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INHERITANCE BY WIDOWS

In the pre-colonial Punjab, the rules of succession to property were based on custom and were variously modified in accordance to the usage, the interest, and prejudice of different groups and as such there was no fixed and leading principle with regard to inheritance. Before the advent of British rule, and thereafter; the agriculturists of the Punjab had not known much of the caste or class system of Hindus. Neither the Punjabi Muslims swayed by the schools of Muslim Law nor the Hindus had any influence of the Dharamshastra. In Punjab, these secular matters were never regulated by religious laws-Hindu Law or Muslim Law, but by the tribal custom, and occasionally by the local custom.1

The present chapter attempts to review the issue of inheritance by widows, the areas and social categories that followed some common practices of succession for widow, if at all, and the changes that inheritance underwent during colonial times as a result of the new social situation under British rule. Section one takes a look at the customary laws in this context, the second section takes up the succession of widows to property in land in colonial times and the rule of decision was to be (i) Custom (ii) Hindu or (iii) Muslim Laws.2 The third section deals the rights of widows, the fourth section deals with limitations on a widow’s succession. The fifth section attempts to summarize the impact of colonial rule on the widow’s succession.

I

The Punjab Customary law was divided into 2 parts (A) Tribal customs (B) Local or Agrarian customs. The customs connected with the tribe or family was called tribal customs.3 Moreover, custom being tribal or family, it could not be held that parties followed one rule in one village and another in another.4 The local customs had no connections with the tribe or family, but were entirely the result of local

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4 T.P. Ellis, Notes, 9.
conditions. The important of them found their way into the reports on customary law of each district, the Wajib ul-Arz.5

According to the customary law of the Punjab, the land was divided equally among the male heirs of a deceased holder.6 In the absence of well-established custom to the contrary, a widow was regulated under Muslim or Hindu Law. Under Muslim Law, widow succeeded generally either as legatee or heir to her deceased husband’s property as absolute owner, not merely on a life-tenure as in Hindu Law. The ruling, however, clearly would not prevail, where the interest of the widow was regulated by custom and not by Hindu or Muslim Law.7 The primary rule of decision was custom, but it did not necessarily follow that there was any presumption in favour of custom. The presumption in favour of custom might however arise, where custom was not proved, personal law must be resorted to them.8 If the tribe was primarily agricultural, the presumption was that it followed custom. If in addition, if followed other occupations, they would probably not follow custom.9 It would be more proper to say that they were customs controlled by agreement.10

If we observe the customs in different areas of the Punjab, we find that there was considerable variation in customs. In the western Punjab, the population was mostly Muslims and belonged almost wholly to landowning, agricultural and pastoral tribes, as well as most of the menial classes. Caste, as a religious institution did not

5 Wajib-ul-Arz was a village wise statement of custom, while Rivaj-i-Am was district-wise statement of custom. The Rivaij-i-Am was usually prepared in vernacular and later on, they were translated into English. Both Wajib-ul-Arz and Rivaj-i-Am or records of tribal custom were most valuable written evidence. (Source-Walker, Ludhiana District, 81; Paras Diwan, Customary Law of Punjab And Haryana, Publication Bureau, Punjab University, Chandigarh, 1978, 38-39.)


7 C.L. Tupper, Customary, 96; T. P. Ellis, Notes, 56, 57.

8 T.P. Ellis, Notes, 3.

9 Custom was said to be in a fluid condition in the Punjab capable of adapting itself to the varying conditions, views and opinions of the community among which it prevailed, but no custom could be recognized as of binding authority unless it was generally, if not universally recognized. However, there was no general body of customary law. It was mainly tribal, the custom of the tribe being modified by locality. So, usage and custom was no less than religious undoubtedly descended by inheritance. What had once supplied a rule of decision, readily served for another occasions, and thus by gradual repetition, the rule gained strength and sanctity, and finally acquired it binding force. So, custom in the Punjab was a tribal or caste usage, variable according to the geographical and local conditions. (T.P. Ellis, Notes, 29, 468; KaliKhosru, A Digest Of Civil, 1925, 12.)

10 Wajib-ul-Arz contained the agreements between the members of the village community as to the administration of village property and affairs, this paper had an authority as part of the settlement record and its provisions could be altered only in the same manner as other parts of such recorded. Although these provisions generally expressed the past customs in the matters to which they related, they could be, and were altered by the agreement of the parties. (Source- Diwan, Customary Laws, 38-39.)
exist among the Muslim and therefore, did not influence custom. In Shahpur district, the widow in the estate took by representation her husband’s share and no distinction was made, whether the husband was or not associated with his brothers.\(^1\) Among Hindus, the widow succeeded to her husband’s property only, if he was separated from the rest of his family. If he was living jointly with his agnate relatives, they inherited his property and his widow was entitled to maintenance only.\(^1\) Regarding maintenance, the ruling was that a Hindu widow’s maintenance was not a mere personal right against the heirs of the deceased husband, but a charge on the ancestral property; and it defeated the right of a mortgage of such property, when there was no other ancestral property, which can be charged with the maintenance.\(^1\) In Dera Ghazi district, the general rule was that the widow succeeded to a life interest in the estate.\(^1\)

However, this was not acceptable in the Nutkani tribe and Gurchani tribe in the Sangarh and Jampur tahsil.\(^1\) Some castes like the Sayads and the Jat tribes, who lived in Biloche country followed the same rule as the Biloches. They allowed the widow her share under Muslim Law, namely one-eighth, if there were sons and one-fourth if otherwise.\(^1\) To this rule, there were exceptions, chiefly among tribes in which quasi-political power, such as the headship of a tribe was associated with the property.\(^1\) In such cases, the widow received maintenance only, and instances of this occur among the Gurchani Baloch of Jampur tahsil.\(^1\) It was also possibly prevalent among the Mairs-Kassars in the Jhelum district; some Pathans and Baloch in Muzaffargarh; the

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1. The 85 percent population were Muslims and to this religion belong almost the whole of the original landowning, agricultural and pastoral tribes, as well as most of the menial classes, but the 15 per cent population was mostly Hindus or Sikhs and comprise mainly the Khatri and Aroras, whose hereditary occupations were trade and money lending. Sikhism in this district was merely a sect of Hinduism.(Source- J. Wilson, *Shahpur District*, 1896, 1.)

1. As in the case of 7, Punjab Record, 1871 (Source- C. L. Tupper, *Punjab Customary, 61-62; Wilson, General Code Of Tribal Custom In The Shahpur District Of The Punjab, Volume XV, Lahore, 1896, 47.)


1. The agricultural population of the Dera Ghazi Khan district was mainly Muslim and composed of Biloche and Jat tribes with a few scattered families of Sayads of local importance. The Hindus form about one-eighth of the total population. Regarding the rights of widow, we did not find similar answer among Biloche tribes (Source- A.H. Diack, *Customary Law Of The Dera Ghazi Khan District, Lahore, 1898, 1.*)

1. Nutkani tribe followed the Muslim Law and recognized the widow as a sharer in her deceased husband’s estate, even if there were sons. Gurchani tribe adhered to the assertion made in the Rivaj-I-am that if a widow had no sons, entitled to be maintenance only,(Source- A.H.Diack, *Customary Law Of The Dera Ghazi Khan District, Lahore, 1898, 14.*)

1. *Ibid., 15.*


1. A.H. Diack, *Dera Ghazi Khan, 15.*
Halimzai and Tarakzai Muslims in Peshawar, and in Shahpur, among several Muslim families of position, a sonless widows got only maintenance. The customs of the Hindus of the district were more akin to those of the western Punjab than to the orthodox Hindu Law.

As compared with the general customs of the western Punjab with in the eastern Punjab, there were noticeable differences between them. According to the Punjab Laws Act, in questions regarding inheritance, and in cases, where the parties were Hindus, the rule of decision was to be Custom or Hindu Law. It had been held on grounds, somewhat doubtful, so far as the Sirsa peasants were concerned that the Banaras School of Hindu Law was current in the Punjab. In Hindu Law (Banaras), the widow succeeded only in default of male agnatic descendants. The custom of Sirsa Hindus, especially the agricultural tribes made practically no distinction between ancestral and acquired property except commercial classes.

Moreover, the widow succeeded, even if her husband was living joint with his brothers. If a partition be made, the widow of a sonless sharer could claim her husband’s share to be held by her for her life time. On her death, it reverted to her husband’s agnates in all tribes. In Bagri Jat, Banya, Rora, Brahman, Suthar, a sonless widow did not get share of the property, but got maintenance from the sons by another wife. Among Bodla, Chishhi, Wattu, Chamar, Chuhra, Bawariya and Heri, the sonless widow took for her lifetime a share equal to a son’s share, and on her death, it went to the sons. In case of Rain, Muslim Jat and Rajput, Kumhar, she would

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20 A.H. Diack, Dera Ghazi Khan, ii.
22 Ibid., 63.
23 Bagri Jats- According to them, all Jats, whether Sikh, Hindu or Muslim, belonged to the same race.
Roras – They were called munna or shaven Sikhs.
Suthars – They said that they were more closely connected with those Lahors than with the Khatis (Tarkhan).
(Source- J. Wilson, Sirsa, 4, 12, 13, 21, 26, 30)
24 Bodla-This class was descent from Aba Bakr Sadi Khalifa.
Wattu-The Mirasis trace the descent of the Wattus. They were Muslim converts; they were of the ordinary type of Muslim cultivators.
Bawariyas – Originally came from Rajasthan and settled down as cultivator in village as an inferior caste.
Heri- The Heri, as they called themselves, were also called Naik (a sort of Honorific title). They were all Hindus, found chiefly in the Hissar Division and in Rajputana (J. Wilson, Sirsa District, 26, 27.)
sometimes take for her life-time, half of the whole estate. As all the Muslim of the Sirsa district admitted that their ancestors were at one time Hindus.

