WIDOWS AND THE STATE

The annexation of the Punjab by the British in 1849 brought the region into contact with the colonial state and resulted in a corresponding impact on the social and economic life of the people. Punjab was one of the last areas to be annexed and had the benefit of the administrative experience of the British in other provinces. The colonial rule in the Punjab was marked by economic exploitation as elsewhere in the subcontinent. The policies of the British were implemented somewhat different from the rest of India as a result of this later amalgamation, the earlier experiences of the British government and the specific social situation of the Punjab. The ‘paternal rule’ of the early decades was eventually replaced by ‘machine rule’ of laws, codes and procedures. The colonial regime produced a certain degree of social transformation in the Punjab.

The present chapter examines the Punjabi widows in the context of colonial rule. It is divided into four sections. The first section deals with widows and the prevalent customs in the early 19th century. The second section takes up changes in law and custom under the British. The third section reviews the widows in the context of colonial law and justice. The fourth section attempts to understand the impact of colonial rule on widowhood.

Till the advent of British rule, the remarkable feature of the social life of the Punjab had been that the agriculturalists had not been influenced much by the caste or class system of the Hindus. In Punjab, secular matters were regulated by the tribal custom, and occasionally, by the local custom, but not by religious laws. The Punjab Customary law remained secular, but with a variety of laws and custom prevailed in the province. The inhabitants of cities generally followed the Hindu and Muslim Law. In

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1 On the annexation of the Punjab, on March 1849, a Board of Administration was constituted for its government, the Board was abolished in February 1853, its powers and functions being vested in a Chief Commissioner, assisted by a Judicial and Financial Commissioner. After the transfer of the Delhi territory from the North-Western (now the united) Provinces, the Punjab and its dependencies were formed under a Lieutenant- Governorship, Sir John Lawrence, In 1866, The Judicial Commissioner was replaced by a Chief Court (Source-Imperial Gazetteer Of India, Provincial Series, Volume I, Punjab, 97.)
3 Ibid, 130.
most of the provincial localities and among the agricultural tribes generally, there prevailed local customs, more or less at variance with the general laws of Indian society and presenting shades of similarity in almost every district. Before annexation, the rules of succession to landed property were variously modified according to the interest and usage prevalent in that area. Among the Malwa Sikhs, the rights of primogeniture in the males were respected, which meant excluding the widow. On the other hand, absence of brothers and nephews, led to the general practice of equal division of lands among the surviving widows among Manjha Sikhs. On the matter of inheritance of widows therefore, there were several situations. Some widows could get lifetime succession, others could claim part of their deceased husband’s property, and most could be assured of maintenance.

The compulsion of sati for widows, which had been a practice among the Sikh rulers of the Punjab, was actually rare. Maharaja Ranjit Singh’s four principal wives – Rani Gaddan Mehtab Devi, daughter of Sansar Chand Katock of Kangra; Rani Hardevi daughter of Mian Padam Singh of Nurpur; Rani Raj Kaur, daughter of Sardar Jai Singh of Chainpur near Amritsar and Ishar Kaur had resolved to burn themselves on the funeral pyre of the Maharaja. Its incidence among the general populace was not common.

Before the arrival of the British, some examples of the remarriages of widows in higher social groups in Punjab are known. Hari Ram Gupta refers at least ten Chacardalna marriages of Maharaja Ranjit Singh with Rani Devi, daughter of Wazir Nakudda of Jaswan in Una district of Himachal Pradesh; Ratan Kaur and Daya Kaur, two sisters, widows of Sahib Singh of Gujrat, married in 1811; Chand Kaur, daughter of Jai Singh Jat of Chainpur in Amritsar district, married in 1815; Mehtab Kaur, daughter of Sujan Singh Jat of Gurdaspur district, married in 1822; Saman Kaur, daughter of Suba Singh Jat of Malwa, married in 1832; Gulab Kaur, daughter of Jagdev in Amritsar district; Jindan, daughter of Manna Singh Aulakh Jat of village Chachar in Gujranwala district, married in 1835; Har Devi, daughter of Chaudhri Ramu, Rajput of Atalgarh;

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5 Selections From The Records Of The Government Of India, Foreign Department No. 6, General Report On The Administration Of The Punjab Territories comprising The Punjab Proper And The Cis And Trans Sutluj States, for The Years 1851-52 And 1852-1853, Calcutta, 1854.
6 By Choondaband practice (Source- Steinbach, Punjab, 1845, Reprinted, Sumit Publications, 1982, 78-81.)
7 See :hapter on inheritance for detail.
8 Har Ram Gupta, History Of The Sikhs, Volume 5, Munshi Ram Manohar Lal, Delhi, 1982, 534.
Devno, of village Deval Vatala in Jammu territory. Later on, the custom of widow remarriage became more prevalent during Misl’s time. In 1858, Sardar Budh Singh, the brother of Sudh Singh of Singhpuria Misl, married his widows Sukhdai and Sada Kaur. Similarly, Raja Sardul Singh of Patiala Riyasat had got married to the widow of Lal Singh. Later on, by this wedlock, a son Himmat Singh was born. Chaudhari Hamir Singh of Nabha Riyasat had got married to the widow of Sardar Kapoor Singh. All these examples of the early 19th century highlight that the tradition of widow remarriage was common among the Sikhs. The third Guru Amardas had not only propagated ‘Widow Remarriage’, but set the example by marrying the Rani of Raja Mandi to Anand Kamaliya before the people. Later on, this tradition was also supported by the 5th Guru Arjun Dev and the 10th Guru Gobind Singh more vigorously, the traditions of widow remarriage therefore become stronger among Singh. It also meant that widow remarriage become more common among the Sikhs of the ruling classes.

On the other hand levirate remarriage was common among the Jats of the Punjab. As Henry Prinsep described the ceremony in 1834 that, “The eldest surviving brother of the deceased places a white robe over, and the neeth or ring in the nose of the widow, which ceremony constitutes her his wife. This custom was characteristic of an extensive assemblage of practices widely upheld in Punjab, which by and large stood outside the realm of conventional Hindu Law. Karewa marriage was the common practice in the region and most groups accepted it by the early 20th century, if not earlier.

Under colonial rule, the British administrators showed their concern for some of the practices prevalent in Punjabi society by codifying customary practices. The establishment of English courts with their own legal perspectives was meant to make the arbitration form the basis of the legal system, the much acclaimed Sati Regulation Act of 1829 was followed by other legislations such as the Widow Remarriage Act, 1856; the Age of Consent Act of 1860; and the Prohibition of Female Infanticide Act of 1872.

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9 Hari Ram Gupta, History Of The Sikhs, 537-538.
11 Ibid, 16.
12 Moris Jakobsh, Relocating Gender In Sikh History, Oxford University Press, Delhi, 2000, 76.
These legislations focused on what was seen as the barbaric customs of the “natives”. It might be noted that between the passing of the Act VIII of 1870 and the publication of the rules framed in 1885, the attention of British government and of local officers was directly mainly to conciliatory measures with a view to persuade the Jats and other castes, suspected of the practice of female infanticide and to reduce marriage expenses. To enforce any law, very wide courage should be needed. The British led an attack on a whole series of customs, aimed at highlighting the ‘barbarities’ of the Punjabi traditions, such as infanticide, expenditure on marriage, sati, and prostitution etc. The British were of the view that these issues related to women were the cause of the attitude towards widowhood.

Mr. Douie, Deputy Commissioner of Jullundur in his note, dated 26th August of 1895 pointed out that, “The subject of female infanticide, in the Jullundur Doab was one of the first matters that attracted John Lawrence’s attention after he became commissioner of the Trans-Sutluj States. He gave a graphic description of the promulgation of the three commandments, “Bewa Mat Jalao; Beti Mat Maro; Korhi Mat Dabao” (Thou shall not burn thy widow; Thou shall not kill thy daughter; thou shall not bury alive thy Leper.) In Punjab, the suppression of widow burning and the burying of living lepers were started with an efficient organization efficient of criminal administration.

Earlier in 1852, Herbert Edwardes, then Deputy Commissioner of Jullundur sent a long report about Infanticide in Jullundur Doab. Edward treated Bedis and Khatris as the principal offenders. The British issued rules under Act VIII of 1870, applied only to ‘all Jat residents’ in 9 scheduled villages. In 1889, the commissioner of Jullundur applied for the extension of this act to Gill Jats of village Kokari Kalan in the Moga tahsil, where there were 40 married women with no female children. Rejecting this offer, the

14 Census Of India, 1911, Volume XIV, Punjab, 244.
15 As in the matter of Sati, the reformers regretted in the twentieth century that, “this system was prevalent in our country for a long time under the face of ‘Pativarta’, the real motive behind it was her property. There was the the popular saying that, ‘Chikha to Uteri Chura Jogi Hoi’. It means if you escaped from the pyre of the Sati, then you will be left to Chuhras. In 1828, British passed an act against it (Source-Sewak, Randia, 16.)
16 The upshot was the issue of Punjab Government Circular No. 6 on 8th September 1864 and then the question simmered for 6 years till Act VIII of, 1870 was passed. Some enquiries pointed to the conclusion that Jats in certain Jullundur villages commonly get rid of their female offspring (Source–Census of Punjab, 1911, 243, 244.)
Government did not approve of a vigorous crusade for depressing the crime being undertaken immediately, for fear of interference with the domestic privacy of the people.\textsuperscript{17} To reduce marriage expenses, the government had applied rules among the Jats of the villages that no person giving a female in marriage, nor any one on his behalf, shall incur any expense upon any ceremony or custom connected with her marriage in excess of that specified by Government.\textsuperscript{18} It shall be the duty of the father or other head of the family celebrating the marriage to induce immediately before the Deputy Commissioner or an officer deputed by him on the same, on account showing the actual expenses incurred.\textsuperscript{19} It is to be noted that despite the Act, these practices continuously prevailed in the Punjab to some extent.

