui though it was marriage. Marriage out of own castes was thought disgraceful. The social disgrace was always accompanied by widow remarriage whether the girl was married or unmarried.

A Hindu widow could not be married according to traditional religious rites. Many a times no ceremony was celebrated. She might take place as dead husband’s brother without any ceremony. This increasing leniency continued till 1888-89 also and people lived as husband and wife without any ceremony. Often only cohabitation or publicity before brotherhood marked Karewa. Jats performed karewa informally. Chadar andazi was performed where woman assumed red sheet and bangles indicating end of widowhood. This ceremony was not indispensable for the validity of a karewa marriage. Chadar Andazi alone was neither a proof of marriage, nor the absence of it a proof that there was no marriage. The ceremony of chadar andazi could also be a called ceremony at all, it was only so in the sense that it expressed the intention of the parties to live together as husband and wife. If such

156 D.G. Ferozepore 1916, 68.
157 C.L. Sirsa, 1883, 10.
158 C.L. Hoshiarpur 1914, 30.
159 C.L. Kangra 1914, 14.
160 IBID, 35.
162 Census Punjab 1901, 220.
163 Census India 1911, 247.
164 C.L. Ludhiana 1885, 51.
165 D.G. Ludhiana 1888-89, 58.
166 C.L. Rohtak 1911.
167 Nanak Chand, Lectures and Notes on Punjab CL, 104.
intention was carried out by the parties thus living together for a considerable period of time, it might be held that marriage had taken place.

The widow put on the signs of or wedded wife as nath and churi in the presence of the brotherhood. Then the red dupatta was thrown on the bride. Jats and Rors of Indri and Lahore, Rohtak only observed such ceremony if the widow was a member of the family otherwise she was taken home simply. In Rohtak also she took up all signs of married woman as choori, color cloth put up her hair and no other ceremony was observed. In Muzaffargarh, no religious rite was observed. Only both were seated together and cloth sheet of man was put over them, then ardas was made, boiled grain and sugar was distributed. Similar customs were observed in Hissar except that red sheet put on her head with a rupee knotted at one end. Bishnois in Hissar tied chadar of one party to another and bangles of lac were put on woman’s hands. In Sirsa also no special ceremony was observed if the wedding was with husband’s brother. Only chadar tied with one rupee at one corner thrown over her head and sometimes bangles put on her wrist. The brotherhood was made to understand that they had taken each other (kar liya) without any ceremony. In Dera Ghazi Khan, in three southern tahsils man only took widow and cohabits with her without any ceremony but in Sangarh Tahsil, recitation of kaj was performed by Brahmin without any ceremony. In Amritsar, lawan was performed at marriage of widow or widower. Among Sikhs, recital from Guru Granth Sahib was required. Hindus put white sheet cloth with colored wedges on women’s head and Muslims had no such ceremony and they had only regular remarriage done. No formal ceremony was required by custom.

In Montgomery husband’s cloth put over head of woman amongst recitation of Vedas or Guru Granth in the assembly of brotherhood was adequate. In Jullundur, Padha or Sikh sadh covered the couple with sheet followed by religious ceremony of reading from Granth. Sheets were withdrawn and sweets were distributed. In Moga, Zira Jats’ only ceremony was throwing of white sheet over woman’s head in presence of relative and one of kinsmen put rupee in her hand. In Shahpur, only man put chadar over woman. In Ludhiana, neighbours and lambardars were called as witnesses. Brahmins recited mantras, made chauk and tied the clothes of both