Among Sikh Jats, the sonless widow got a share of the land equal to the share of son for her life, but more often got only enough of land for her maintenance or simply enough of the produce of the common holding to maintain her comfortable. In either case, her share went to the sons on her death. All tribes agreed in Ambala district that a widow without male issue could claim partition as a matter of right, although she holds a life interest only. It was clearly recognized all through the district that the widow was within her rights in demanding separation of her husbands’ share. The claim was usually contested by the heirs on the ground that the widow would only waste the property, when she obtained absolute control.

In Delhi division, the widow of a son, who predeceased his father, was entitled by Hindu Law to nothing more than maintenance. Ordinarily, the circumstances that the husband was joint in estate with others did not deprive the widow of her right to succeed to his share as in the case of Hindu Jats of Ambala, Gujranwala and Brahmans of Karnal city.

The Muslim agriculturist did not consider the Islamic Law except in regard to the semi religious ceremony of marriage. As Sayads, who had settled in Karnal district, were generally agriculturists. Even when settled in towns or villages, which had subsequently grown into towns, as agriculturists or religious preceptors. They adapted the customs of their neighbours. The Hindu agriculturist was unaware about any written code of Hindu Law. In such matters as adoption, inheritance and partition, was considered by him to be in accordance with his tribal custom. The peasant was not in the habit of comparing the customs of his tribe with those of other tribes or other tracts of country and thus has no idea of a common law of the land to which some of his tribal customs were exceptions.

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2. J. Wilson, Sirsa, 169.
21. Ibid., 8.
22. Wilson, Sirsa 169.
24. No 20, Punjab Record, 1872 (Source- C.L. Tupper, Punjab, 63, 66.)
25. No 28, P.R. 1870 (Including Hindu Jat of Ambala); No 954 of 1872 (Hindu Jats of Gujranwala), No 149, P.R. 1888; No. 83; P.R. 1905 (Brahmans Of Karnal City). (Source-W. H. Rattigan, A Digest Of Civil Law For The Punjab, 8th Edition, Lahore, 1915, 23-24.)
27. Case No13 of 1903(Source- T.P.Ellis, Notes,27.)
28. J. Wilson, Sirsa, 33.
Generally speaking, we found different rulings in the different areas, as to the custom were conflicting. As in central Punjab, the Hindu widow only succeeded, if her husband was separated from the rest of his family, if he was living jointly with his agnates and his widow would only get maintenance. This ruling was valid in Sialkot district among Chima Jats. In this district, the right of the widow extended to the share of any other ancestral property to which her husband would have been entitled, had he been alive. In the central Punjab, the right of the widow to succeed to her husband’s estate was a custom, which might be said to be attached to the soil and to supersede all laws. The Awans, who were the strictest observers of the Shariah made no attempt to deny it. In the Ludhiana district, all widows shared alike except among the Garewal Jats, who said that, the widows, who was not a Jatni, would be entitled to maintenance only.

In Gujrat district also, the same custom existed among Waraiches, whereby the widow of a son was entitled to succeed on her father-in-law’s death, to the share of her predeceased husband. The similar ruling was followed in the Kharian Tahsil among the Gujars, though not among the Kathana Gujars. By custom, the latter claimed that the widow of a son, who had predeceased his father, was not entitled to succeed to the share, which his husband would have been taken, had he survived.

In Ferozpur, the Maharajkian Siddhus allowed the widow for life a share equal to one of the son’s shares and apparently this only to the sonless widow, not on the widow having sons. In Lahore district, the widow was usually entitled to maintenance only. Moreover, Jats and Dogras said that the widow could only claim

34 H. A. Rose, Compendium Of Punjab Customary Law, Civil And Military Gazette Press, Lahore, 1907, 63.
35 Case No 62 of 1882 (Source- J. R. Dunlop Smith, Customary Law Of The Main Tribes Of The Sialkot District, Volume XV, Civil And Military Press, Lahore, 1896, 16.)
38 Case No 75 Of 1888 (Source- Captain Davies, Gujrat District, 10.)
39 Case 8 of 1889(Source- Rose, Compendium, 40.)
40 Captain H. Davies, Customary Law Of The Gujrat District, Volume IX, Lahore, 1892, 10.
41 Rose, H.A, Compendium, 40.
42 Where the larger part was Hindus, there was among them a small Muslim minority. The Jats furnished 16 percent of the total population. However, their customs were practical identical. Where the differences were detected, they existed probably more in the affirmation of ideal custom than in actual observance. The principle of male representation had far the strongest hold on the Jat Tribe. (Source-Walker, Customary Law Of Lahore; 1894, iii)
to hold her deceased husband’s separated property, if he was holding separately from his brothers at the time of his death. Among Rajputs, a widow could claim a specific share of one-eighth on account of her dowry, even if there were sons, or son’s sons.\footnote{G. C. Walker, \textit{Lahore}, \textit{9}.}
Moreover, Rajputs and Arain said that a widow could claim to have her share separated off from the joint property.\footnote{Ibid., \textit{10}.} By custom of the Khojas of Kasur, Lahore district, the entire property of dead husband devolved on the sonless widow in full proprietorship to the exclusion of sisters and their heirs.\footnote{Case No 27, Punjab Record, 1868 (Source-Tupper, \textit{Punjab Customary Law}, \textit{58}).}

In Jullundur district, if there sons, widow or widows were only entitled to maintenance.\footnote{Rai Bahadur Hotu Singh, \textit{Customary Law Of The Jullundur District, Volume XXIX}, Government Printing Press, Lahore, 1918, 31.} There was no difference in the rights of the widow, whether or not; her husband was associated with his brother.\footnote{Ibid., 37.} Similarly, amongst Bansal Banias of the Jalandhar city, a widow was not entitled to succeed to her husband’s share in property jointly acquired by him and his brothers.\footnote{W. H. Rattigan, \textit{A Digest}, \textit{24}.} In the Nakodar tahsil, however, among Jat Hindus, Jat Muslims, Rajput Muslim, Arains, Gujaras, Dogras, Sayyads and Kamboh, it was said that a widow with sons took no share, but a sonless widow in the presence of sons took a share equal to that of each of sons.\footnote{Rattigan, \textit{A Digest}, \textit{22}.} In Kangra district, the widow of a man, who had predeceased his father, would inherit as the representative of her deceased husband, though a gain only, on the same limited and conditional basis.\footnote{P. Partly Jonathan, \textit{Caste And Kinship In Kangra}, Vikas Publishing House Private Limited, New Delhi, 1979, 167.}

So, a widow in possession of her husband’s estate succeeded to his collaterals in the same way as her deceased husband\textapos;s would have done. If living, as noted among Hindu Rajputs of Hoshiarpur district (No 43, P.R, 1905); Rajputs of Kangra district (No 93, P.L.R, 1904); Brahmans of Gurdaspur district, (No 7, P.R. 1909); Randhawa Jats, Amritsar district (No 30, P.R, 1909); Jats and Mehtas of Jalandhar, (No 162, P.L.R., 1902); Jats of Ludhiana district, (No 20, P.R, 1895); Arains of Nakodar tahsil (No 146, P.R. 1889); Muslim Jats of Nakodar tahsil ((No 98, P.R., 1910).\footnote{Rattigan, \textit{A Digest}, \textit{22}.}

In some cases, the widows got share in separate property only. This succession was for life interest only. On widow’s death, the property reverted back to her son. In
case of absence of sons, it followed the agnatic principle. Sometimes, the widows were given only maintenance. The reason can be different in different cases, as influenced by many factors such as joint property, presence of sons, widow’s caste. Among Hindus, generally, the widows succeeded only in absence of male descendants as among Banya, Brahmans and Bagri Jat. Similarly, among Grewal Jats of Ludhiana district, if widows were not of the same caste, got only maintenance, otherwise, succession to the property. It seems that, regarding succession, Muslim Jats resident in central districts of the Punjab were ordinarily governed by customary law. As a general rule, it may be assumed that Brahmins did not observe customary rule, but an exception to this rule was to be found only in those cases, where the parties were shown to have more or less assimilated themselves to their peasant neighbours. It was clear therefore that several situations exerted with regard to succession by a widow. In some instances, the widows had to right to inherit her deceased husband’s share in others, her right was to maintenance alone

II

The share of the widow, whenever granted depended on the prevalent practice of the area of succession to property, which, was by bhiaebhund and chundavand. Division according to the number of mothers was called ‘chundavand’, in Hindi, ‘maonbhant’; while division equally among the sons was called in Punjab ‘pagvand’, in Hindi, ‘pagbanf’, division according to the number of pagris or males. The normal custom in the Punjab was undoubtedly division according to the pagvand or bhiahant rule. The chundavand was an exception, which required special reasons to admit for it. However, the practice of chundavand was agreeable to the Hindu Law.

54 P.L.R. 105 of 191, Ludhiana District (Source-Ellis, Notes, 13.)
56 The term chundavand, the form ‘chunda’, which means that hair braided (Knot) on the top of the head, and was applied, where the division was governed by the number of mothers; the sons however few, by one wife, took a share equal to that of the sons, however, many, by another. So, this, system was called ‘chandavandy’ (from the women’s head dress ‘chunda’ in the provincial dialect and ‘Patni Bhaga’ in legal phrase. It corresponded exactly to the phrase ‘per stripes’. The other mode of distribution was called ‘pagvand’. This was called due to the ‘pagri’, the male head dress. It corresponded exactly to the phrase ‘per capita’. For example, if a man left 2 widows, one of whom had one son and the other had three sons. By chadar band, the single son of the first widow would take half of the estate and his three half brothers would each take a sixth. By bhiahant or pagvand, as it was sometimes called, the four sons would each receive a quarter. (Source- Tupper, Customary, Volume II, 80; Walker, Lahore, 9; Ellis, Notes, 42; Bingley, Siks, 139; J. Wilson, Sirsa District, 118.)
58 It was said that if there be many sons of one man, by different mothers, but in equal number and alike by class, a distribution amongst the mothers was approved to Brihaspati. If there be many
In some areas, *chundavand* was once more prevalent, as in Ludhiana. All the tribes of Pathankot were said to follow *chundavand* excepting the Khokhars of one village. In Batala, the Gujarars and Dogars had *chundavand*, as had the Rajputs (except the Bhattia in two villages) of that tahsil. The Bhattis in parts of Raya tahsil of Sialkot adhered to it. The rule was however, fast disappearing. In Lahore district, *pagvand* was said to be universal. All tribes followed the *pagvand* custom and never the *chundawand* that was, all the sons, whether by one wife or more than one, took an equal share.