Apart from the above issues, the British did not show concern with other problems regarding widows. As child marriages caused child widowhood the British knew it very well, how this practice was prevalent in Punjab. The British considered that to alter the custom by legislation was a very difficult matter. On the subject of infant marriage, the British officials, Mr. Smyth, officiating Deputy Commissioner of Lahore, Mr. Elsmie, hold in common with the officiating Deputy Commissioner of Jullundur, viewed that the excess of children was owing to early marriages in Punjab.\textsuperscript{20} They had concluded that the early age at which females were married in any country, the greater will be the number of children alive at any one time.\textsuperscript{21} It means that the system was prevalent in Punjab. D.C. Barkley, member of the Legislative Council of the Punjab Government, argued that in the Punjab, early marriages was probably less prevalent among the illiterate masses than among the educated. There were considerable tracts of country, in which the customs of the people were opposed to early marriages, and it was usually the higher castes and the people of best social position, who considered them most necessary.\textsuperscript{22}

The British generally thought that infant-marriages should not be directly repressed, yet they ought not to be encouraged. Although, it was believed that a departure here from native custom would be more likely to do good than harm. C.R. Hawkins,

\textsuperscript{17} Census Of India, 1911, Volume XIV, Punjab, 247.
\textsuperscript{18} Census Of India, 1911, Volume XIV, Punjab, 244.
\textsuperscript{19} Census Of India, 1911, Volume XIV, Punjab, 245.
\textsuperscript{20} Lahore Census Report, 87-93(Source-Census of 1868, 43): Jullundur Census Report, 22-25 (Source-Census of 1868, 45.)
\textsuperscript{21} Report On The Census Of The Punjab, 1868, 45.
\textsuperscript{22} Daya Ram Gidu Mal, The Status Of Women In India, 37.
Deputy Commissioner, Amritsar suggested that, “I should consider that the State should only show disapproval of such customs as infant marriage. One means of showing this disapproval seems thoroughly practical and inoffensive. Any measure of this sort would be useful and unobjectionable. D.G. Barkley argued that several suggestions were made as to modes in which the state might indirectly show its disapproval of Infant marriages. The only one of which did not seem to involve undue interference with a practice, which it was not expedient to prohibit by law was that the educational department might draw attention to the evil in its school books.23

D.G. Barkley, again added that even in the case of Christians, the age at which marriage may be entered into was not regulated by law and though the effect of Section 60 of Act XV of 1872 must be to render more difficult marriages between native Christians below the ages there specified. In the case of Parsis also, no age was fixed, but section 37 of Act XV of 1865 did not allow certain suits relating to marriages to be brought until the husband had completed the age of 16 years and the wife the age of 14 years. But it should be necessary to ascertain that at least a large number of Hindus, desired such legislation before it could be proposed.”24 This brings us to the notion of the apprehension of the colonial state, which played a determinant role in setting up the policy.

Apart from this question of early marriage, it may be doubted, whether the system by which betrothals of children were arranged at an early age, appeared to them a question for prohibitive legislation. As British opined that if a minor was betrothed by his father, he might sue for damages for breach and might recover actual expenditure of father.25 According to the Circular No.102, dated 30th October, 1858, it was provided that ‘If a person, who had contracted a betrothal with a girl, before completion of his marriage with her, contract a marriage with another women, the earlier engagement might be broken off at option of the betrothed girl or her relatives, of course, damages could awarded for breach.26 However, no damages could be awarded for a breach of betrothal

23 Daya Ram Gidu Mal, The Status Of Women In India, 114.
24 Ibid., 224.

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of an unborn child.\textsuperscript{27} The Kangra Betrothal Rules (No 9) lay down that the betrothal was not to take place before the girl was five years old.

This aspect of widow’s life, which was result of child marriage and child widowhood, did not much concern the colonial state. To decrease the member of widows, many people wanted to check child marriages. The British had their own perspective. Supporting the custom, the British administration in accordance with the Punjab Civil Code, recognized the Infant marriage with consummation, but not Infant marriage, which was not actually consummated. The Hindu Law portrayed a different picture for Infant marriage. Under it, consummation was not necessary to make the marriage legally complete. By the Shara, the minors could be contracted in marriage by others. They had option at puberty of cancelling the marriage. The Punjab Civil Code made allowance for ‘native’ sentiment by giving an action for damages against both parents and child, if the marriage-vow were broken under any circumstances. It also declared that the child, if marrying again was not guilty of adultery.\textsuperscript{28} In actual fact, then the British did not sincerely attempt to check child marriage and child widowhood.

In a case of Birbal versus Sawan in 1874, the court reversed this by giving verdict that the consummation was unnecessary to the completion of the tie. The support derived from the Punjab Civil Code had gone.\textsuperscript{29} The court stated that the cohabitation was not necessary to make a marriage legally complete. In the cases before 1874, the principle laid down by the courts that when a marriage was solemnized during the infancy of parties, but not consummated, the court held that the husband was not entitled to the custody of his wife; but that under section VI, clause 12, Punjab Civil Code, a suit for damages might lie against the parent as in the case of Jewan versus Sundhee.\textsuperscript{30} Before 1874, the general view was that an Infant marriage, which had never been consummated by cohabitation, was voidable and incomplete.\textsuperscript{31} Among Hindus, only a claim for damages was lying against the parent marrying, but among Muslims, even if there was no consummation, the husband was entitled to restitution at age of 12.\textsuperscript{32}

\textsuperscript{27} 60 of 1886 (Source-Ellis, Notes, 285)
\textsuperscript{29} No.4, Punjab Record, 1874, Criminal (Source-Tupper, \textit{Punjab, Volume III}, 23.)
\textsuperscript{30} No.3, Punjab Record,1870 (Source-Tupper, \textit{Punjab, Volume II}, 22.)
\textsuperscript{32} 15 of 1876(Source- T.P.Ellis, Notes, 272.)
Suits for the recovery of the wife, or for restitution of conjugal rights, had to be instituted within two years from the time, when possession or restitution had been demanded and refused. Nevertheless, in a suit by a husband for restitution of conjugal rights, a court might refuse its assistance, as in case of custody of wife by Muslim of Gujrat district. The fact showed that there was a subsequent marriage of first wife without consummation of marriage. The Muslim law and custom recognized the validity of first marriage. Later on, the court reversed the order of the lower appellate court that plaintiff was entitled to a decree for the recovery of defendant as his wife. Moreover, a husband was not entitled for the custody of his wife before he had paid his wife the dowry: fixed or the dower. In case of Hindus, they were not entitled to the custody of his wife till she attained maturity, unless such custody was necessary in her interests. As seen in the illustration of the Jats of Rohtak, no decree for restitution should be passed in favor of minor husband against minor wife till she had attained puberty. For Muslims, where both husband and wife were minor, the court generally did not grant a decree for custody. Nevertheless, the court had a discretionary power to refuse restitution, if the conduct of the husband had been such as to show that he had grossly neglected his marital duties towards his wife. In another case, where a Hindu wife and husband married, when former was 13 and after short co-habitation was ill-treated and expelled owing to husband’s intrigue with his brother’s widow, which he kept as a mistress, and 13 years later, husband sought restitution, held not entitled. These interpretation by the British limited the number of child marriages and hence child widows.

The Muslim marriage was a civil contract by Muslim law, a contract of marriage made on behalf of an infant by a father or grand-father was binding, and could not be annulled by the infant on attaining majority If the contract be made by any other guardian, the infant might refuses to be bound by it on coming of age, as in the case of Sultan Bibi and others versus Nihala. In case of Hindu minor widow and no one capable of consenting, consented to her re-marriage and she repudiated such, it was considered

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33 Kaikhosru Rustom, *A Digest of Civil Law for The Punjab*, 188.
34 79 of 1880 (Source-Tupper, *Punjab, Volume III*, 27.)
36 Moulada Khan Versus Wazir Shah, No 45, Punjab Record, 1876(Source-Tupper, *Punjab, 24.*)
38 35 of 1894(Source- Ellis, *Notes*, 273.)
40 IV A, H.C. 109(Source-Ellis, *Notes*, 270.)
41 No.53, Punjab Record, 1871(C.L. Tupper, *Punjab, Volume, III, 24.*)
By the Hindu and Muslim law, the guardianship of a minor, devolved on those parties, who were nearest-of-kin, according to the rules of inheritance that was to say, first the mother, then the paternal and the maternal male relatives in order. Legality therefore, gave more authority over the widow to the guardian and thus upheld custom.

The court had discretionary power. Of course, the British claimed the freedom of choice for restitution of conjugal rights, when a girl married during her minority denied the factum and refused to consummate the marriage. But this was not the rule; the court only might refuse the assistance to the husband. In Wilson’s ‘Muhammadan law’, there was the recommendation to the court that the court must order restitution, where the defendant’s wife, not a Muslim, was married in her minority and she objected to live with her husband, even if the marriage had never been consummated, as the British did in case of Birbal versus Sawan in 1874. The seriousness of the British’s attitude could be seen in this statement that, “They did not see that it would be more right for Government to take steps to deter the people from the early marriages or to encourage widows to remarry.” On the one side, they pretended to be reformers, on the other side, they were considering reforms that would be unobjectionable to the native people.

The issue of child marriage, was taken much later in the third decade of the twentieth century, when the matter was subject to the provisions of the Child Marriage Restraint Act, 1930, which was effected from 1st April 1930. Though this was passed in its final form on 28th September, 1929 and provided penalties for the solemnization of marriages of male children under 18 and of female children under 14 years of age. It was believed to be a measure to check underage marriages and possible widowhood.

In fact, marriages did not stop, when the Act came into force, but were celebrated, particularly by Muslims by way of protest. The marriages were celebrated by Muslims in Multan and by orthodox Hindus. The agitation against the Act resulted in Mr. Surpat Singh’s motion in July 1930 to amend the Act so as to permit of the marriage of persons

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42 49 of 1903(Source-Ellis, Notes, 273.)

43 T.P Ellis, Notes On Punjab, 272.

44 Rustom, A Digest Of Civil Law, 188.

45 Under Customary law, Hindu Law and Muslim law, marriage of minors had been valid. Under customary law, the rule had been that for the marriage of a minor, the consent of the guardian was necessary. Under Hindu law and Muslim law, it would not void, but continue to the subject to the provision of repudiation of marriage by the minor on attaining majority only under the Muslim law. (Source-T.P.Ellis, Notes On Punjab, 272; Paras, Customary Law Of Punjab And Haryana, 74.)