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168 C.L. Kaithal 1892, C.L. Rohtak 1911, 17.
169 C.L. Sirsa 1883, 106.
170 C.L. Amritsar 1947, 32.
together. The man put a sheet over woman’s head and she became his wife. No pheras or circumambulation around fire was performed.\textsuperscript{171} In Kangra, usually widow marriage was performed by Balu or a jhanjrara ceremony, but it was not necessary if one married brother’s widow as in case of Thakars and Rathis of Nurpur Tahsil. Among Jats of Kangra, woman became wife by residing in man’s house for 2-4 years if Balu ceremony had not been performed.\textsuperscript{172} The essential part of the balu ceremony was that she was made to wear nose ring again which she had discarded on losing her previous husband. Ghirths gave a drinking party. Goat was slaughtered for meat and feast was arranged, but otherwise it was a simple affair. Many a times even priests and barbers were also not present. Jats, Sainis, Ghirths called lambardars and chaukidars to be present on the occasion so that no dispute arose in the future. With time, the tribes shifted to lavish ceremonies and no difference was kept between balu and ordinary marriage. Some castes even beat drums, played musical instruments and all show and display was there as for the marriage for first time.\textsuperscript{173} In Ferozepore district, the ceremonies for widow remarriage were simple. Among Muslims only nikah was read. Among the Jats and Mahtams it was known as karewa or chadar andazi. The men put white sheet or chadar with coloured corners over the woman’s head and gur was distributed. Bagri Jats called it as natha and the widow wore red dress (orhna) and red sealing wax bangle (churi). The wearing of churi constituted remarriage as widow was prohibited from wearing bangles. Sometimes the simple ceremonies were also discarded and parties just lived together.\textsuperscript{174} Muslim widow was married by usual nikah ceremony.\textsuperscript{175} And that was the only ceremony in karewa for the Muslims.\textsuperscript{176} In Kangra district the lambardar and chowkidar was also called so that no dispute arose in future. The other change was that those tribes who allowed widow remarriage made no difference between ordinary marriage and balu marriage. The ceremony was losing its simplicity. Beating of drums, playing on musical instruments and feasting were becoming very common.\textsuperscript{177}
Generally, widow once married was given same treatment as one married for the first time. There was no distinction between rights of karao and ordinary wife. The remarriage was as binding as the first marriage. The remarried widow inherited same rights as the ‘bihi hai aurat’. Her sons inherited and shared equally with those married by regular form and she also commanded equal respect as the first wife. Some Hindus were of the view that bihi hai aurat took greater share in the funeral ceremony of the husband than the wife by karewa did. In contrast in Simla, if the widow remarried she lost her husband’s property no matter whether she was marrying in or outside husband’s family.

Regarding the position of widowers, Jat widower could marry even an unmarried woman through Karewa. Among Chhangs of Hoshiarpur, if unmarried man wanted to marry a widow he should go through the marriage ceremony with the Drek tree (Melia azadis Rachta). A branch of the tree was brought home as if bride was brought home and after that he could marry the widow in an ordinary manner. Such marriages were permitted by custom and ranked equally with the first marriage. It was common for the widowers with means to remarry girls half their age. On the very day of wife’s cremation if the mourner rinsed his wet dhoti in the presence of the assembled gathering it was an indication that he was ready to offer his daughter in marriage to the widower.

On the whole karewa was the customary form of widow remarriage. It was followed by the agricultural groups mainly, but by the 20th C had extended to other groups in the Punjab region. Custom had altered to some extent as more castes came to follow it and a wider range of husbands relations came to be included in the list of those who could marry the widow. Karewa remained largely within the deceased husband’s family. There were however, instances of remarriage outside that family but with their consent.

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III

The colonial state took notice of customary law regarding the dissolution of marriage. In some instances they upheld custom while in other they went against existing tradition. In most cases karewa or widow remarriage was upheld according to custom, at the same time it was extended to cover the caste marriages and karewa as well as the colonial rule also introduced the right to conversion which was not considered valid ground for dissolving marriage; right to dower or maintenance and increased litigation over issues of divorce and remarriage. The written and recorded word was given more value than custom.

The Chief Court held that the apostasy of one person did not dissolve the marriage among Hindus.\textsuperscript{183} The apostasy of a Hindu wife did not dissolve the marriage union.\textsuperscript{184} It was held among Singha Jats of Tahsil Tarn Taran that apostasy of the husband to Islam did not dissolve marriage so as to entitle the wife to remarry.\textsuperscript{185} Similarly wife’s conversion to Islam also did not dissolve marriage as per Hindu Law.\textsuperscript{186}

Among the Malerkotla Jats the husband had power to divorce a wife who was immoral or who committed adultery or who converted to another religion.\textsuperscript{187} In the same manner apostasy of a Chamarani to Islam did not dissolve her marriage or entitle her to remarry.\textsuperscript{188} In a case a Sikh Jat abducted a sweeperess, the husband was prosecuted. The couple converted into Islam and went through its rites of marriage and thereafter lived together for many numbers of years. After they had a child it was treated legitimate by the father and brother-hood and the original husband took no further steps. It was held that there was a strong presumption that the original husbands had repudiated or divorce his wife before the Muslim marriage and the child was legitimate.