The practice of succession of property among the Manjhee Singh was by both methods. *chundawand*, which was generally practiced by Manjha Sikhs, meant the property was divided among the mothers, but *bhaiband*, generally in vogue among the Sikhs of the Malwa. It was an equal distribution of all lands, forts, tenements, and moveables, among sons, with, in some instance, an extra or double share to the eldest, termed ‘Khurch Sirdaree’. It appears that the rules of succession to landed property were arbitrary and were variously modified in accordance to the usages, the interests, and prejudice of different families.

In the hills, property was usually divided on the *pagvand* principles, that of *chundavand* never. In Kangra proper, they were almost universal adherence to the *chundavand* form of succession. However, *pagbandh* was followed only some

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60. Ibid., 41.
61. Ibid., 43.
66. The etymology of these terms, chundabandh or pagbandh provides the clue to their meaning. ‘Bandh’ is the root of the verb ‘bandhna’, ‘to divide’ (Source-Partly Jonathan, *Caste And Kinship*, 165; H. A. Rose, *Compendium*, 42.)
67. Mr. Tupper had given attention in this connection to the rule of chundavand. He observed that uterine apportionment was the general rule in Kangra proper, a part of the country so near the region where polyandry still existed. So, one might easily leap to the conclusion that chundavand was directly descended from the ruder form the Polyandry, by which, the husband being of different stocks, the only rule of succession was through the mother. In that part of the country, a combination was found of Polygamy and Polyandry that was to say, several brothers might have between them several wives in common. In a dispute about an inheritance, it thus seemed to be possible that chundavand might be a relic of a state of society, which had begun to be polygamous without having
royal Katoch sub-clans and by Gosains.\textsuperscript{58} The pagvand rule therefore was more widespread for inheritance and the onus was on the party denying such rule. If in any family, the customs fluctuated, pagvand was to be given preference especially among Muslims. Moreover, \textit{chundavand} was a family, and not a tribal rule.\textsuperscript{69}

The Hindu Rajputs generally followed the \textit{chundavand} custom. The Rors of Kaithal also occasionally followed the Rajput custom, not by the Jats, Gujars or Arains. On the other hand, the Jat Sikh would also furnish instances of \textit{chundavand}.

As in Ambala, the Muslim Rajputs of certain villages in Naraingarh, and the Hindu Jats of nine villages, mostly held by Jats of the Bachal got or tribe followed the rule of \textit{chundavand}; and instances occurred among the Jats, Sayyids, Sainis and Gujars of Naraingarh, and the Rajputs, Jats, Arains and Rors of Pipli, but except in these two tahsils, the custom was quite exceptional.\textsuperscript{70} As the \textit{chundavand} was not the customary rule of succession among Jats of Mauza Kolaran, tahsil Rupar, Ambala district and neighbouring villages.\textsuperscript{71}

In Sirsa district also, some tribes said that the estate should be divided according to the number of mothers (\textit{chundavand}).\textsuperscript{72} Some of the Sikh Tarkhans and Hindu Khatis say that the property should be divided according to the number of mothers.\textsuperscript{73} Generally, there was no regard paid to uterine descent. All the legitimate sons took equal shares except the Rains and Chamars.\textsuperscript{74} There was a strong trend against a division according to mothers was strengthened among Muslims by the knowledge that such a division was not in accordance with Muslim Law.\textsuperscript{75} Among them, the rule of inheritance was now \textit{pagvand}; all the sons took in equal shares.\textsuperscript{76} If we talk of western Punjab, among Awans of Shahpur district, where the parties were governed by custom, not by Muslim Law, and it was found that the rule of inheritance

\textsuperscript{58} Partly Jonathan, \textit{Caste And Kinship In Kangra}, 165-166.
\textsuperscript{59} From the above notes, one was almost tempted to say that chundavand was essentially a Rajput Institution, and not an unnatural outcome of the importance attached among Rajputs to purity of descent, which enhanced the mother’s status. But Murray in his book ‘History of the Punjab’ had a curious remark on its distribution among the Jats. According to him chundavand was certainly not unknown among the Jats, especially the higher tribes, which tended to adopt Rajput ideas. (Source-H.A. Rose, \textit{Compendium}, 43; T.P. Ellis, \textit{Notes}, 42.)
\textsuperscript{60} H.A. Rose, \textit{Compendium}, 41.
\textsuperscript{61} Case No 34, Punjab Record, 1879 (Source-Tupper-Punjab Customary, Volume III, 69, 70.)
\textsuperscript{62} J. Wilson, \textit{General Code Of Tribal Custom In The Sirsa District Of The Punjab}, Calcutta, 1883, 118.
\textsuperscript{63} Ibid., 118
\textsuperscript{64} Ibid., 117.
\textsuperscript{65} Ibid., 118.
\textsuperscript{66} Ibid., 53.
was pagvand, and not chundavand. Many instances were of pagvand and the only instances in which the sons shared according to the number of mothers (chundavand) were a few among the Khokhars, in which the father made the division in his lifetime and one among the Hindu, the pagvand rule was practically universal throughout the district.78

In Muzaffargarh and Dera Ghazi Khan, the chundavand rule was unknown.79 In Jhelum, whether true chundavand existed or not was doubtful. If it did, it was confined to the Gakkhars. In Rawalpindi, the Dhunds followed the chundavand rule, as did the Chauhans of Pindi Gheb and the Hindus of all tahsils except Kahuta, isolated cases among Pathans and Gakkhars of one village were also noted.80 In Peshawar, the general rule was pagvand.

When the property of the common ancestor was distributed according to the rule of chundavand (per-stripes), the whole blood excluded the half-blood, and where the property of the common ancestor was distributed according to the rule of pagvand (Per Capita), the whole blood and half blood succeeded together.81 However, the normal custom in the Punjab, prescribed a division according to the pagvand rule.82

Moreover, chundavand was slowly giving place to pagvand, wherever, it was in force.83 It must always be borne in mind that old instances of the chundavand rule were not of much value, in as much as in many tribes and where it was followed was going out of use.84 If the deceased had left a sonless widow, besides sons by another wife, some allowed her half the estate for her life, some only a share equal to a son’s, some only enough land for her maintenance, and some only enough of the produce of the land to maintain her.85 With the increasing use of pagvand principle, the widows

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7 Case No 8, Punjab Record, 1879 (Source-Tupper, Punjab, Volume III, 69.)
7 J. Wilson, Shahpur District, 43.
7 H.A. Rose, Compendium, 43.
7 H.A. Rose, Compendium, 42, 43.
8 J. Kaikhosru Rustom, A Digest Of Civil Law For The Punjab, 10th Edition, Civil And Military Press, Lahore, 1925, 49.
8 Rustom, Customary Law Of The Punjab, London, 123.
8 Case No 14 of 1909(Source- Ellis, Notes, 43.)
8 Case No 50 of 1909. As, in an earlier decision before 15 of 1891, there was no general custom in the Punjab, that the whole blood excluded the half blood. So, the cases, which were decided before 4 of 1891, it must be due regard with the exposition of the law in that dealing. But now it was held that unless a special custom was proved entitling the half blood to succeed equally with the whole blood. He must be excluded in all cases.(Source-Rose, Compendium, 41, 62; T. P. Ellis, Notes, 43.)
8 Ibid., 117.

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were left on the mercy of the patriarchy. Before it, the widows had fully right on succession under the chundavand system.\textsuperscript{86}

In some instances, caste determined the share of the widows. The term \textit{chundavand} appeared to be sometimes loosely used in a different sense by which the sons of a low caste wife took a lesser share than those by a wife of higher status or caste.\textsuperscript{87}

The rights of a widow of different castes, varied as the fact such marriages were rare as to afford no basis for a statement of custom. Instances were quoted by the Rajputs of Kharar to show that widows of different castes got nothing and were not even entitled to maintenance. On the other hand, as the Muslim Rajputs of Pipli said that in the rare cases, in which a well-to-do man had married a wife or wives of an inferior tribe, and a wife of his own tribe, all the widows inherited equally. All Jats said that a women of a different caste was excluded, some Gujars and Sainis said that all widows shared alike irrespective of caste. If the case came into court, the tendency would probably be to ignore restrictions of caste, but disputes of the kind were necessarily extremely rare. According to the custom of the Sirsa Hindus, all the widows took equal share.\textsuperscript{88} The Rajputs of Kaithal and Kharar in Ambala, who excluded such widows from maintenance, but the Muslim Rajputs of Pipli said that all widows inherited equally.\textsuperscript{89}

In Rawalpindi district, among Bakral Rajputs of Mauza Devi, tahsil Gujar Khan in western Punjab, a widow of an inferior caste had the same rights as any other widow. Even after death of her co-widow of superior caste, had the right to hold her husband’s estate for life like any other widow under customary law.\textsuperscript{90} In Jhelum, there was a wide-spread though vague feeling that the sons of a wife of inferior status should get less than a full share, e.g., only one-fourth of it, or even merely maintenance, but there was no definition of low birth in a wife.\textsuperscript{91} In Peshawar, among Sayyids of Naushahra tahsil, a widow of good family would exclude one of low family from the succession, but would maintain her.