46 Census Of India, 1931, Volume I, Part I, Report, 229.
below the specified ages on the production by such person’s guardians of the certificate of a civil court of its satisfaction that the marriage should be permitted for family reasons or on conscientious grounds. But no amendment got further than that stage. The first conviction under the Act was reported from Lahore in July 1930, and up to February 1931, when the Census took place, there had been thirty-three prosecutions; at least three of which related to Muslims and one to Christians.

There was a campaign against the Act by those, who regarded it as objectionable. The opposition of a conservative section of orthodox Hindus was natural. The Muslim, who had their close association with their Hindu neighbors, they were gradually assimilating more and more the social customs of the major community. There were Muslim processions and a hartal in Peshawar, but it failed to bring about a large number of marriages before April 1st, 1930 as its promoters had intended. In Sind, likewise Muslims as well as Hindus hurried on marriages to forestall the Act. In Larkana town, alone 300 pairs of infant were reported to have had their marriages arranged in March. Meanwhile, corresponding legislation has been passed in a number of Indian states including Kashmir and Baroda.

It must be recognized that Infant marriage on the scale that preceded the Sarda Act at this Census was of an abnormal nature and was hardly consistent with the steady improvement in the age of marriage that had taken place during the past 50 years. It was evident, therefore that the earlier a girl was married, the greater were the chances of little mothers, little widows and virgin widows.

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The British officials found with alarm that other issues relating to widows affected British’s interests. A widow often alienated property for her own maintenance,

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48 Ibid., 233.
49 Ibid., 230.
50 Ibid., 231.
51 Mysore, the first state, which had an Infant Marriage Prevention Regulation, for bidding the marriage of girls under eight years, as early as 1894, introduced a bill in 1931, making punishable marriages below the ages prescribed in the Sarda Act but providing for the reduction of the age for special reasons to 12 in the case of girls, under the orders of the District Magistrate and on condition that consummation should not take place till after the age of 14. The Baroda Government on the contrary which had an Infant Marriage Prevention Act, in 1904, and which had since 1922 exempted the Kadva Kunbis from its application, withdrew that privilege in the 1930. (Source- Census Of India, 1931, Volume I, 226, 232.)
52 Census Of India, 1931, Volume I, 226.
53 Paras Diwan, Customary, 5.
daughter's marriage or payment of revenue. Now, the anxiety of the British was to preserve customs in Punjab with its own interpretations to suppress the widow. The personal law was not implemented by the British except among the higher castes. The first and very serious attempt to impose Muslim law on Muslims was made by the Shariat Act 1937, in the twentieth century. The concern of the British was only for the prevention of the fragmentation of landholding. This was a prime concern of the British even as late as 1936, and especially after the 1856 Act, which was served to keep property within the patriarchal family. The contentious interpretations of the statutes of the Act XV of 1856 referred especially to communities, where remarriage and inheritance by widows was common. The clauses on property rights ironically made remarriage more difficult for widows belonging to that castes and tribes that had never placed the restriction on the widow's remarriage. To endorse this theory, the British came with Punjab Laws Act of 1872. The Section 5 of this Act stipulated that in certain matters, all Punjabis will be governed by custom, unless a particular matter, there was no rule of custom. The Punjab Laws Act of 1872 was passed, which gave tribal or customary laws, precedence over the laws of Hinduism and Islam, which formed the basis of legal authority in most other parts of British India. Later on, the Shariat Act of 1937 repealed Section 5 of the Punjab Law Act, 1872. Now evidence of custom contrary to Muslim Law was not admissible on questions of succession, special property of females, marriage, divorce, dower adoption, guardianship and gifts. However, the laws of the agricultural land remained same as declared in the Punjab Law Act.

The Punjabi Hindus, too, had not been governed by the Hindu Law. They have been all along governed by the customary law of the tribe to which they belonged or the local custom of the place where they resided the position till the enactment of the statutes of codified Hindu Law after independence. The Hindu Marriage Act 1955 sets the minimum age for the marriage of Hindu girls at eighteen. It also permitted divorce on the initiative of women as well as the men. The Hindu Succession Act, 1956 applied to the Punjabi Hindu also. This meant

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56 Moris D. Jakobsh, *Relocating Gender In Sikh History*, 76.
58 The Hindu Marriage Act, 1955 sets the minimum age for the marriage of Hindu girls at eighteen. It also permitted divorce on the initiative of women as well as the men. The Hindu Succession Act, 1956...
that in matters of marriage, divorce, adoption, maintenance, guardianship and minority, custom law did not apply. This was not under colonial rule, but was much in keeping with the trends initiated in that time.

From a utilitarian perspective, the British did critique Hindu and Muslim practices. G.W. Leitner observed that, “There was a great deal of exaggeration about the hardships, if not cruelties, to which widows were subjected.” As a rule, women in all countries could take care of themselves. The sight of a widow ready to burst into tears might grow to be trying to her surroundings, or, if poor, she might wish to make herself useful to the rest by working for them or rendering such other services as women discharge in most native households. The British suggested for the widows that the cruelty of enforced widowhood might be educationally utilized by appointing widows, who could act teachers of girls, visiting in their homes, or by training them for that, profession. Among Muslims and Sikhs, Leitner did not apprehend that there would be much difficulty in securing a supply that will exceed the demand. Among Hindus also, with the cooperation of the Brahmins, objections against the above plan would also gradually disappear.

Towards the end of the nineteenth century, widow’s rights had become a highly contested issue among the conservatives, reformers and the British. The British administration, however viewed the reformers with this fact that, “A portion of the male community, was however, peculiarly interested in the widow question. Many aspiring regenerator of his country wished to take care of the widows. If certain reformers could only rehabilitate a widow that marries (and innumerable widows do so in the lower

introduced inheritance rights for women in equal degree with men. The Hindu Adoption And Maintenance Act, 1956 lays down that child to be adopted should be no less than 15 years in age and should not be married. If a custom permits adoption of a child of 15 years or more or a married child, then it can be validly made. (Source- Burton Stein, A History Of India, 395-396; The Gazetteer Of India, 1971, Volume III, 644; Paras Diwan, Customary, 7)

59 Paras Diwan, Customary Law, 6.
60 G.W. Leitner, History Of Indigenous Education In The Punjab Since Annexation And In 1882, 1883, Reprinted, Language Department, 1971, 100.
61 Sir John Lawrence surprised to see in Punjab that there were Madras as of every community- Sikh, Muslim and Hindu; here people were not unknown about the education of women as in the rest of India. In Lahore, there are 16 Madrasas as for girl education (Source- Third Sikh Educational Conference, 1910, Amritsar, 34.)
63 G.W. Leitner, History Of Indigenous, 100.
classes) in middle native society, they would not have the difficulty, which they encounter not of finding suiting wives in their own caste.  

The British, however, were not concerned with the independent will of the widow. This approach can be noticed from views of Leitner “Probably many widows would not object to remarriage. But I doubt, whether signatures to a memorial to government purporting to emanate from a number of widows, were genuine.” The British saw many hurdles for the remarriages of widows. First of all, it would be well to know to what caste, these widows belong and whether they would be object to a marry a man of an inferior caste, or, indeed of a superior one, for all castes were now jealous of intrusion from both above and below”. There was no denying the fact that the Widow Remarriage Act, 1856 did not provide impetus to remarriages in India. It was ascribed to the general feelings among the British. The apparent acceptance for widow remarriages can be found in the approach of G.W. Leitner, “It must also not be forgotten that if the 21 millions widows in India were allowed to be married without a social stigma, which deters most of them from the fatal step, an immense stimulus would be given to polygamy and that the peace of the majority of better Hindu’s homes, which are chiefly monogamous, would be destroyed. The quarrels for inheritance would also be embittered. Moreover, 21 millions of widows can not be married without some injurious effect on the chances of marriage of unmarried girls there can be little doubt. Finally, just as Polyandry (confined to the brothers of the husband) was a check on population. The prohibition of widow remarriage also was precaution against an undue increase of the population in a crowded country like India, where already the supply of food was in many parts insufficient for the demand.” This reflected the unsympathetic approach of the British towards widows in India.

The British treated Punjabi widows from their own perspective. The British considered that whether rightly or wrongly, the prohibition of widow remarriage amongst Hindus was a partial check upon the birth-rate, though not a very humane one. Describing the Garshankar tahsil in Hoshiarpur district, Malcolm Darling admitted that, “there are fifty widows between the ages of sixteen and forty among Hindus. Of course, this practice was not a very human one. But the only advantage of this practice was a partial

64 Leitner, Indigenous, 99.
65 Ibid, 100.
66 Ibid., 99.
check upon the birth rate.\textsuperscript{67} The British had the different perspective for prospect of remarriage to remove the plight of high caste widows. The British observed that higher castes of Hindus clinged to their objection against the custom, which was indeed commonly used as the test, and spoken of as the mark of their superiority.\textsuperscript{68} The British considered it wiser for a government to leave it well alone. Any encouragement or any form of female education will make the Punjabi widows dissatisfied with their position.\textsuperscript{69} In Punjab, they had to take a different perspective, due to some personal motives. Here, Karewa or remarriage of widow was forced by the patriarchy with the help of Colonial administration. As Denzil Ibbetson, Director of Public Instruction, Punjab, opined that a very considerable portion of our population, probably something like two thirds of the whole, practiced widow marriage.