In Lachhu V/s Dal Singh the parties were Ghuman Jats of Gurdaspur Tahsil, it was observe that it was not repugnant to the spirit of law that a man who took a wife should have the power of repudiating her and when so repudiated she should be free

\textsuperscript{183} C.L. Kangra 1914, 29.
\textsuperscript{184} 32 P.R. 1870 Cr.
\textsuperscript{185} 19. 152 P.R. 1890.
\textsuperscript{186} 49 P.R. 1907.
\textsuperscript{187} Bhan  Kaur V/s Isher Singh 1958 P.L.R. 136 Paras , 84.
\textsuperscript{188} I.L.R. 1 Lah. 440 ; 30 C.A. 718 of 1910.
to marry another man. In another case Gopi Krishna V/s Jaggo a custom in the Vaishya Community under which abandonment or desertion of the wife by the husband brought about a dissolution of marriage was held valid. A judicial decree was unnecessary and penitence or return to the faith did not restore the tie.

In a case in Tahsil Dasuya of district Hoshiarpur the court held that dower was payable only if parties were not on good terms. In the same district Maryan sued husband Shahabudddin for Rs 16 as mahr muajjil. Later a compromise was arrived and it was agreed that he would keep wife with him and if he did not do so his wife was entitled to four ghumaos of land in addition to the claim of mehr as earlier. Karewa marriage might be performed by a Jat with the sweeper or Chamar or Nai woman. Karewa form of marriage might also be performed between people belonging to same gotra. In a case where a Saini and Mali woman of these same gotra married in 1873 and the validity of marriage was questioned by the cousin of deceased man but the marriage was held valid by custom. When ancestral land was transferred by a Muslim husband to his wife in lieu of dower without objection by his collaterals, it becomes the self acquired property of the wife which she was at full liberty to alienate in any manner she was pleased.

However, the scene in Punjab was a little different from the rest of India regarding widow remarriage. A report in The Tribune dated 27 February 1908 carried a description of marriage ceremony of widowed daughter of Justice Mukerji of Calcutta High Court before a gathering of advanced as well as orthodox Hindus. Commenting on this, the reporter had remarked that in Punjab the rigors of Hindu orthodoxy were not felt as intensely as in other places due to several causes and he was of the view that “we do not real see insurmountable difficulties in the way of a social reformer in Bengal.” In Census of Punjab 1891, it was reported that widows in Punjab had greater freedom in remarrying than in other provinces of India.

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189 33 P.R. 1896; Paras, 83.
190 63 IA 295:Paras, 83.
191 16, 124 P.R. 1876; 132 P.R. 1884; 124 P.R. 1876; 39 Cal. 370; P.W.R. 123 of 1915 and 61 P.R. 1899; 85 P.R. 1906.
192 Biro vs Pt Khan Munsif judgment 26-3-1898.
193 C.L. Hoshiarpur 1914, 36.
194 80 P.R. 1917.
196 Selections from the native newspapers published in the Punjab Vol XXI. No.1, 113.
197 Census Punjab 1891, 225.
The Census of 1891 also reported that earlier views on remarriage of widows had slowly melted and remarriage of widow was more frequent than it was in 1881. Widows were forced to remain widowed more because of custom than their preference. The decline in number of widows was reported in 1901 in comparison with 1891 among all religions. Vidhva Vivah Sahaik Sabha was the main society in the province that encouraged widow remarriage. Widow re-marriage was advocated enthusiastically by the Arya Samaj but the results were not very positive. Lahore had become the centre of activity of these social reformers who wanted to eradicate such custom.