\textsuperscript{86} J. Wilson, \textit{Sirsa District}, 117.
\textsuperscript{87} T.P. Ellis, \textit{Notes}, 42-43.
\textsuperscript{88} J. Wilson, \textit{Sirsa District}, 63.
\textsuperscript{89} A. Kensington, \textit{Customary Law Of The Ambala District}, 17.
\textsuperscript{90} Case No 15 of 1915 (Source- T.P. Ellis, \textit{Notes}, 67.)
\textsuperscript{91} H.A. Rose, \textit{Compendium}, 42.
In central Punjab, Jats also excluded widows of another caste as among Grewal Jats in Ludhiana. Similarly, all tribes of the Jullundur tahsil and Khatris of the Nakodar tahsil said that a widow of different tribes did not inherit along with a widow belonging to the same tribe, but she was entitled to maintenance. In Ferozepur, Dogras gave only maintenance to a widow, who was not a Dogari. Otherwise, under Muslim Law, a widow was entitled to a share of the property, not merely to maintenance. In Ludhiana district, Awans, who were following custom under which a widow, where there were sons, was only entitled to maintenance.

It was no doubt that it was only property to land that the agricultural tribes attached much importance and the life-interest of the widow in her husband’s holding or share was most unwillingly admitted by the agnates, and her power over it, strictly controlled. In this matter of succession to land, religion made no difference, a man being a Zamindar first, and an observer of the Shara after. This can be viewed from the situation of the Muslim widows. In western Punjab like Rawalpindi district, Muslim widows had equal rights; whereas in central Punjab like Ludhiana, Muslim widows was entitled to maintenance as among Awans. Sometimes, the rights of widow were influenced on the question of caste as among Grewal Jats in Ludhiana. However, village custom generally favored the succession of the widow. Campbell observed that his experience was that strict Hindu law was never followed in the Punjab.

On the issue of the preference of succession between a mother and son’s widow in relation to collaterals, customary law was confused and invalid. There was no clear cut pattern of preference of succession. In Dera Ghazi Khan District, the general rules among Biloches were that the mother and the son’s widow shared equally for life. In Dera Ghazi Khan tahsil, however, the mother excluded the son’s widow. The Muslim Jats and Sayyids also followed Muslim Law, as a rule. By Muslim Law, the mother’s share would be in that case, one third of the estate.

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98 Ibid., 64.
Shahpur district, among the Awans, a mother took a share along with the widow of the deceased.\textsuperscript{100} Both were preferred to an unmarried daughter, at least among Muslim.\textsuperscript{101} In Multan district also, the widow and the mother generally succeeded to equal shares, but in Multan tahsil and town, the customs were varied. The son’s widow was apparently entitled to nothing. In Jhelum also, the customs were very varied and not always clear. Generally, all widows and son’s widow divided the property equally. Some of the Janjuas of Jhelum tahsil said that the widow would succeed and maintain the son’s widow. On the other hand, Jats, Gujar and Gakkhars recognized that widows, i.e. they got, what their husbands would have got. In Muzaffargarh, the son’s widow would seem to have no rights and the mother appeared to succeed after daughters, but before sisters.

In the central Punjab, in Ludhiana, most tribes alleged that a son’s widow (nuh) or widows took an equal share with those of the deceased except the Arains, Dogras of Ludhiana tahsil and Hindu Rajputs of Samrala tahsil gave the widow first right before the nuh.\textsuperscript{102} The same consideration seemed in the district of Ferozpur and Gurdaspur. The mother came after the father, but before daughters or their sons, while the son’s widow remained excluded.\textsuperscript{103} The practice in Sialkot was different as the mother and son’s widow succeeded jointly. In Amritsar, no provision appeared to be made for either the son’s or father’s widow.\textsuperscript{104}

If we consider the position of the deceased mother and son’s wives in eastern Punjab, we see that in Kaithal, the mother and son’s widow sometimes succeeded jointly, but sometimes, the mother succeeded first, and then the son’s widow. On the other hand, among Jats of Kaithal, a widow’s claim to succeed was occasionally postponed to that of a mother, who disliked seeing a young woman managing property.\textsuperscript{105} Yet in Ambala, the son’s widow (nuh) was always excluded for the father’s widow, except among the Sayyids, who gave the latter a prior right, while Jats and Gujar felt strongly that the existing practice was wrong and both should share equally.\textsuperscript{106} Similarly it was considered that, among the Rajputs, Arains and Gujar, when a man died, both a mother and widow, each took half the property, but

\textsuperscript{100} J. Wilson, *Shahpur District*, 45.
\textsuperscript{101} H.A. Rose, *Compendium*, 66.
\textsuperscript{102} H.A. Rose, *Compendium*, 65.
\textsuperscript{103} H.A. Rose, *Compendium*, 66.
\textsuperscript{104} Ibid., 65.
\textsuperscript{105} Ibid., 64.
\textsuperscript{106} Ibid., 65.
this was open to doubt. Both succeeded to a life-interest in the deceased’s estate, when he had left no male lineal descendants or widows of his own. To sum up, confusion arises out of the question of the share of widow in colonial Punjab; we notice the varied customs in different districts, whether the widow should take equal right or maintenance share among co-widows in succession. Tribal law and locality decided the answer to this question. Of course, religion has fewer roles on this issue. The widow’s in western Punjab, irrespective of their castes, had more rights of succession than the other parts of the Punjab.

III

The widows right to property, wherever she did succeed was rather limited. It was strongly insisted on by all tribes that the female proprietor holds a life-interest only, and that she could never alienate except in case of necessity. A Hindu widow was capable of making a valid alienation of her husband’s estate for certain purposes, as for legal necessities. In the case of alienations by widows and females, generally, valid necessity differed materially from necessity in the case of full owner (male proprietor). It might be said that the main practical distinction between a female’s position and that of a male owner was that in dealing with a female, the aliened must ascertain that her income was insufficient to meet the expenditure proposed in contrary to male proprietor. So, the position of male proprietor and widow was distinguished. The widow’s income was an important factor, in determining, whether her alienation was for necessity or not.

Under the Customary law, a mortgage by a widow could not be regarded as for ‘necessity’, when she had ample income for her maintenance and other necessary expenses. Moreover, widow’s mortgage to pay off husband’s debt, was not upheld, when she had sufficient income to pay off the debt. It appears that rule of Hindu law was not applicable to cases under custom. Under the Hindu law, a widow was not bound to pay the debts of her husband out of the income of the property and that she could validly alienate part of the immovable property to raise money for payment

107 H.A. Rose, *Compendium*, 64.
109 ‘Necessity’ was usually defined as payment of her husband’s debts and the government revenue, the performance of obligation of religious ceremonies in connection with his death, the marriage of his daughters, and the necessaries of life for herself. (Source-Rustom, *Customary Law*, 537.)
110 Rustom, *Customary law*, 537.
111 Ibid., 538.
thereof. A widow’s alienation for her maintenance was considered valid, but she could not ‘anticipate’ future necessities. It may be observed that the position of a male proprietor was not different to that of a widow in respect of that being able to ‘anticipate necessities.’ As, in Ludhiana district, the widow had no power of alienation, except for special necessity. Most tribes admitted the right of temporary alienation in order to raise money. The only objectors to this, was a few of the Jats (of Samrala) and Arains of Ludhiana. The power of sale was admitted by the some tribe in parts of the district and denied by it in others. Moreover, Hindus rarely admitted the daughter’s right to succeed in the presence of collaterals however remote except Muslim Jats, a few Hindu Jats and Rajputs, Awans, Gujars, Dogras and the Hindu Labana.

Under the Punjab Civil Code, a Hindu distributed real ancestral property according to the rules of inheritance. However, most Muslim tribes in TarnTaran gave daughters and their sons, a third on the widow’s death. Further some Afghans, Rajputs and Arains allowed the sonless widow to give to the daughter or her children, one-third.

In Sialkot district, the widow had no right of transfer except a temporary alienation for the payment of revenue due to government and the debt of their deceased husband. The Jats and Rajputs of tahsil Daska said that they could also make a temporary transfer for the marriage expenses of a daughter. They had no power of alienation by bequest. However, by the custom of Brahman of the Daska tahsil of Sialkot district, a widow made gift to her daughter of the acquired property. The nephew was excluded. Among Kakezai’s of Nowshera in Pasrur tahsil, a widow was empowered to make a valid will in favour of her daughter’s children. In Lahore district, Jats and Dogars also said that widows had absolutely no rights of alienation over their deceased husband’s property, of whatever kind, whether movable or

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112 Rustom, Customary Law, 538.
113 11 P.R. 1885 (Source-Rustom, Customary Law, 540.)
114 156 P.R. 1919 (Source-Rustom, Customary Law, 540.)
116 Ibid., 54.
117 H. A. Rose, Compendium, 68.
118 Walker, Ludhiana District, 55-56.
119 H.A. Rose, Compendium, 68.
120 J. R. Smith, Sialkot District, 16.
121 No 51, Punjab Record, 1873 (Source-Tupper, Punjab, Volume III, 64.)
122 C.L. Tupper, Punjab, Volume III, 64.
123 No 10 of 1892 (Source- J. R.Dunlop Smith, Sialkot District, 17.)
Among Rajputs, the widows could alienate by mortgage, but not by sale for the same objects. Arains, who were generally speaking agriculturists, followed this custom. Their customs were considered more favorable to females than those of other tribes. Their widow has the power of alienation by sale of mortgage for the objects stated above. In no tribe, widow could make a gift of any part of her deceased husband’s property, not even to daughter. Even among the Rajputs (presumably Muslims), Dogars and Arains of Lahore, collaterals even within the 5th generation excluded a daughter.

The Muslims Jats, resident in the central districts of the Punjab were ordinarily governed by customary law. In the Central Punjab plains, the widow usually succeeded for life only without power of alienation, except for necessity, or by consent of the heirs of her husband. The general rule against alienation by a widow applied alike to Muslims and Hindus. In Gujarat district, the land owning population was almost entirely Muslim. With few exceptions, all Muslims recognized the same customary law; among Hindus, Khatris and Aroras, whose tenure of the land was usually by mortgage, followed the general customary law of Hindus, which varied, but little in different parts of the Punjab. Some Hindu tribes as Labanas were more in accordance with those of Muslims. In this Muslims district, also the widow had the power to sell or mortgage the property under the necessary expenses. Mostly, the Hindu widow had no authority of mortgage or to sell the property of any of her husband’s collaterals were alive. In Gujarat district, with regard to a widow’s power of alienation by gift or by will, it would be necessary to prove that such transfer had been made or sanctioned by the husband previous to death or permission of her husband’s collaterals, if opposed, be always set aside by the courts, unless the case presented special circumstances.