The British approach regarding these Punjabi widows may be considered in their earlier judgments. In the case of high caste Hindus, such as Brahmans, Khatris, etc, who lived in urban areas and was engaged in trade, industry or service, the initial presumption of the British was in favor of the application of personal law, i.e., Hindu law. In such cases, a person alleging that he was governed by custom and not by personal law, had to establish it.\textsuperscript{70} The British frankly admitted that, if the evidence on the record, did not establish the custom set up, then they will be governed by Hindu law, as in a case of a marriage between a Khatri and Brahman, which was not valid under Hindu law.\textsuperscript{71} In this case, J.Broadway contended that in as much as, it had been held that a Hindu Jat might by custom marry a Brahman woman, in another case, so a presumption should be raised in favor of a Khatri being able to do the same.\textsuperscript{72} The judge pointed out that it would be dangerous to seek to extend custom by such logical process as analogy. I was unable to hold that the applicants had made out any case in which it had been held that by custom, general or special, a marriage between a Khatri male and a Brahman woman was valid.\textsuperscript{73} In other case, of 1906, in which a Brahmin widow remarried with a Khatri, but in this

\textsuperscript{67} Malcolm Lyall Darling, \textit{The Rusticus}, 39-40.
\textsuperscript{68} Daya Ram Gidu Mal, \textit{The Status}, 169.
\textsuperscript{69} G.W. Leitner, \textit{History Of Indigenous Education}, 99.
\textsuperscript{70} Paras Diwan, \textit{Customary Law (of Punjab and Haryana)}, Publication Bureau, Punjab University Chandigarh, 1978, 57.
\textsuperscript{71} 73 Ind Cas, 239,1922(Source-Rustom, \textit{Punjab Customary Law}, 694.)
\textsuperscript{72} 20 P.R., 1900(Source-Punjab Customary Law, 694.)
\textsuperscript{73} Rustom, \textit{Punjab Customary Law}, 694.
case, the validity was doubted. Similarly, Lalotras (Brahmans) of Kangra, with whom all widow remarriages, was invalid. The court also admitted that in this case, the Karewa marriage was invalid. The perspective of the British courts generally was to deny customs in case of high caste widows. The, Act XV of 1856, Section 7, enacted that in the case of a Hindu widow of full age, or whose marriage had been consummated, her own consent should be sufficient consent to constitute her remarriage lawful and valid. The scope of widow right was constrained through a series of judicial decisions. It was an established fact that the high castes will be governed by Hindu or Muslim Law, in absence of customs.

We have illustration about the non-observance of the custom by the British. In that case, the learned district Judge (J. Shadi Lal) adjudicating upon the factum of the remarriage of Santi with Bhagat Singh had dismissed the latter’s suit on the ground that ‘the remarriage of a pregnant widow immediately after his first husband’s death and immediately before her confinement was opposed to equity and good conscience and public morality.’ It was true that according to the strict Muslim Law, marriage within the period of ‘Iddat’, namely, 4 months and 10 days from the death of her former husband was void. It may be observed here that there was no rule in customary law, which prohibited a pregnant widow from remarrying immediately after her first husband’s death, and such remarriage was not invalid. The Muslim rule of ‘Iddat’ was unknown to customary law. The British thus, were arbitrary and biased in their rulings on customary laws.

On the contrary, in another case when a converted Muslim still observed Hindu law, as for the prohibition of widow remarriage, the British favored custom, as in case of Manj Rajputs (converted Muslims) of Jagraon tahsil, Ludhiana district. The Judges Rossignol and Harrison in 1922 observed that, “we are constrained to find that among this restricted community of Manj Rajputs, there is a prejudice against remarriage of widows, But that prejudice, we hold, is inhuman and opposed to natural justice, equity

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74 P.L.R of 1906(Source-Ellis, Notes, 265.)
75 113 of 1885 (Source-Ellis, Notes, 266.)
76 J. Wilson, Sirsa District, 102.
77 102 P.R., 1919(Source-Rustom, Punjab Customary Law, 696.)
78 Rustom, Punjab Customary Law, 696.
79 Rustom, Punjab, 695.
and public policy. Once again, there is the illustration of the arbitrariness of the interpretation of custom and law.

The presumption of the British was always in favor of custom. Ibbetson said that the custom was used to induce them to marriage. In the case of the Karewa wife of the Manha Rajputs of Shakargarh, who ranked equally with the regular widow? The onus was one the other side to prove, contrary the custom. Dealing the cases of Chadar-Andazi, the court did not lay down strict Hindu laws. As in the case of the Hindu Jat Sikhs of the Punjab, strict Hindu law was not applicable. In case, of Chadar-Andazi marriage between a Jat and a Brahmman woman, the marriage was recognized in 1900. Later on, this decision was supported in the other cases. As J. Chatterjee opined in 1908 that in that case, we saw no reason to doubt the correctness of the observation. In 1913 again, the court held the decision in favor of custom in another case. The court (Reid C.J. and Rattigan J) was clear about this custom among the agriculturists in the Punjab. It was held that a marriage between a Hindu Sikh Jat and a Muslim convert to Sikhism was valid. In dealing with such marriages, the strict principles of Hindu Law were inapplicable. In case of Karewa union of Jat with a Koli woman (A sweeper or chamar), the Judges Ryves and Scott Smith held that we did not see any reason for holding that the marriage of a Jat with a Koli would be invalid by custom. In considering, whether a union between a man and his nephew’s widow was recognized as valid by custom, the court must, where the parties were Jat agriculturist, residents of a village, looked for guidance, not to Hindu law, but to custom, as opined by Chevis and Wilberforce J.J. in a case in 1920. Even when a man and woman were proved to have lived together, by cohabitation, as man and wife, the law will presume, unless the

80 Rustom, Punjab Customary Law, 695.
81 Daya Ram, The Status, 224, 225.
82 T.P. Ellis, Notes, 63.
83 50 P.R., 1900 (Source- Rustom, Punjab Customary, 691.)
84 72 P.R., 1908 (Source- Rustom, Punjab Customary, 691.)
85 99 P.R., 1913 (Source- Rustom, Punjab, 691.)
86 Rustom, Punjab Customary Law, 691.
87 Rustom, Punjab Customary Law, 690.
88 2 Lab, L.J. 370 (Source- Rustom, Punjab Customary, 691.)
89 Rustom, Punjab Customary, 691.
contrary be clearly proved that they were living together in consequence of a valid marriage, and not in a state of concubine.90

In the cases of Jats of Gurdaspur and Ferozepore, the Judges observed that cohabitation with a deceased brother’s widow was sufficient and no ceremony was necessary. They held that it was a valid customary marriage.91 In another case, Mula and others versus Chando and others, a Karewa marriage between a deceased Hindu Jat’s widow and his brother upheld, although no marriage ceremony in the nature of Chadar Andazi or otherwise was proved.92 To this, it should be added that in the case of Jats and lower caste Hindus, the law always leaned to the side of presuming marriage, where there had been a long connection even without ceremonies.93 In short, it was a valid marriage for colonial government. In their overall recognition of remarriages or Karewa of agriculturist widows, the British went much beyond custom.

Mr. Lyall described that among the Jats of the eastern plains, or at least among those of the Jumna zone, the tribes in which the levirate or primary form of Karewa was the rule, the eldest, only of two or more brothers living together was married. He believed that it was the rule for the wife to cohabit with all the brothers, not the exception. Mr. Delmerick, who had great knowledge of native custom, wrote that, In the Ambala sub-montane tract from the Jumna to the Sutlej… a sister-in-law was looked upon as common property, not only by uterine brothers, but by all bhais, including first cousins. Among them, a wife could not remain a widow and they said she then becomes a Sada Sohagan, a perpetually married woman.94

The recognition of the British with the temporary marriages flooded the purchase of brides. It was penetrated in all grades of the society. Mr. L. Darling estimated that in the Central Punjab, it entered into 70 percent of the marriages made. Of course, Darling criticized the matter as the shameful fact that women were bought and sold. This was clearly not compatible with civilized life. He also admitted that it was increasing with the so-called modern progress.95 The domestic morality in the Punjab became somewhat

90 Rustom, Punjab Customary, 695.
91 T.P Ellis, Notes, 268.
92 No.26, Punjab Record, 1880 (Source- C.L.Tupper, Punjab, Volume III, 27.)
93 T.P Ellis, Notes, 267.
94 Report On The Census Of British India, 1881, Appendix L, CLV.
95 Malcolm Lyall Darling, Rusticus, 41.
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Malcolm Lyall Darling tried to justify British policy by this view that, “it must not be supposed that purchase was one of the effects of British rule, for it was common in the central Punjab before annexation. Further, he himself admitted that now it had greatly increased”. T. Gordon Walker also denied this practice before annexation. Since the rulers would not permit it, it was still forbidden in the Nabha State. The custom was almost universal, although transaction was still kept secret, as worthy of reprobation, and only a few of the better families abstained from it. Indeed a Jat, now considered the birth of a daughter, a piece of luck, for the ordinary price had in recent years run up very high.

There is no doubt that, the practice of purchase of the women was increasing and was by no means confined to the uneducated.

Hugh Kennedy Trevaskis reported that in the twentieth century, the government had tried to check for optional marriage. The registration of marriage had been made by a few district boards, but they had generally collapsed before the determined hostility of the vested interests attacked. Not only the actual pimps and panders, but the lawyers and false witnesses, who profited by the resultant litigation, the police, who were bribed to keep quiet the Brahmans, who dreaded any infringement of their ecclesiastical rights were all landed together to deprecate reform. If purely local registration, moreover, had been done generally due to the initiation of some high minded Deputy Commissioner, and had tended to fall into abeyance, when he had left the district. The systematization of such marriage registration under the supervision of the Inspector General of Registration would provide a necessary check on possible abuse.