The fact was that though the widows were allowed to be remarried in certain areas especially in the south east her interests were in the background. The only concern was the property she inherited from her husband and in laws did not want it to go out of their hands. She had to bear the forced burden. A certain passage in prasar samhita (a shastra) favored widow remarriage. A suit was dismissed because parents of the wife were not present at time of chadar andazi and she also did not consent to it. Similarly another suit was dismissed in Tahsil Hoshiarpur as chadar andazi was not solemnized with her consent.

The marriage of widowers was an easy task. Rather rich widowers were married to young girls. The spread of education and western influence and the campaigns of social reforms as Arya Samaj in 1930s changed the outlook of the people. The practice such as the marriage of rich widowers with the very young girls was now disliked by the new generation, and a social stigma was attached with this practice. There was a report in The Tribune that a group of Arya Samajists barat prevented such an ill matched marriage in Gujranwala and the old man was disgraced and driven out. Many processions were also taken out by them in the protest.

Though the custom allowed remarriage of widows in certain castes and regions, yet the custom was male centric. It was arranged so that the property of the family on which she might stake her right, did not go outside the family. Her sexuality was also being controlled. In some cases she was reportedly forced to marry her

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198 IBD, 225.
199 IBD, 225.
200 Census Punjab 1901, 219.
201 Census Punjab 1918.
202 District Judge 15 – 11 – 11.
father in law. Not all the castes permitted widow marriage and karewa was an easy way to blackmail her to accept the proposal and eventually be in charge of her life.

According to Act XV of 1856, Section VII, if the Hindu widow was adult or her marriage had been consummated, then her own consent was sufficient for lawful and valid remarriage but if she was a minor and her marriage had not been consummated then consent of her father or the relations of husband were necessary for remarriage but according to custom the consent of relations of former husband were necessary.

Due to strong family pressure she used to present a petition to the Deputy Commissioner seeking permission to marry man of her choice but of no help because the D.C. never showed any response as if he had nothing to do with it. Repeated litigations were filed in Civil and Criminal Courts to enforce these supposed rights. The karewa required no religious formality. It was held in Chet Singh v/s Asu that where a Kahan Jat of Gurdaspur district took his deceased brother’s wife without performing ceremony of marriage and the marriage were valid.

Karewa marriage might be performed with different castes also. In a case the marriage between a Jat and Koli woman was held valid by the custom. Some Karewa marriages were declared both valid and invalid in different districts. As the case of the Karewa marriage between father in law and daughter in law. In Ambala district a Jat married the widow of his deceased son and also had a son by her, but this marriage was held in valid. The judges Lord justice Dalip Singh and Abdul Kadir pointed out that no instance of such a marriage had occurred which showed that such marriage was repugnant to the ideas of the people concerned and it was difficult to see in the face of such repugnancy how any custom could have grown up validating such marriages. However such a custom was held valid in Hoshiarpur district.

Chadar andazi was also most frequent case of criminal litigation. At the death of the husband, widow tried to escape from husband’s home but was opposed by his brothers. They made a complaint under Section 498 of Indian Penal Code. The

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204 D.G. Rohtak 1911, 90.
205 54 P.R 1900.
206 Mst. As Kaur v/s Sawan Singh. 79 P.R. 1910.
208 IBID.

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brothers affirmed that marriage had taken place by *karewa* or *chadar andazi* but the widows denied it.\(^{210}\)

Hence according to customary law the marriage was dissolved due to divorce or death of a partner. Muslims had the custom of divorce that was validated by their law too. Though Hindus did not have the custom of divorce, nor was it held legitimate by the Hindu law. Yet they could turn their wife out or abandon her. It meant same as divorce and was called *tyag*. Muslims also had the custom of dower, the amount promised to be paid to the wife either at time of marriage or later on. However husbands tried to avoid paying it. *Karewa* or widow remarriage was an acceptable norm in the province. It was acceptable to many tribes as they never wanted that the family property should go out. Still some tribes were against the practice. Though widow remarriage was not an accepted norm universally, yet it found favor with many tribes. British rule both upheld and supported customary law in the region. In fact their position was ambivalent as the same issue was termed valid in one area, while considered invalid in another. The consequences of colonial rule introduced changes in the customs of society but in an uneven and lopsided manner.

\(^{210}\) Census Punjab & Delhi 1921, 244.