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125 Ibid. A.A.
126 Case 43 of 1883, 128 of 1884 (Source- Davis Captain, Gujrat District, 3.)
According to the Gujrat Rivaj-am, the Gujars, Jats and Varaich tribe said that a childless proprietor might give the land to resident son-in-law and daughter but not the widow alone. In Jullundur district, a widow had no power to make a gift of her inherited property; such a gift was subject to the doctrine of reversion. Although among Muslims Rajputs of the Jullundur district, there was a strong feeling against succession to ancestral land in the female line, yet the succession of daughters was not unknown; and there was no clearly defined custom on the subject. Similarly, we found that among the weavers of Jullundur, in the presence of daughters, brother’s sons and grandsons were not entitled to succeed to ancestral house property.

If we examine the hilly areas of central Punjab, we found that according to the Rivaj-am, Kangra district, the Brahmmins, Khatris, Rajputs and other Hindus said that even a gift might be made by father with the consent of the descendents of the great grandfather, but without the consent of the heirs for his acquired property, was not valid. The custom of western Punjab, regarding widow’s power of alienation was quite different, doubtless owing to Muslims influence. Most of the Jat tribes of the Dera Ghazi Khan district with a few exceptions were followed Biloch custom. The Sayads and a few sections of the Nutkani tribe of Biloches in Sangarh were governed by the provisions of the Muslims law. So, they recognized the widow’s right to alienate, as she chose. Among the Muslims, a daughter could inherit after her brother’s sons and grandsons were not entitled to succeed to ancestral house property.

The conclusion is not that Biloches strictly followed Muslims law, but their custom of

134 C.L. Tupper, Punjab, Volume III, 110.
135 C.L. Tupper, Punjab, Volume III, 58.
136 C.L. Tupper, Punjab, 68.
137 Ibid., 111.
138 The Dera Ghazi Khan District, which was mainly Muslims with some Biloch, Jat tribes and a few scattered families of Sayads of local importance. Hindus form about one-eighth of the total population. (Source: A. H. Diack, Dera Ghazi Khan, Preface, 11,12.)
139 C.L. Tupper, Punjab, Volume III, 47.
140 A.H. Diack, Dera Ghazi Khan District, 17.
141 A.H. Diack, Dera Ghazi Khan District, 16.
142 C.L. Tupper, Punjab, Volume III, 47.
143 A.H. Diack, Dera Ghazi Khan District, 17.
agnatic succession was greatly influenced by the spirit of Muslims law. However, there was a good instance of the fusion of Muslims law with local custom in the Rivaj-am of Dera Ghazi Khan that if the widow alienated, she could do so to the extent of her legal share, but not more. This applied to all the Muslims tribes.

Among Bukhari Sayads of the Jhang district, a widow by custom took the entire estate with a restricted power of disposing of the estate, certainly not more extensive than that of a Hindu widow, which might be exercised under necessity, so as to bind the estate in hands of the reversionary. By the same custom, the reversionary was only liable for debts necessarily incurred by the widow, and not for all her debts without regard to their character or object or the circumstances under which they were incurred. There was no special custom among Sayads in district of Jhang, empowering a widow to make a valid gift of property inherited by her from her husband. A widow might gift to her daughter to that property, which she succeeded in lieu of dower. So, the agriculturist Sayads in Rawalpindi and Multan followed custom in alienation and succession.

In Jhelum, the position was almost precisely the same, unmarried daughters succeeding till death or marriage to a life interest and only inheriting absolutely in certain tribes as among Awans of Talagang and all the Muslim tribes of Chakwal, if there were no agnates within four degrees. In Shahpur district, the 85 percent population was Muslims, but the influence of the Muslim law did not extend to the questions relating to property. The only effect of Muslim law on questions relating to property had been the indirect influence, viz., that by breaking down the rule requiring a woman to be married to a non-agnate. It had weakened the power of the agnates to forbid an alienation of immovable property to a relation through a female.

However, attempt by a widow to alienate land away from the agnate heirs was common, but generally held illegal except for proved necessity. The widows, whether sonless or with minor sons had more power to the disposition of the property.

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1 T.P. Ellis, Notes, 20.
2 C.L. Tupper, Punjab, Volume III, 47.
3 J. Wilson, Shahpur District, 47.
4 No. 95, Punjab Record, 1879 (Source- J. Wilson, Shahpur District, 74.)
5 J. Wilson, Shahpur Distric, 74.
6 Rustomji, Punjab Customary, 536.
7 86 of 1894, 102 of 1901(Source-Ellis, Notes, 26-27.)
8 H.A. Rose, Compendium, 69.
9 J. Wilson, Shahpur District, 1, 9.
10 Ibid., 47.
left by her husband. Among all Muslims and some Aroras, she could alienate as she pleased by sale, mortgage or gift any of the moveable property, which had devolved on her from her husband, whether it is ancestral or acquired. She could not in any case alienate by sale or gift, without consent of the husband’s agnates, any of the immovable property, ancestral or acquired. If however, the husband’s agnates did not make proper arrangements for necessary expenses, the widow could (in case of necessity) mortgage immovable property, which had devolved on her from her husband.155

Among Hindus, generally, the widow could not alienate, whether it be moveable or immovable property, to an unreasonable extent, or on improper objects stronger reason was required to justify the alienation of immovable than of moveable property.156 In western Punjab, the widow had more powers in the alienation of the property.157

In Sirsa district, in all tribes, whether Hindu or Muslim, the widow could not without the consent of the husband’s agnates, alienate by sale, mortgage, or gift any of the immoveable property, ancestral or acquired, such as land or houses. It was, however, incumbent on the husband’s agnates to make proper arrangements for necessary expenses, such as maintenance, marriage of daughters, payment of the government’s revenue, funeral expenses, or gifts on the birth or marriage of daughter’s son or daughter, or to allow the widow to arrange for them by alienating (where necessary) the immovable property.158 A Hindu widow had absolute power in the disposal of the movable property.159 There were few instances in any tribe of a widow’s having alienated land inherited from her husband.160 The most highly developed system of tribal custom was that of the Rains, who were essentially an

154 J. Wilson, Shahpur District, 10.
155 J. Wilson, Shahpur District, 46.
156 Ibid., 47.
157 The Daughter, in the absence of sons or son’s sons, succeeded to the whole estate of her father till her marriage in western Punjab – a custom hardly known to Muslims in Sirsa in eastern Punjab. While in Sirsa, the agnates could forbid the alienation of immovable property to a relative through a female, such as a daughter’s son or son-in-law. Among the Awans of Shahpur, in such alienations, the agnates had no power to forbid them (Source: Wilson, Shahpur, 10, 40; J. Wilson, Sirsa District, 121.)
158 J. Wilson, Sirsa District, 121.
159 Ibid., 63.
160 Ibid., 121.
agricultural Muslim tribe. They were not pardahnashin. Widows and widowed daughters were often allowed to dispose of the property inherited by them.\textsuperscript{161}

It was held that sometimes, the circumstances of the particular case had failed to establish a custom. In a suit, the parties to which were Sayads of Kharkhanda in the Rohtak district held that no custom was proved by which widows were able to make alienations to the prejudice of the next heirs otherwise than for necessity.\textsuperscript{162} However, some Sayyids of Kharar and Naraingarh, daughters succeeded after the widow.\textsuperscript{163} In Ambala district, the right of the widow extended to mortgage only and not sale, and the alienation was limited to what was absolutely required.

Under certain circumstances, gifts were considered admissible, as where small plots were given in charity (Punarth). There was no distinct custom as regards alienation to the husband’s kindred. Ordinarily, the land would be first offered to them, but alienation could not be so made with intent to defraud remaining heirs.\textsuperscript{164}

The Laws regarding the right of the widows was not uniform. Generally, the neither Hindu nor Muslim Law was followed to decide the right of property to widows. In case of alienation by widows, she has to prove it with valid necessity, even marriage expenses and debt generally did not come in the category of valid necessity. In some western areas, the widows had right of alienation under the influence of Muslim Law. Similarly, among Sayad in Rohtak district, the widows had not only right of alienation, but also the property of the widows reverted back to her daughter.\textsuperscript{165} The Arain also favored daughters for succession in Ambala. Generally, Muslim widows had no power of alienation in eastern district due to influence of customs.

IV

Regarding Stridhan, it is doubtful whether the law was invariably or strictly observed.\textsuperscript{166} Ordinarily, there was no general custom of considering part of the Joint estate as being the special property of the women. Whatever was given to a women, become merged in the Joint estate under the control of the agnates, although they

\textsuperscript{161} J. Wilson, \textit{Sirsa District}, 56.
\textsuperscript{162} No. 60 of 1878, Sayads had settled in this country, generally by agriculturists. Even, when settled in town or villages, which had subsequently grown into towns. They would follow to intermixture and exigencies of their occupation, whether as agriculturists or religious preceptors necessarily and naturally adopted the custom of their neighbors, as also in case of alienation in Karnal (18 of 1903). (Source-Ellis, \textit{Notes}, 27; H. T. Rivaz, \textit{Digest Of Punjab Record}, 44.)
\textsuperscript{163} H.A. Rose, \textit{Compendium}, 68.
\textsuperscript{164} J. Wilson, \textit{Sirsa District}, 17.
\textsuperscript{165} Following Muslim Law.
\textsuperscript{166} C.L. Tupper, \textit{Punjab}, 101.
should not alienate any such property without the woman’s consent unless in case of necessity. 167

The Hindu law recognized the absolute domination of married women over her separate and peculiar property except land given to her by her husband, of which she was at liberty to make any disposition at pleasure. 168 As a widow, she remained practically under the control of his male kindred. And in a few cases, where women did possessed of special property, the rule of succession would be found to depend on the character of the tenure of the village and the source from which, it was originally derived. There was in fact, nothing in the nature of a general rule of customary descent of such property. 169

Among Muslims, generally there was no custom of Stridhan in case of widow. 170 If a wife had acquired land in full right by gift or otherwise, her son would succeed to it on her death, if she had no sons, her daughter succeeded to it till their death or marriage; failing sons and daughters, the husband succeeded to it. After the husband, it went to his heirs.