From the above account, with confirmed facts, the approach of British, favoring the custom of remarriages among the agricultural castes and other lower Hindu Castes is evident. For Levirate marriages, the British made compulsory the consent of the husband relatives for remarriages, as the custom favored it. As the British made compulsory the consent of husband relatives for remarriage, it meant that the widow could not get remarried outside the family. The Jat agriculturists considered it their privilege to marry

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96 Selections From The Records Of The Government Of India, No. 6, 1851-52, 1852-53, 90.
98 T. Gordon Walker was a Settlement Officer in Ludhiana.
100 Malcolm Darling, Rusticus, 348.
101 I.C.S, Inspector General of Registration and Director of Land Record.
103 I bid., 205.
the widow with the younger brother. The British also supported this tendency, as it was shown by the view of H.A. Rose that, sometimes this practice was enforced by the state in the Kangra hills, now the custom is no longer enforced by the state to compel the widow to marry her husband elder or younger brother.\textsuperscript{104} Rattigan also asserted the perpetual tutelage of widows, which was the feature of the Punjab. To conclude, widow had no rights for remarriage.\textsuperscript{105} The self assertion by widows had become so common that in the late nineteenth century, officials felt constrained to take action prohibiting the partition of land “in the wider interest of preserving the ‘village community.”\textsuperscript{106} Instead they chose to give increasing judicial support to the institutions for suppressing widows as Karewa, which was practiced among Jats to avoid an open conflict for succession.\textsuperscript{107}

The primary consideration in the mind of British was to relate themselves to custom than other laws. Their favorism could be seen in the following observations. In regard to Muslim law, Sir George Campbell in the discussion on the Punjab law bill in 1872 said that it had always seemed to him that the Muslim law was a law, not for a settled place, but for a wandering people, possessed of flocks of sheep and herds of cattle.\textsuperscript{108} Mr. Tucker observed that the Muslim law was most unsuitable for regulating the succession to land and gave reasons for this opinion.\textsuperscript{109} Female succession and the wider liberty in the transfer of property by gift, which the Muslim law allowed were not consistent with village usage. When the tribe had settled on the land, broken up into clans and section holding villages, the character of property had changed, and with its character the rules should also change respecting its devolution and transfer. Tupper also took this matter a very important in the case of Punjab. According to him, by the Census returns of 1868, Muslims were 53.02 percent of the total population and of these, 57.40 percent, were either agriculturists or engaged in occupations connected with agriculture. His opinion was that the Muslim law had modified Punjab custom, rather than Punjab custom changed the Muslim law.\textsuperscript{110} This was the common belief of the British.

\textsuperscript{104} H.A. Rose, \textit{A Glossary Of Tribe, Volume II}, 268.
\textsuperscript{105} C.L. Tupper, \textit{Punjab Customary Law, Volume II}, 80.
\textsuperscript{106} Janaki Nair, \textit{Women And Law In Colonial India, A Social History}, Delhi, 1996, 64.
\textsuperscript{107} Steinbach, \textit{The Punjab}, 80.
\textsuperscript{109} Settlement Officer in Dera Ismail Khan.
The British also held that the British Legislature in this country had always shown a tender regard for native customs and usages. Meanwhile, the Punjab manual was prepared by them due to the need of the compilation of ‘native law’ and of the manual for guidance of the judicial officers. Its circulation of which was sanctioned by the Government. The manual set forth those principles of the Hindu and Muslim law, which was deemed worth of observance, such as the rules of inheritance, property of females, adoption and property and also the points on which these laws were not to be followed. It described the circumstances and methods under which the law might yield to ascertain the local custom.

The British courts used village oral evidences as custom. Records of rights prepared by the settlement officers were an important piece of evidence. They included Wajib-ul-Arz and Riwaj-i-Am. They were intended to be exponent of village custom. The Wajib-ul-Arz was prepared by the settlement officers under section 44 of the Punjab land revenue Act, 1887. At the revised settlement under the Punjab land revenue Act, the custom was recorded in, what was called, Riwaj-i-Am. Wajib-ul-Arz being part of a revenue record was of greater authority under Riwaj-i-Am. They were prepared as village wise record of custom. The Riwaj-i-Am or records of tribal customs were prepared district wise. These official manuals were used in cases of inheritance.

Unfortunately, the perusal of the statements of custom in different districts had been carelessly and insufficient conducted, but no attempt had been made to test their accuracy by comparison with similar cases in other districts affecting the same class of persons. The results was as might have been expected, that a mass of conflicting rulings were passed, which instead of defining and consolidating the customary law, tended much more to render it confused and uncertain.

Rattigan, himself admitted that when the decisions for the past ten years had been grouped and classified under proper heads, this evil was to a large extent, checked, because comparison was then rendered easily accessible. These were incorporated to some extent in the Punjab Tenancy Act, The Punjab Land Revenue Act, and the Punjab

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111 Rustom, A Digest, Tenth Edition, 12.
112 Selections From The Records Of The Government Of India, Foreign Department, No 6, 1854, 89.
113 Paras Diwan, Customary Law, 38.
114 Paras Diwan, Customary Law, 39.
Law Act, for provisional codification and to consolidate certain branches of the civil law.\textsuperscript{116}

Rattigan and Boulnois remarked that the Punjab courts generally considered traditional rules of custom regarding inheritance without those explanations of a spiritual character which had been applied in other parts of India that the true will was foreign to the indigenous system of the country. In village communities, such a thing as a women’s peculium, or separate property rarely existed. They also quoted with apparent approval, a judgment in which it was said that, in the Punjab, association and disassociation of brethren did not operate with so much force in controlling the rights of inheritance.\textsuperscript{117} The Punjab Civil Code fully recognized the legal force of custom in all matters of civil right and that it prevailed against Hindu Law, where the latter was shown to have been superseded by it, for example, whether the adoption by a Khatri of his daughter’s son was a valid adoption will depend upon the custom of the caste in the Punjab, which must be found a fact upon evidence.\textsuperscript{118} However, even one caste did not follow the same customs when located differently in the region.

The tendency of the English legal system had been to substitute individual for communal holdings. Holding of the latter type were, however still numerous. The increase of population and of the profits derived from agriculture led in time to large portions of the common waste being broken up by individual shareholders with the result that in the end, a demand arose for its partition under the law of inheritance. Partition cases were generally decided by Revenue Assistant. In the case of a village site, which was hardly ever assessed to land revenue except in the canal colonies, he must refuse partition, as land so unassessed could only be dealt with by a civil court. Even if it was so assessed, he might refuse partition and this discretionary power might properly be held to extend to the uncultivated land round a village, which was used as a standing ground for or occupied by enclosure for fodder and manure.\textsuperscript{119}

In other cases, the Revenue Assistant should normally refer the cases to the tahsildar or naib tahsildar for report. When the portion was contested, reporting officer should visit the spot, in order to ascertain the local peculiarities of the land to be

\textsuperscript{117} C.L. Tupper, \textit{Punjab Customary Law, Volume II}, 81.
\textsuperscript{118} H.A. Rose, \textit{Compendium}, 53.
\textsuperscript{119} Hugh Kennedy Trevaskis, \textit{The Punjab Of Today, An Economic Survey Of The Punjab In Recent years, 1890-1925, Volume I}, Civil And Military Press, Lahore, 1931, 164.
partitioned. To prevent such delays, the revenue assistant was granted the power of the civil court to decide, such a question of title in land of the application for partition. He should exercise this power, unless he was of the opinion that the party asking for partition had done so in order to evade direct resort to the civil court regarding a question of title, which he knew to be disputed.\textsuperscript{120}

A widow’s demand for partition was always strongly objected by the collaterals. If the holdings remained undivided, the widow found it difficult to manage the share. She was allowed partition only, if she made proper arrangement. Such objections having been disposed of but the next important thing was to determine the method of partition. An exact application of the rule of equal proportions would result in the formation of an excessive number of small scattered fields.\textsuperscript{121} Sometimes, this strategy was adopted, while disposing case. While the holding was joint, one shareholder might have brought part of it under irrigation by sinking a well or digging an irrigation channel, or might have raised its value by embanking it. He ought as far as possible, to be allowed to retain the land, whose present value was due to his enterprise.\textsuperscript{122} These and other similar considerations determined the method of partition.

When we observe colonial views for widow’s claim to partition, then according to the Para 15 of Rattigan’s Digest of Customary Law, it was held that it lay on the widow of proving that she could claim partition under the Punjab Land Revenue Act, Section III, 1887. A widow holding a life interest had a clear unequivocal statutory right to demand partition.\textsuperscript{123} Later on, in 1912, J. Kensington observed as to the well-known capacity of the women of the agricultural classes to manage the cultivation of their lands in a case.\textsuperscript{124} They did not agree with the assumption of revenue officials regarding widows in the case of better cultivating castes, the Jats, Sainis, Rains, Kambohs and some other that they would waste the property. It was unreasonable to refuse to award partition in these castes. These words adequately expressed the views of the Bench Robertson and Kensington J.J. The effect of the decision in 70 P.R. 1912 was taken to be this that according to the statute law, a widow had got a right of partition but that right might be curtailed or

\textsuperscript{120} Hugh Trevaskis, \textit{The Punjab Of Today}, 165.
\textsuperscript{121} Trevaskis, \textit{The Punjab}, 166.
\textsuperscript{122} L.A.M.459 (Source-Trevaskis, \textit{The Punjab}, 166.)
\textsuperscript{123} \textit{Ibid.}, 167.
\textsuperscript{124} 70 P.R.,1912 (Source- Rustom, \textit{Punjab}, 168-169.)

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limited by a custom, who might be proved by a person, who objected to her right of partition.\textsuperscript{125}

Of course, in 1887 by the Punjab Land Revenue Act, a widow holding a life estate had a statutory right to demand partition.\textsuperscript{126} The earlier rulings of the chief courts were no doubt to the general effect that a widow was not generally entitled to claim partition, but in 70 P.R., 1912, Robertson and Kensington J J held that a widow of a deceased, co sharer in a joint holding had a statutory right to demand partition subsequent to 70 P.R. 1912, there was no reported case of the chief court or of the high court to the effect that the onus in such a case was upon the widow to prove that she had a right to a separate partition of her share.\textsuperscript{127} Now, the onus was upon the party, who disputed here right to obtain a partition to prove that such right did not exist.\textsuperscript{128} It was now definitely settled that a widow had a statutory right to claim partition of her deceased husband’s joint and undivided estate.\textsuperscript{129}

Some plaintiffs, on whom the onus rested, failed to prove this as Sodhi family of tahsil Una, district Hoshiarpur, failed to prove that by special custom, the widow of a male proprietor was entitled only to maintenance in their presence.\textsuperscript{130} The learned judges observed in favor of widow that the plaintiffs had not succeeded in establishing the custom propounded by them, a custom which was certainly at variance with the almost universal Punjab agricultural custom that a widow in the absence of male issue succeeded to a life-interest in her deceased husband’s estate.\textsuperscript{131} Where under the customary law, the widows were undoubtedly entitled to maintenance, but not a share, the learned judges of the chief court, Kensington and Chevis in 1912 made the following pertinent observation that they had a wide discretion to award suitable maintenance.\textsuperscript{132} Generally, cash allowance was sufficient. Sometimes, allotment of specified shares in the holding was provided by way of maintenance and not way of inheritance to protect the widow from the bad feelings. The land was given to widow for maintenance, till her death, remarriage or unchastity. The widow forfeited her limited estate in the following cases (i)

\textsuperscript{125} Rustom, Punjab, 170.
\textsuperscript{126} I bid., 168.
\textsuperscript{127} Rustom, Punjab, 171.
\textsuperscript{128} Mastinean and J.J.Moti Sagar 1922(Source-Rustom, Punjab, 172.)
\textsuperscript{129} I bid., 172.
\textsuperscript{130} 133 P.R.,1968 (Source-Rustom, Punjab, 142.)
\textsuperscript{131} I bid., 142.
\textsuperscript{132} 85 P.R.,1912 (Source-Rustom, Punjab, 174.)
Remarriage (ii) Unchastity. Punjab Customary Law (Volume III), which had a manual for the use of settlement officer on Tribal and local customs was written by C.L. Tupper. He did not favor two of the conclusions of Punjab customs that a widow would terminate her right on unchastity or remarriage. He supported this view that in the first place, widow’s unchastity should not terminate her right, unless it is notorious, and secondly, when she remarried into another got or tribe. In accordance with this view, the decision was taken in a case, Mamraj versus Bhola in 1869, where the widow was not with standing her proved chastity decreed to be entitled to hold her husband’s estate during her lifetime. Tupper noted that if the unchastity was such, as might give an outsider any power over the property or of interfering in the village economy, the women ought to be deprived. The chief court had also found acceptance with this view in decision no 107 of 1888 by quoting the above case (Mamraj versus Bhola in 1869) with other cases as no 158 of 1883, No.118 of 1884 and No.105 of 1885.

There was no general custom of the Punjab, by which mere unchastity (badchalani) of a Hindu widow was a sufficient reason for declaring her right to her husband’s estate to be forfeited. The entries to the contrary was in the Sirsa Code of Customary law were set aside on the ground that no instances were quoted. But it might be pointed that this was a somewhat hard ruling, besides being distinctly against the universal feeling of the people. It was almost impossible that instance should be openly quoted in a matter, so, intimately affecting the family honour of the people by whom the custom was attested. Similarly T. Gordon Walker, opined that, “I doubt if the courts would ever recognize mere unchastity, of which sufficient evidence would always be difficult to obtain, as forfeiting the rights of the widow, and there certainly neither was established custom on the point, nor was it likely to be raised”. In a series of cases, it was held that the female holders did not forfeit her estate on the ground of unchastity. In those tribes, where unchastity led to the forfeiture of estate, it was effective only from the date of

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133 Rustom, Punjab, 174.
134 Tupper was under Secretary to the Government of the Punjab.
135 No78, Punjab Record (Source- Tupper, Punjab Customary, Volume II, 46.)
137 A. Kensington, Ambala District, 18.
138 T. Gordon Walker, Ludhiana District, 60.
chastity. It has been observed that the customary law recognized two types of widow’s property.

(1) Widow’s limited tenure

(2) Widow’s special property

Before 1913, it had been generally accepted that a widow for necessity may alienated her deceased husband’s property and the satisfaction of his debt had invariably been regarded as necessity. But the widow holding on usual life tenure was not the next holder within the rule in 4 P.R. 1913. Simple money decree against male proprietor could be executed against ancestral property in the hands of his widow. The full bench decided that the tenure of the widow was very different from that of the reversionary (P.R. 1913). As the decree debt against a deceased proprietor, could not be recovered against the estate to the hands of his successor, but this rule did not apply in the case of a widow. In a case, the Punjab chief court went a step further and held that a widow was empowered to convert a just unsecured debt of her deceased husband into a secured debt. In 1922, J. Broadway ruled that ancestral property in widow’s hands not liable for her deceased husband’s debt, when not ‘charged on the property.’ These decisions brought bad laws for the position of the widow for alienation. Under customary law, the widow was justified inalienating it or a portion of it in order to save it. The basic assumption of customary law was that she took a limited estate for the purpose of her maintenance. For necessity of alienation, J. Shadi Lal, 1915, referred the law of Rattigan Digest to establish that for all this, widow’s income was determining factor. Forde and Campbell J J ruled in a case in 1926 that a widow’s debts could not be treated as just antecedent debts enabling her to transfer her husband’s land. We had come to the contrary conclusions that the general rule for the male proprietor for a necessary purpose was valid irrespective of his income and means. Where in the case of alienation by a

139 Rustom, Punjab Customary Law, 448.
140 17 P.R.,1919 (Source-Rustom, Punjab, 449.)
141 69 Ind.Case 554, 1922(Source-Rustom, Punjab Customary, 449.)
142 Rustom, Punjab Customary Law, 449.
143 29 Ind.Case.780, In Para 65 Expln I of Rattigan Digest(Source- Paras Diwan, Customary Law of Punjab, 231.)
144 96 Ind.Case, 256 (Source-Rustom , Punjab Customary Law, 539.)
145 Rustom, Punjab Customary Law, 539.
widow that a widow was required to show that her income was insufficient to provide the money required for the purchase for which the sale was made.  

It was an established rule that the British wanted restriction on her power of alienation of land. So, the ‘Punjab Limitation (custom) Act’, 1920, which was first published in the Punjab Gazette of the 28th May, 1920, came into force in Punjab. It repealed the previous Ancestral Land Alienation Act, 1900. The aim of the Act of 1920 was to amend and consolidate the law governing the limitation of suits relating to alienations of ancestral immovable property and appointment of heirs by persons, who followed custom in the Punjab. In this act, the only difference in respect of alienation of 2 types of property, which had descended on the widow, In case of ancestral property, a reversionary could challenge alienation within limit period of 6 years, while in case of self acquired property, the limit period was 12 years. Under the Punjab customary law, there was no distinction could be made between ancestral property and self acquired property in respect of gift by a widow. Now, in Punjab, no female in possession of immovable property inherited from her husband had power ordinarily to make a gift of such property. This ruling was given by J. Abdul Raoof in a case in 1922. 

There existed a distinction between a widow and a male proprietor. As J. Martineau in a case in 1920 came to the conclusion that although in certain cases, a male proprietor could make a gift of ancestral land in consideration of services rendered by the donee, a widow could not in the absence of a custom to the contrary make a gift of land at all. She could ordinarily alienate only for necessity. There was no doubt that it had been laid down in 3 P.R. 1914 that the onus was upon the proprietors to establish their right to contest an alienation by a widow that a widow’s estate was only limited for the benefit of reversionary and where there none, she was, to all intents and purposes, an absolute owner. These above views was quoted by J. Shadi Lal in a judgment in 1917, where a widow adopted deceased husband’s sister’s son and got the disputed estate mutated in his favour. The Jat, who was plaintiff of another got and proprietor in the thalla, sued for a declaration that the adoption and the mutation consequent there upon

146 Rustom, Punjab Customary Law, 540.  
147 Rustom, A Digest, i.  
148 Ibid., iii, iv; Paras Diwan, Customary Law, 229.  
149 74 Ind.Case, 653 (Source-Rustom, Punjab Customary, 536.)  
150 3 Lih.L.J.172 (Source-Rustom, Punjab Customary, 536.)
should not affect their rights. Shadi Lal in his judgment interpreted Rivaj-i-Am differently on the question of succession of sister’s son. He concluded that no instance of the succession of the proprietor of a thulla as against a sister or sister’s son was forthcoming. Moreover, in the present case, the proprietors of the thulla were not a compact body, but were of miscellaneous tribes. He quoted 2 judgments on the general rule propounded above as in case (No 28, Punjab Record) of 1904 of Jats of Ambala district and Ghirths of Kangra district in 1905 (95 P.R), where the a sister’s son excluded the village proprietary body. Similarly in 1918, in a case, (65 P.R) Rattigan C.J. and Rossignol J. ruled that no doubt, the onus was on a sister or a sister’s son to prove their right of succession as against near and possibly even remote collaterals. In the absence of all agnatic heirs, their rights to succeed appeared to us to be preterable to the rights of the proprietary body or government, especially in villages, which were not homogenous and were composed of proprietors belonging to different religions, different castes and different tribes.

As they had been supposed to do elsewhere, the kindred were often found anxious to prevent alienation by widows. The idea of an absolute power of alienation was not found in customary law. It was obvious that like the estate of the widow under Hindu Law, the widow of limited estate under customary law was not an absolute owner of her estate, as it was proved by a series of cases. The widow could alienate land only for exceptional circumstances i.e., for necessity. As long as the widow lived, the reversionary had no interest in the estate. The only right to demand that the estate should be kept free from waste and damages during its enjoyment by the widow and on her death, the estate would revert to the next heirs of the person from when she had inherited it. Her own heirs were not entitled to inherit it. To conclude, the widow’s interest with substantial features occurred in different areas of the Punjab. But whether government should enforce the right of the State was a matter to be decided after considering the circumstances of each case.