In the case of Hindus, the same, except that in all cases, the husband succeeded in preference to the sons; failing the husband, the son succeeded and failing them, the husband’s agnates. 171 So, a presumption might here be derived from the general character of Punjab customs. It is a fact that among Hindu non-agriculturists, a daughter or a sister’s son was generally recognized as a proper person to be appointed as Shias of Ambala city, which were non-agriculturists followed Muslim laws as alienation and succession. 172

There was no definite rule as to what degree of relationship gave a collateral a right to exclude the daughter or vice versa especially in non agriculturist classes, but the critical presumption in favour of restricted power of alienation of ancestral property applied to members of agricultural tribes, who were members of village communities. Where a family, though belonging to an agricultural tribe, had

167 J. Wilson, Shahpur District, 8.
168 C.L. Tupper, Punjab, 103.
169 J. Wilson, Shahpur District, 101.
170 J. Wilson, Shahpur District, 65.
171 J. Wilson, Shahpur District, 54.
172 54 Of 1903 (Source-Ellis, Notes, 26.)
altogether drifted away from agriculture as its main occupation, then presumption no longer attached in the case of such a family.\textsuperscript{173}

The same was the case in other parts of the Punjab. As Rajputs, who were generally governed by the general rules of customary laws. In Ferozepur, Rajputs, who had acquired urban immovable property out of income, they should not govern by the general rules of customary law.\textsuperscript{174} The presumption in favour of a restricted power of alienation of ancestral immovable property applied only to members of agricultural tribe, who were members of village communities and whose main occupation was agriculture.

Even Muslims; who were resident in city, dependent on service and not in agriculture, even if not following strict Muslim law in matters of inheritance and could not be said to be bound agricultural custom in matters of alienation.\textsuperscript{175}

This brought out the fact that daughters and their sons were excluded by near male collaterals both amongst Muslims and Hindus. Probably, where a daughter succeeded, she would take only a life-interest, like that of a widow.\textsuperscript{176}

There were two forms of adoption in the Punjab, Firstly, adoption among agriculturists, which was strictly speaking not an adoption, but merely the customary appointment of an heir and secondly, adoption under Hindu law as practiced in the south-east part of the Punjab. The ordinary form of adoption generally prevalent among the Hindus in this province was the simple Dattaka form.\textsuperscript{177} Under Hindu Law, where adoption was not in the Dattaka form, the adoptee was not entitled to succeed collaterally.\textsuperscript{178} In the case of a widow, who wanted to adoption depended on whether her husband had given permission in his lifetime. Failing this, the consent of his kinsmen, which might be presumed from long acquiescence, might be necessary.\textsuperscript{179}

The general custom of the Punjab was opposed to adoption without authorization of husband as for example among the Chopra Khatri of Ferozepur, Muslim Jats of Hoshiarpur and Brahmins of tahsil Panipat, Karnal.\textsuperscript{180} Under Hindu Law, if she did not adopt without authorization or consent, the only right the adoptee generally

\textsuperscript{173} P.L.R. 270 of 1903, Karnal. (Source-Ellis, Notes, 24.)
\textsuperscript{174} 55 of 1908 (Source-Ellis, Notes, 25.)
\textsuperscript{175} 74 of 1914 (Source-Ellis, Notes, 22.)
\textsuperscript{176} C.L. Tupper, Punjab Customary, 48.
\textsuperscript{177} J. Kaikhosra Rustom(ed.), A Digest Of Civil Law For The Punjab,88.
\textsuperscript{178} Ibid., 87.
\textsuperscript{179} C.L.Tupper .Punjab , 78.
\textsuperscript{180} 57 of 1886 ; 44 of 1911; 13 of 1873(Source-T.P.Ellis, Notes, 132.)
obtained was to take personal property and perform the funeral obsequies, which was within her disposing power. The ‘adopted’ child was not permitted to inherit family property. The adoption was considered from the date of the appointment and not to the date of the death of the deceased husband.

In an agricultural population, composed of Hindus and Muslims, neither of whom paid much observance to their scriptural law, no special and elaborate formalities attended an adoption. Among Hindus, a chauk ceremony was performed, but it was not essential and frequently omitted. The conception was that an adoption was the transfer of a boy from one family to another by a kind of fictitious birth. Thus, among the Jats of Lahore, an adoption could not be cancelled. Among Muslims, the brotherhood was assembled and some gur was distributed among them. The adoption was neither verbal nor written. The Rajputs and Arains said it could be cancelled, if the adopted son was disobedient. Among the Muslim Awan of Shahpur, Dera Ghazi Khan District, the adopted son inherited nothing, if a natural son was to be born after his adoption. Other Muslims however, allowed the adopted son to share with natural sons born before or after his adoption. In short, the Muslim idea of adoption was rather of a conditional gift than of the transfer of a son.

There were no recognized limits to the age of the adopted son and it ranged from 1 to 20 years. Kharar Rajputs quoted cases of adoption at 10, 15 and 16 years. Effected widow of such appointment was to invest the estate in her hands. The appointed heir was expected to waive his right of immediate succession in favor of the widow, who appointed him. This was of course, conditional on the provision that the deceased husband might qualify the power of appointment with a condition that the son appointed by his widow should not succeed until after her death and the heir

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181 T.P. Ellis, Notes, 132.
182 Rustom (ed.), Digest, 90.
183 The adoptee usually called the neighbors and his relations together and distributed gur with saying that he had adopted (god-lia) so and so; or a deed of adoption might be written. It was recognized that there must be some such public notification of the fact of adoption, but this was all. The same above formality was prevalent. If additional precautions are required, a registered deed is made out. (Source—Walker, Ludhiana District, 69-70.)
184 Dunlop Smith, Sialkot District, 23.
185 H.A. Rose, Compendium, 55-56.
186 H.A. Rose, Compendium, 56.
187 Kensington, Amballa District, 24.
appointed under the power would be bound by such condition. Among Khatris and Brahmins, different rule naturally prevailed and the succession passed, in accordance with the Hindu Law, to the heirs of the adoptive parent into whose family, the adopted son was admitted by virtue of the adoption. It seems that adoption was used to gain control of family property by the widow.

On the other hand, amongst Muslim Khokars of Lahore, it was found that widows had free power to adopt with or without the consent of their husbands, and so had Jain widows. Widows of Kashmiri Pandits of Delhi Districts and of Maheshris of Delhi, where the husband had property of his own and was not a member of a Joint family. In the case of an undivided Hindu family, the assent of those kinsmen of the deceased husband was requisite, who were liable to support the widow during her widowhood. It seems that in many instances, no formal adoption took place and relationship established between adoptee and adopter was a purely personal one. The customary appointment of an heir in the Punjab resembled in many respects, in the incidents, the “Kritrima” form of adoption of Hindu Law. It was clear that the appointed son did not lose his rights of inheritance in his natural father’s family.

In Sialkot District, no widow could adopt without the permission of her husband. An adopted son was entitled to succeed to the estate of his adoptive father’s collaterals in the same manner as a natural son of such adoptive father would have succeeded among Chima Jats of tahsil Daska in this district. However, no adopted son of another tribe could ever take a share. His rights were those of a

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189 Rustamji (ed.), Digest, 90.
189 No. 147, P.R. 1889; No. 21, P.R. 1890 (Source - Rustamji (ed.), Digest, 90.)
189 Rustam(ed.), Digest, 81.
189 82.
189 As for example, In Gurdaspur district, a Hindu Jat widow adopted a son with the permission of her deceased husband’s brother. But the adopted son was entitled to succeed to the estate of which a widow was in possessions at the time of adoption, but had no right of succession to the property of deceased father’s brother. (Source- Rustam(ed.),Digest, 10th Edition,86.)
189 A Kritima adoption did not transfer the subject of it from his natural family. It gave him in addition to his rights in that family, right of inheritance to the persons actually adopting him and to no one else: this son acquired no rights of inheritance to his adoptive father’. So, the Kritima son lost no rights of inheritance in his natural family. He took the inheritance of his adoptive father, but not of that father’s father or other collateral relations. In the case of a customary appointment of an heir, the (male?) descendent of an adopted son who has succeeded to the property of his adoptive father, retain their rights of succession in the natural family of the appointee in the presence of and along with other descendants of the appointee’s in natural family. (Rustam(ed.), Digest, 85.)
189 Rustamji (ed.), Digest, 85.
189 J.R. Dunlop Smith, Sialkot District, 27.
189 Rustamji (ed.), Digest, 87.
tenant. Similarly, among Rors in Panipat tahsil, a tenant’s adopted son succeeded collaterally in his adoptive father’s family. It was also prevalent among Jats of Rohtak and Sikh Jats of Moga tahsil.

In Gurdaspur, Lahore and Sialkot, she was only allowed to do so under permission from her husband or with his agnate’s assent, if he left very near agnates. As a Hindu Khatri widow in the Lahore district, adopted her daughter’s son, to whom she made gift of her husband’s estate. The court found the adoption invalid, as the consent or authority of the husband had not been proved.

According to Hindu Law (Banaras School), a widow could not adopt without the authority of her husband. But it appeared that many of Hindu laws were utterly at variance with the customs and ideas of the Sirsa Hindus. Among Sirsa Hindus, a widow could adopt without the authority of her husband. Moreover, an adopted son shared equally with a natural son after adoption.

In the central hilly areas, as in Kangra, Nurpur and Hamirpur in the Kangra district, where the chundavand system prevailed, the share of the adopted son was first computed as the pagvand principle and then the other sons took chundavand. In the hills, adoption was common. In Kangra proper, all tribes agreed that a man could adopt a boy of his own gotar or clan and probably he could adopt a daughter’s son, who would usually be of a different gotar. However, among Brahmins of Kangra, a widow of an adopted son could not succeed collaterally in the family of his adoptive father. This was not said to be custom established on this point. As, there was some variety in local usage regarding the power of a widow to adopt a son.

In some parts, however, the widow could not adopt as for example, in Ludhiana district, most of the gots of Hindu Jats said that a widow could adopt under no circumstances, even with the sanction of her husband. In Amritsar district,
neither amongst the Athwal Jats and nor amongst the Brahmans of the Gujrat district, a widow could not do so even with the consent of husband and relatives. Under these circumstances, she could not bring in an outsider without the practical assent of the community. While in Ludhiana district, all Muslims except Rajputs and Hindu, Sainis said the consent of the collaterals was necessary. In the absence of instances, sometimes an adoption by a widow was set aside as in the case of Dhaliwal Jats of Jagraon tahsil. The court was pressured that no custom excited and the right was not recognized. So, the right of the widow to adopt a son as heir to her deceased husband was exceedingly limited in Ludhiana district.

In eastern Punjab, among Sirsa Muslims, adoption was very rarely practiced except among the Rains, who were essentially an agricultural tribe. It would be seen that, except in questions of marriage, which was a semi religious ceremony, the Muslim law and religion have had no effect on the tribal custom of the Sirsa Muslims. Similarly in Ambala district, the Rajputs, Sayads, many Jats, the Muslim Jats of Ropar, and most of the Rains in all tahsils said that they did not recognize the right of adoption at all. The general rule for all tribes was that a woman could never adopt. This was in some cases qualified by an admission in the widow’s favor provided she had received distinct permission from her husband, and collaterals. It was enough to say that a disputed adoption, which had been upheld, was extremely rare. The feeling of the people was strongly against adoption by a widow in Ambala. In Kaithal, the right was now denied too. In Indiri, it was only admitted that when the husband had given her permission before her brotherhood and in Hissar, the adoption was held invalid except widow’s own property. However, in several cases, courts held that a custom had been proved, whereby authority to adopt was unnecessary.

In the Rohtak and Gurgaon districts, in common with other parts of old Delhi territory, adoption, when effected, was of a formal nature and not the mere customary appointment of an heir such as in usually met in the Punjab proper, and the adopted

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son merges with his new family. Customary appointment of an heir was almost unknown in the districts, which formed part of the old Delhi territory. Where, therefore, adoption was proved to have taken place among Jats of the Gurgaon District, the presumption was that the adoption was a formal one.219 Among the Hindu agricultural Rajputs of the Gurgaon district, as stated in the Rivaj-i-Am and supported by instances, a widow could without any permission, adopted one of her husband’s collaterals, as her husband’s heir.

It was held that the Kashmir Pundits of the Delhi district were governed in matters of adoption by custom and not by the principles of the Mitakshara form of the Hindu Law and that amongst them, a widow had full power, after the death of her husband and without this express permission in that behalf, to adopt any boy, whom she might select, provided he was of the same tribe.220

Among Jains, a widow had power to adopt and no special ceremonies were necessary except that the fact should be apparent and due publicity given to the adoption. So, according to the law and custom prevailing amongst the Jain community, (1) a widow had power to adopt a son to her deceased husband without special authority to that effect and (2) a married man might lawfully be adopted. Adoption amongst the Jains was a purely secular institution.221 The presumption was that the Jains were governed by the ordinary Hindu Law, unless it is shown that by custom a different law prevailed among them.

There was no instance of an adoption by a widow’s own sole act in the absence of authority from her husband. In western Punjab in Shahpur district, among Muslims, adoption was practically unknown except among Awans, but the adoption must be made by written deed.222 Among the Hindus, a man having no son or son’s son might adopt any near relation he pleased, but not a distant relation or stranger and the adopted person succeeded to the whole of his estate, as if, he were a natural son, to the exclusion of the other natural heirs.223

In Dera Ghazi Khan, the same general rule applied as widow was only allowed to do so under permission from her husband or with his agnate’s assent. But the Jats

219 99 P.R. 1909 (Jats, Rohtak District); 1921, 59 Ind. Case 82 (Hindu Jats, Gurgaon District) (Source- Kai Khosru Rustam(ed.). A Digest, 10th Edition, 87.)
220 34 P.R. 1907 (Source- Rustomji, A Customary Law, 315.)
221 Rustomji Customary, 316.
222 J. Wilson, Shahpur District, 8.
223 Ibid., 8.
of Jampur and Rajanpur said that what a women might adopt without permission from anyone clearly because that was her absolute share by Muslim law.\textsuperscript{224}

If the question was ‘who could be adopted?’ The answer was that only 2 qualifications were needed.

(I) First of all, the adopted son must be of the adopter’s caste or tribe.

(II) Other was that he must be chosen from his own agnates.\textsuperscript{225}

Clearly, the right of the widow with regard to adoption was usually not allowed, when it was restricted to the deceased husband’s family and generally allowed the adoption of son for succession. In some cases, it has been noted by the officials that widows adopted to gain control of the deceased husband’s estate ‘for’ the adopted son.

However, in Punjab, the several Jaina communities believed that the custom of adoption without consent was valid.\textsuperscript{226} It had been judicially held that Jains and Kashmiri Pandits followed the same custom. It was obvious that, in this case, the ‘custom’ followed by Mahesris was not the custom of the Jat agriculturists of this province.\textsuperscript{227}

When a widow did remarriage, then the step son, i.e., the son of a widow by her first husband had as a rule, no right, whatever in the property of his mother’s second husband. The step son, which was called pichlag or gadhelra, had no rights of inheritance. Though in a few cases, he had retained possession of property given him for maintenance by his step-father with the collateral’s consent. Whereas, in Kaithal, the step son was generally maintained by his step-father till he grew up, but he had no right to inherit. Some tribes denied right to maintenance, as the Jats and Arains said that he might get a share with the consent of the step father’s own sons.\textsuperscript{228} It was found that among Kang Jats of Nakodar in Jullundur district, there were no custom

\textsuperscript{221} H.A. Rose, \textit{Compendium}, 51.
\textsuperscript{222} Rustom (ed.), \textit{A Digest, 10th Edition}, 81.
\textsuperscript{223} Similarly, among Mahesris of Delhi, it was held that in the matter of adoption, Mahesris followed custom and not strict Mitakshara law. It proved that widow had an unrestricted right to adopt to her deceased husband, where the husband had separate property and was not a member of a joint family, and that neither the authority of her husband nor the consent of collaterals was necessary to validate the adoption. The place of origin of Mahesris was in the Bikaner State. They did not follow the strict Mitakshara law. In 1917, the Calcutta high court held that amongst Mahesris, the widow had an unrestricted right to adopt to her deceased husband, and that neither the authority of the husband nor the consent of the collaterals was necessary to validate the adoption. (Source- Rustom, \textit{A Customary}, 3 (6), 321)
\textsuperscript{224} Rustom, \textit{A Customary}, 321.
\textsuperscript{225} H.A. Rose, \textit{Compendium}, 57.
entitling stepsons, as a class, to succeed to the lands of their deceased step father, in the presence of male collaterals, even where such step sons had long lived with, and been brought up by their step fathers.\textsuperscript{229}

In Ludhiana district, in all tribes, such a son succeeded to the property of his natural father and had no claim to that of his step-father, even if the widow be pregnant by her first husband at the time of her second marriage. The son had no claim on the property of the second husband in all Hindu tribes except the Labanas and the Hindu Jats of tahsil Samrala, who said that such a son born after the second marriage inherited equally with the son of the women by her second husband, being apparently treated as issue of the second union.\textsuperscript{230} Labana, originally was not the name of a caste, but was applied to all, whether Hindu or Muslim engaged in the carrying trade with pack-bullocks. However, the step-son was treated as issue of the second union entitled to maintenance, if he lived and worked with his step father. But this maintenance would remain till he grew up in all tribes.

Among Muslims, however, marriage with a pregnant woman was considered illegal and if it should take place, the son born after marriage would succeed to his natural father. Amongst Rajputs, widow marriage was unknown and the question did not arise in the Ludhiana district.\textsuperscript{231}

In central districts of the Punjab, a step-son was entitled to inherit no share, but he must be maintained by the heirs of the deceased until he attained maturity.\textsuperscript{232} As in Gujrat district, there was no custom by which the ‘pichlag’ succeeded to the property of his step-father except Phalia tahsil.\textsuperscript{233} He was only entitled to maintenance until of age.\textsuperscript{234} In Sialkot district also, a step son was entitled to be maintained by his step-father up to the age of maturity (i.e., 18 years). If the step-father has no male lineal descendants, he could give by a deed of gift one-twentieth part of his estate to his step-son, but not more than this without the consent of his male collaterals.\textsuperscript{235}

\textsuperscript{229} Sawan Singh, Fateh Singh And Attra Versus Ruldo and Golabo No 18, Punjab Record, 1879.(Source- Tupper, Punjab, 69.)
\textsuperscript{230} T. Walker, Ludhiana District, 63; J. Wilson, Sirsa District, 12.
\textsuperscript{231} Walker, Ludhiana District, 64.
\textsuperscript{232} J.R. Dunlop Smith, Sialkot District, 20.
\textsuperscript{233} In Tahsil Phalia, in addition to above, that a step-father could bestow on his step son during his lifetime a portion of his estate, but only on condition that the consent of his male issue and of the co-sharers was obtained and that the ‘pichlag’ was put in possession of the portion. This was stated in the Munshi Amin Chand’s customary law (Rivaj-l-am) of Gujrat district. (Source- Captain Davies, Gujrat, 15.)
\textsuperscript{234} Captain H. Davies, Gujrat District, 15.
\textsuperscript{235} Smith, Sialkot, 20.
In western also, the general answer of Hindu and Muslims, especially in Dera Ghazi Khan District was that the step-son succeeded his natural father only. The Jat tribes of the Jampur tahsil said that if his mother received her share of her second husband’s estate as fixed by the Muslim Law, he would inherit, if there were no sons by such husband, in which case, it would be one-fourth, and would divide it with his half brothers, if there were any, in which case, it would be one-eighth, step-sons and their half brothers all sharing equally. Moreover, the step-father could bestow his share by a will, as among Jats of Jampur. However, the general answer regarding maintenance was that a step-son was not entitled to maintenance from his step-father. Exception were the Biloch tribe of the Dera tahsil, who considered that he was entitled to it up to the age of 12, the Biloch tribes of Jampur who allowed him maintenance till he was of age, but conditional on service, and the Jat tribes of Rajanpur, who did so unconditionally.