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152 24 P.R.,1917 (Source-Rustom, *Punjab*, 279.)
155 Ibid, 279.
In the ordinary law, it was well established about high castes that in the questions relating to inheritance, partition, alienation and the like, where the parties were of high castes Hindus, residents of a town, though holding land, non-agriculturists, depending for their livelihood on avocations other than cultivation of land, where the court should see in a first instance, whether there was any custom bearing the question in issue, no presumption in favor of the existence of such a custom should be made, which governed the latter. The presumption was that a Khatri was only bound by so much of the record of rights as deal with similar customs. As this attitude of court came in a case of 1895. 159

In respect of property, British had always considered that Kinship, a department of status, was thus the paramount influence in regulating property and obligations, as Sir Henry Davies pointed out in his report on Gurdaspur, this system served in troubled times and for several centuries instead of title deeds. 160

There had never been a doubt that they were limited to the sole sense of the word ‘local usage’. 161 They were bound by charter to recognize the usage of the gentus. 162 The results were that the British considered the duty of courts to interpret and give effect to customs. Apparently, they showed respect to custom, as they discovered remnants of their own distant past by matching the early custom of European kin with the Karewa. The British declared that all this was for the status of widows in Punjab. Under this declaration, the issue was different. 163

Favoring custom, the colonial state went with these findings that one of the main causes of poverty throughout the older district of the Punjab as in Hoshiarpur district, the fragmentation of holdings. The common belief of British was that the fragmentation of holdings was bound up with Hindu laws of inheritance, and of course, the Muslims had adopted many of the Hindu customs. The British always thought that it was impossible for the government to interfere in such matters. 164 So, property was held by bodies of men and enjoyed in common. No outsider could intervene to acquire any right over the

159 60 of 1895 (Source-Ellis, Notes, 19)
160 C.L. Tupper, Punjab Customary Law, Volume II, 84.
161 Usage was not a law; it must have derived any conceivable original validity with the approval of the community and it could not subsist by opposition. (Source-Ellis, Notes, 5.)
162 T.P. Ellis, Notes, 5.
163 Moris R. Jokobsh, Relocating, 76.
joint holding.\textsuperscript{165} So, the criterion was applied that the Punjab Customary Law contributed to the solution of any collateral difficulties.\textsuperscript{166} In the Punjab, the joint family large or small was historically later than the village community.\textsuperscript{167} The eastern and the central Punjab form the special home of the village community.\textsuperscript{168} In some cases, the British viewed that a widow without male issue could claim partition. The assumption of the British was that Punjab Custom was historically earlier than Hindu Law.\textsuperscript{169} It was the Brahmanical law occasionally and the Muslim law more often, which had modified the customs.\textsuperscript{170}

When the British assumed judicial responsibility in the Punjab, they looked at the region differently from other states of India. Tupper stated that it seemed to me to be much better suited to a country like Bengal, where the village system had been a good deal broken up, and where, at least in one place, there were distinct traces of the house community, then to this part of the empire.\textsuperscript{171} Tupper asserted that the Hindu law extravagantly exalted the Brahmans. In the Punjab, Hindu and Muslim converted from Hinduism might fear or flee the Brahman; but in civil affairs, Punjab Customary Law ranked him with other men.\textsuperscript{172} Moreover, the Brahmans were not, in the Punjab, the depositaries of customary law.\textsuperscript{173} It was accepted that in the rural portions of the province, numerous groups of persons connected with the land, followed in most matters customary rules, which were not identical with the rules of the Hindu or Muslim law. A considerable mass of information as to the customary rules observed by numerous groups in different parts of the province had been accumulated by the labour of settlement officers, and in the records of the civil courts.\textsuperscript{174}

The British courts asserted their State rights on these hapless widows. George Campbell, a British official attested the above things in the 1870. He wrote that, “A

\textsuperscript{165} C.L Tupper, \textit{Punjab Customary, Volume II}, 89.
\textsuperscript{166} \textit{Ibid.}, 82.
\textsuperscript{167} C.L Tupper, \textit{Punjab}, 86.
\textsuperscript{168} \textit{Ibid.}, 66.
\textsuperscript{169} C.L Tupper, \textit{Punjab}, 89.
\textsuperscript{170} Ellis, \textit{Notes}, 6.
\textsuperscript{171} Instances occurred in Calcutta and possibly even in the Mofussil of families comprehending, as many as 300 or 400 individual including servants, living in one house; and it was probably usual for a family to amount to something between 50 and 100. (Source- Tupper, \textit{Punjab Customary Law}, 86, It is mentioned in \textit{Rustic, Bengal; Calcutta Review, Volume LIX}, 1874, 207.)
\textsuperscript{172} Tupper, \textit{Punjab}, 87.
\textsuperscript{173} \textit{Ibid.}, 82.
\textsuperscript{174} T.P Ellis, \textit{Notes}, 8.
fields themselves. It was only reasonable to scrutinize the claim more rigorously and to refuse to award partition unless where it could be shown that the claim was made bonafide and subject to proper arrangement for the management of the holding.

In case, Dhanpat versus Haku, Lindsay and J.J.Smyth, (J.Plowden dissenting as to this) held that a Hindu widow though entitled to the absolute and uncontrolled possession of the movable estate of her husband..... She might not waste, the corpus, if she converted it in immovable property. She might not dispose of such property otherwise than she might have disposed of it. But J. Plowden objected to this judgment by showing fear of apprehension that a Hindu widow was not subject to the control of her husband’s relatives was dealing with the moveable property of her husband, or immovable property purchased therewith, unless her dealing amount to waste, or risk of waste.

The assumption was that the widow’s rights deserved special notice, only in the cultivating castes As in the judgment of Robertson J. in a case of 1912(70.P.R), he brought notice to the well known capacity of the women of the agricultural classes in central Punjab to manage the cultivation of their lands, this dissertation was only for the better cultivating castes, the Jats, Sainis, Rains, Kambohs and others and not for the widows of all classes, not for all women. Under the cover of Punjab Custom, the British pursued his designs in the Punjab. The whole principle underlying in regard to agricultural custom in the Punjab was that its basis was mainly economic. The British court also held that agricultural custom in regard to succession etc. owed its origin to the economic organization of the tribe on an agnatic basis, and restrictions on alienation, etc. were due to this agnatic organization. Moreover, the agricultural population was not less than ten millions in 1880.

J. Wilson, the settlement officer in the Ludhiana district claimed for the social justification of the British by this that, “I very much doubt, if amongst the Rajput, the offspring of a marriage, otherwise properly contracted, with a woman not belonging to the tribe, would be considered by the courts not entitled to inherit. At present, the fear of exclusion from the brotherhood appears to be a sufficient deterrent from such unions but

187 Not in case of better cultivating castes, the jats Sainis, Rains, Kamboh and Some Other.
188 A. Kensington, Amballa District, 32.
189 C.L. Tupper, Punjab Customary Law, 77.
190 Rustom, Punjab, 169.
191 T.P. Ellis, Notes, 7.
192 C.L. Tupper, Punjab, 77.
government had been always tender in regard to the customs of the people of India and the functions of the court, in regard in custom.\textsuperscript{180}

It appeared that in questions regarding inheritance, the rule of decision was generally the custom, applicable to the parties concerned. But there was a reasonable ground that why British had shown regard to native custom in the Punjab.\textsuperscript{181} The British directed their attention to the native tradition of Karewa. Sir Robert observed in 1878 that the most fundamental basis for the division of the population in this part of India was tribal rather than religious. The British administration thought that it would appease the wider population of the Punjab.\textsuperscript{182}

British’s apprehension towards the widows of Punjab, clearly recorded in the statement of Steinbach, which he expressed about customs that “If the free will of the widow was consulted, It was scarcely to be doubted that he would prefer the possession of power and the charms of beauty, to the alternative of sacrificing her claims to her brother-on-law, taking her station amongst his rival wives.\textsuperscript{183} The perpetual tutelage of woman was practically asserted by Rattigan and Boulnois as a fact, generally obtaining in the Punjab, The Chief Court had held in 1879 that sons, by general custom inherited per capita, and it lied upon the parties alleging the special custom of chundavand to establish it.\textsuperscript{184}

The British apprehension towards the widows of Punjab was clearly indicated in legal records. H.A. Rose himself admitted for its causes that it’s customary law, which our law courts had stereotyped, excluded females from succession to land, and tended to make the Punjab the land of sons only.\textsuperscript{185} The British always treated Punjab different from the rest of India. It was clearly recognized all through the district that if the claim of widow for estate was contested by the heirs on the ground that the widow would only waste the property, when she obtained absolute control. It was not uncommon for revenue officials in the lower grades to assume that the widow’s claim should be rejected on the ground that they were not qualified to manage their land themselves.\textsuperscript{186} The assumption was especially for those castes, where the women were unable to go into the

\textsuperscript{180} T.P Ellis, \textit{Notes}, 5.
\textsuperscript{181} C.L Tupper, \textit{Punjab Customary, Volume II}, 84.
\textsuperscript{182} Moris Jakobsh, \textit{Relocating Gender In Sikh History}, Oxford University Press, 2000, 76.
\textsuperscript{183} Rustom, \textit{Punjab Customary Law}, 169.
\textsuperscript{184} C.L. Tupper, \textit{Punjab Customary Law, Volume II}, 81.
\textsuperscript{186} Rustom, \textit{Punjab}, 169.
special source of dispute was the obligation of widows, to marry their deceased husband’s brother. They had a contrary way of asserting their independence by refusing to do so. My doctrine was that if they refuse, they must show reasonable cause, the parties used to come before me with such vociferation on the female side, and I decided whether the excuse was reasonable. If the man seemed a decent man, and the women could give no better reason than to say I do not like him,’ I said ‘Stuff and nonsense, I can not listen to that the law must be respected, and I sometimes married them there and then by throwing a sheet over them after the native fashion for second marriage. So far as, I could hear, those marriages generally lived out very happily”.

Form the 19th century, the objective of the British became very clear, appeared from the debate in the Legislative Council on the Punjab Laws bill on 26th March, 1872. The intention of the legislature was to give importance to custom. The Lieutenant governor in moving an amendment to make this intention more plain, said that the object of the amendment was to provide in simple words, only in such a way that the officers of the Punjab in administering the law might not mistake, that custom came first, and that Hindu and Muslim law only came when custom failed. The British approach can be better understood by the opinion of T.P. Ellis, I.C.S. that just as the discretion of a court can not applied arbitrarily so too, the will of the section could not be applied arbitrarily. It must be on the principles of rights, recognizable as such, and variations in the will sanctioning custom must be variations based on historical development. It means all decision were in the reach of the British, to whom they wanted to favour. In Punjab, there was no rule of law, which prescribed any period, during which a custom, in order to be valid and enforceable, It was sufficient to show the custom actually prevailed. It was supposed to British under favour the native customs or laws, according to their beneficial concern. The British had always taken credit that

176 By the Punjab Laws Act of 1872, custom governs all questions regarding succession, betrothal, marriage, divorce, the separate property of women, dower, wills, gifts, partitions, family relations such as adoption and guardianship and religious usages or institutions provided that the custom be not contrary to Justice, equity or good conscience on these subjects the Muslims or Hindu law in applied only in the absence of custom. (Source-Imperial Gazetter Of India, 1901, 102.)
177 J.Wilson, Sirsa District, 7.
178 T.P Ellis, Notes, 4.
179 ibid, 96.
is improbable that this would retain its force for ever. However, long the social punishment would continue to a restraint among other tribes and sections of the Hindu Jats. I do not think that the courts could even now declare such offspring to be illegitimate”. 193 If the British tried to give some concessions from customs, then the underlying motives were there. As in case of widows, they held that the collaterals had no right of the forfeiture, whether the widow was chaste or unchaste. This was done due to the productivity of the widows especially of Sikh women. Though the British courts made some exceptions, but the general trend regarding the widows of the Punjab was to uphold the Karewa in any form.

There was no noticeable break in the policy of the British regarding widows. They gave no special attention to this group. It appears that widows were forced to take shelter in the prevalent institutions such as Karewa in the Punjab. The British officers were undesirable to grant partition to widows. The compiler of the Customary Law of the Ambula district agreed with the other tribes of the Punjab that a widow without male issue can claim partition, but for her life interest only. 194

The Punjab was an agricultural province, a land of peasant proprietors. In the 20th century, five million acres of canal irrigated land had been added to the wealth of the people. The Colonial state considered the Jat peasant as a remarkable race for this agricultural province. H.A. Rose observed that the Jat peasant, whether Hindu or Sikh, closely resembled the French peasant in his thrift and land hunger and he was hardly inferior to the Hindu. 195 Ibbetson also considers Jat the most important person among Punjab peoples. In point of numbers, he surpassed the Rajput. Politically, he ruled India and from an economical and administrative point of view, he was the husbandman, the peasant the revenue payer par excellence of the province. About the position of Jat in society, Ibbetson maintained that the Jat stood next after the Brahmans, the Rajput and the Khatri. 196 Malcolm Lyall Darling stated that the Jat was so sturdy, he demoralized his environment. 197 Numbering about five millions, he had spread north south, east and west,

196 Ibid., 367.
and there was no part of the Punjab, where he could not be found. In short, it might be said that in the whole of India, there was no finer raw material than the Jat. It would be difficult in any country to find a more remarkable combination of cultivator colonist, emigrant and soldier. It will be seen that if the Rajput wife was an economic burden, the Jat was an economic treasure. Moreover, in the Punjab, the surplus men, who were not anchored to their homes by the ties of family life, were ready to enlist the army in larger proportion than the men of other provinces. So, the British always dealt Punjab with different angle.

Viewing from these economic dimensions, the Government was supporting the policies of remarriage regarding widows, as Karewa and temporary marriage. In many cases, the court held that mere cohabitation as husband and a wife for a long period with out any strict matrimonial ceremony had been considered sufficient to validate the marriage. In Rattigan’s Digest, the statement of law was thus made. A Karewa marriage with the brother or some other male relative of the deceased husband requires no religious ceremonies and confers all the rights of a valid marriage. The British in the initial stage, not only supported it, but also tried to enforce it, but in the twentieth century, the purchase of bride, went up and then they tried to overcome this evil. But nobody was thinking about the widows, but they were taken by the society as economic assets. The widow, governed by agricultural custom and having only a life interest on the land left by her husband without any power of alienation except for necessity. The reason behind was that the value of land had increased many fold.
The British insistence in favor of patriarchy had jeopardized the claims of widows. It was a well-established feature of the British approach, as we can witness in the Sirsa District. Under the British rule, the most extraordinary instance of the development of adaptation in custom to the changed conditions and the more importance now moved to rights in land. For example as the Sirsa district when it came under British rule in 1837, the Muslim law was followed in matter of marriage only, not in laws of inheritance among Muslim tribes. Under Muslim law, the widow had a whole right on property implying that Muslim law had no influence on personal law and it led to the modification of custom among them.\(^\text{207}\)

Assuming these points, the British generally pursued customs in dealing with the case of the widows in the different districts of the Punjab. The general truth of this was that the courts in dealing with custom, could not deal with myriad custom; nor recognize a progressive change of custom; the old custom must prevail until it had been superseded by the new custom and their action in this way had at times the unfortunate effect of crystallizing the existing custom, whatever it might be. Sometimes, such instances might be followed so generally as to establish a custom though origin was usurpation and custom was not clearly established.\(^\text{208}\)

If we look closely, we can observe that in the Punjab, the British had formulated the proposition that no special arrangements for succession or to provide for the interests of specific individuals like widows were to be made. Such was the deliberate conclusions of the Punjab Government. Any complaint was considered unseemly from the widow.\(^\text{209}\)

The new legal system brought by the rulers led the widow to British court to contest the new law. These widows went to the court for relief, became pioneers in seeking property rights for women during the late 19th century.\(^\text{210}\) Sometimes these contestants failed, but they started to assert their rights. Displaying the pain and anguish, the widows blamed the British by saying that the British had banned Sati, but they did nothing for the Randis. Comparing her situation with the widow of the England, She pointed out that, “I have

\(^\text{207}\) J. Wilson, *Sirsa District*, 52.
hearc that in Wilayat, the more joy is enjoyed by Randis. But here nobody expressed pity on us.\textsuperscript{211}

To provide a concrete example of this trend, some cases has been discussed to understand it that how the widows had been marginalized by the British government. The widows were excluded from their rights with the legal stamp. In the light of the above situation, the reversionaries started litigation. On the pretext of waste any transaction by a widow in respect to the property inherited by her, had to be justified on the ground of legal necessity. With the widow’s death, the property devolved on the heirs of her husband. The British chose to give judicial support to the widow’s kin, by ‘forcing’ her for Karewa. The widow’s resistance against Karewa was not noticed by both, either British or her kin. Steinbach had pointed out that nobody consulted the widow to know her will, whether she would like to follow Karewa or not.\textsuperscript{212}

Campbell also pointed out that sometimes, these widows were forced to do Karewa in courtroom. As without strict ceremonies, these marriages were valid before the British Law.\textsuperscript{213} It appeared that in most cases opinions had more significance than proven facts. The government recognized the right of patriarchy over land, not of females. Generally, there was a presumption that British laws were favoring widows in spite of her proven unchastity. It should be observed that if unchastity gave an outsider, any power over the property, they at once excluded the rights of the widows. The fact of the matter was that there is no doubt a general tendency of the stronger to override the weak.\textsuperscript{214}

Walker, T. Gordon opined that, ‘I may observe here that there is an increasing amount of laxity in the matter of these second marriages and people live together as man and wife without going through any ceremony. Such conduct was punished by a heavy fine under native rule.’\textsuperscript{215} British courts showed other perspective by favoring it especially in case of Jats.\textsuperscript{216}

Everybody was taking decisions about widows irrespective of their caste, as Leitner remarked about high caste widows that if they were asked, probably many

\textsuperscript{213} George Campbell, \textit{Memiors Of My Indian Career, Volume I}, London, 1893, 89.
\textsuperscript{214} C.L. Tupper, \textit{Punjab}, 89.
\textsuperscript{216} Rustum, \textit{Punjab Customary Law}, 690.
widows would not object to remarriage.\textsuperscript{217} The British showed different norms for the higher caste widows. There seemed no doubt that remarriage among Hindus, was a greater misery for the widow than widowhood. Realizing this, Denzil Ibbetson suggested that, ‘I think I would allow a widow, as well as a wife to sue for and obtain separate maintenance on proof of social ill-usage and on condition of chastity’.\textsuperscript{218} Social ill-usage was difficult to define, but so were many other questions of fact upon which the courts had to decide.\textsuperscript{219} Moreover, the marriage with formal ceremony was valid among the high caste widows. The British legal system presented a very complex attitude towards widows of whatever caste. She might be. On the other hand, the British showed different regulation for the agricultural castes. Steinbach remarked that nobody ask from widow in these levirate marriages prevalent in these castes, if the free will of the widow was consulted, she would prefer the possession of power and charms of liberty, to the alternative of sacrificing her claims to her brother-in-law.\textsuperscript{220} It should be admitted that due to the patronizing of the British to the agricultural class, the customs of the Punjab were preserved by the hands of the British.\textsuperscript{221}

In the twentieth century, petitions from widows become common, especially from those, who resisted the efforts of her kin to remarry her within the husband’s family. If a widow did not accept the framework of Karewa, the legality for the life term estate could be challenged on two pretexts-remarriage and unchastity. The patriarchy wanted to suppress her sexuality by the notion of chastity. On the other hand, they had no individual freedom on the question of remarriage. The scope of the widow’s right was constrained even more due to British intervention.

In the case of Punjab, the colonial government gave overwhelmingly recognition to the customs of agricultural classes and accepted custom as the first rule of decision. It was now held that in the absence of male lineal descendants, the widows can uphold the estate of her husband only for her lifetime. She forfeited her right to the estate, if she proved to be unchaste. This notion was used as a measure of control over the conduct of widowhood. The colonial legal structure deprived widows of their rights of inheritance. Some were forced to accept remarriage with her brother-in-law or some widows had to

\begin{footnotes}
\item[217] G.W. Leitner, \textit{Indigenous Education}, 100.
\item[218] Ibbetson was Director Of Public Instruction, Punjab.
\item[221] Steinbach, \textit{Punjab}, 80.
\end{footnotes}
prove their chastity. In such situations, many widows ran away from the home, adding to so called misconduct and even adultery.

Comparing the plight of widows in Bengal, to what was constructed as the favorable position of widows in Punjab; the British chose to give increasing judicial support to the custom on question of inheritance. This favourism was the attempt to appease the agriculturist peoples. The widows generally did not exist for the colonial state. The privileges were still in the hands of her male kin. To sum up, there was full control upon the widows, sexually and economically on the name of custom, property and other material assets, which were at stake. Through a series of judicial decisions, it was established that the widows could uphold only two options-Karewa or Chastity. These were effective methods to regulate the widow sexuality and inheritance. From the utilitarian perspective, the colonial state was quite comfortable with the prevalent customs regarding widows in region like Punjab, where the peasant economy and the recruitment of soldiers made it a necessity for them. The variety of customs in the Punjab however, created a complex situation leading to arbitrariness, bias on the part of the new rulers. Some modification in customs did result, though not always favorable to the widow. In actual fact, the British authorities did practically nothing of the benefit of widows in the province.