It is observable that the Punjab widow did not enjoy the full property rights. Her rights were generally limited. The next reversionary; however remote might be, was check on widow’s right on issue of alienation or transfer or donation. The widows had right of temporary alienation of immoveable property in case of special necessity. This necessity was also fixed by Colonial law, only for the payment of government revenue. This rule was implemented on both Muslim and Hindu widows. The women were almost excluded from succession. As the widow had generally no right of transfer of land neither to her daughter, nor to any religious place as donation. It seemed to be well established that two things could deprive widows of her limited shares of her husband’s estates-remarriage and unchastity.

In all tribes, if a sonless widow, had succeeded to her husband’s estate, married by Nikah or Karewa anyone except a near agnate of her husband, she lost all right to her husband’s estate. By custom, among the Sikh Jats of the Punjab, a widow did not forfeit her life-estate in her deceased husband’s property by reason of her remarriage in Karewa form. In remarriage, throughout the province, a widow

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237 The Jats of Rajanpur and Sangarh also said in such a case, the step-son would be allowed to keep the share bestowed upon him by his step-father. But the Hindu generally refused to admit the possibility of there being a step-son except in Sangarh and Rajanpur (Source: *Dera Ghazi Khan*, 22.)
239 J. Wilson, *Sirsa District*, 123.
lost all rights in her husband’s estate as she becomes a member of another family, but not, if she married her deceased husband’s brother.  

Moreover, in some cases, on the remarriage of a widow of last male owner, his mother succeeded to a life interest in preference to his collaterals. The general principle governing succession to an estate among agriculturists was that when the male line of descendants died out, it was treated as never having existed, so that succession was then reckoned with reference to the last male owner, who died leaving descendants and that this principle was applicable to these parties. So, Jawai was entitled to the property during her life.  

The widow had to reside permanently in her husband’s home. If she left it, she had to deprive with property of the husband to near collaterals restriction on widows. Now the question arises why there were so many restrictions on widows for her re-marriage. The answer was that when a person died, leaving no male offspring, his brothers or his nephews of the full blood, assumed the right of succession, to which the widow or widows become competitors. Sikhs with a view to avoid an open and direct violation of a known law had a custom named Karewa.  

Amongst certain tribes, a remarriage in the Karewa form with the brother of the deceased husband did not cause a forfeiture of the widow’s life estate in the property of her first husband. This form of marriage existed commonly among Jats throughout the province and it was confined usually to tribes like Ahirs, Jats, Gujars, Mullas, Pathans and Rangars and had been held to exist. If it existed, it conferred the same rights as an ordinary marriage. But it was not as a rule practiced by Brahmans, Rajputs, Kayaths and Banias. Among Rajputs of Ambala, the marriage was not entirely invalid and the issue could succeed, but they had no right of collaterals succession.  

It was found that the offspring of a marriage by the Karewa, Karao or Chadar Dalna from were not entitled equally with sons the offspring of a regular marriage.

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241 108 of 1913 (Source-Ellis, Notes, 63.)
242 In a case of Shahpur district, where after the death of son Sahibu, his childless widow Bano and his mother Jawai succeeded in equal shares. The widow having re-married, the question for decision was whether by custom her husband’s collaterals or her mother-in-law (Jowai) succeeded to her share in the property. (Source-Rustom, Customary, 276.)
243 Rustomji, Customary law Of The Punjab, 276.
245 Rustom(ed.), A Digest, 59.
246 26 of 1800, 29 of 1883 (Source-Ellis, Notes, 266)
247 2 of 1872, Punjab Record (Source-Ellis, Notes, 266)
among Rajputs, such sons were excluded from the inheritance in Ambala Division. However, no distinction was made by tribes, among whom Karewa marriage were recognized. All the children shared equally whether by the first or second marriage in the Ambala and Sirsa district.

Among Sikhs Jats of the Sirsa district, a remarriage in the Karewa form with the brother of the deceased husband did not cause a forfeiture of the widow’s life-estate in the property of her first husband. It was not uncommon among the Sikh Jats, when she lost her right to the deceased husband’s estate; even she did the Karewa marriage with the brother of the deceased husband. There were numerous instances in which a sonless widow married her deceased husband’s brother, and still kept her deceased husband’s estate. The general feeling against this custom was part of the feeling against allowing land to go through a woman.

The Bagri Jats at first said that if the remarried widow bore any son to the brother of her first husband, they would succeed to the estate of her first husband to the exclusion of his other agnates, and that if she bore no son, the estate of her first husband would revert on her death to all his agnatic heirs. Some Kumhars and Khatis said that if a sonless widow married her husband’s brother, she kept the movables of her deceased husband, which went that brother, whom she married but most said that she lost all right to the moveable also, which went at once to the agnates and said a son born of the widow by her husband’s brother would succeed his own father, not his uncle. Indeed, the Chamars, Chuhras, Bawariays, Rains and Heri said the she always remained in possession, and that the sons of the widow by the brother succeeded to the deceased husband’s estate. Indeed among the Rains, the brother of the deceased husband took permanently, when a widow was sonless. Among Muslim Jats and Rajputs, a sonless widow, who had married her husband’s brother was allowed to remain in possession for her lifetime of her former husband’s estate. A widow could not marry anyone else without the consent of her husband’s agnates. She was often regularly sold by them to a stranger, in which case, she lost all claim to her deceased husband’s estate.

248 C.L. Tupper, Punjab, 92.
249 A. Kensington, Amballa District, 27; J. Wilson, Sirsa District, 107.
250 No 80, P.R. 1900 (Source- Rustom (ed.), A Digest, 59-60.)
251 No 88, P.R., 1900(Source- Rustom(ed.), A Digest, 59-60.)
252 J. Wilson, Sirsa District, 124,125.
Similarly in the central areas of Punjab, as in Sialkot district, the offspring by the Karewa marriage were entitled equally with sons of a regular marriage in all that tribes, in which the custom existed.\textsuperscript{253} The Rajputs of Zafarwal and Sialkot and the Aroras and Bhatias said that such offspring was considered illegitimate. Such children are entitled to maintenance until they were of age, i.e., male child up to the age of 18 and female child up to that of 14. Their issue was entitled to no maintenance.\textsuperscript{254} However, the decision was so entirely at variance with the feeling of the people.\textsuperscript{255} For like custom among Ambala Rajputs, Brahmans in the Ferozepur district, the issue of a Karewa marriage could not inherit, as in the case of the Gobinda Versus Kahna.\textsuperscript{256}

In Gujrat district, in all Muslims with exception of Jats had no right to succeed to his father’s property.\textsuperscript{257} In Ludhiana district, where the custom of Karewa was established, there was no distinction made between the offspring of this and of ordinary first marriage and all the children would share equally in the inheritance.\textsuperscript{258} In higher castes, children of a dharel mother did not succeed.\textsuperscript{259} Among Sartoras Rajputs of Kangra, where a widow marriage was upheld and the issue of the marriage was not excluded from inheritance.\textsuperscript{260}

On the other hand, western parts of the Punjab as in Shahpur district, in all tribes, the offspring by the Karewa, Karao or Chadar Dalna form were not entitled to inherit equally with sons, the offspring of a regular marriage because their marriage was not permitted by Muslim law and the offspring were illegitimate.\textsuperscript{261} The widow hold the whole estate till her death or remarriage, and had power to make all ordinary arrangements for its management and enjoyed the whole of its produce.\textsuperscript{262} If she remarried, she lost not only her control over her former husband’s estate in all tribes

\textsuperscript{253} J. R. Dunlop Smith, \textit{Sialkot District}, 26.
\textsuperscript{254} \textit{Ibid.}, 25-26.
\textsuperscript{255} A. Kensington, \textit{Ambala District}, 10.
\textsuperscript{256} Marriage between a higher caste and a widow (Source- C. L. Tapper, \textit{Punjab}, 63, 23.)
\textsuperscript{257} Captain H. Davies, \textit{Gujrat District}, 15.
\textsuperscript{258} T. Gordon Walker, \textit{Ludhiana District}, 71.
\textsuperscript{259} Marriage between a higher caste and a widow (Source- Rustamji, \textit{A Digest}, 186.)
\textsuperscript{260} Illegitimate sons found chiefly among higher classes were called Sartoras (\textit{Punjab District Gazetteer, Volume VII. Part A, Kangra, District}, 1924-25, 110; Rustom(ed.), \textit{Digest}, 186.)
\textsuperscript{261} J. Wilson, \textit{Shahpur District}, 62.
\textsuperscript{262} J. Wilson, \textit{Shahpur District}, 6.
in the Shahpur district, even though she married her husband’s brother. She did not lose her right by going to reside elsewhere.

In Dera Ghazi Khan District, among the Muslim tribes, sons of a Karewa marriage shared equally with other sons of the father. Moreover, the Muslim widow remained possession of her husband’s property during her life time, supposing that she did not re-marry. The custom of the Hindus of the Dera Ghazi Khan District were more akin to those of the Punjab than to orthodox Hindu law, but were opposed to some usages, such as the remarriage of widows, which were not uncommon in the Punjab. These were good instances of the fusion of law with local system.

To conclude, it seemed that amongst Brahmins and pure Rajputs, this form of marriage was reprobated and conferred no rights of inheritance on the issue born of it. Sometimes among Rajput, the issue of the marriage was not excluded from inheritance. When she was allowed her share by the Muslim law, then she might retain it in spite of remarriage. Moreover, she got her share of her second husband’s estate as fixed by the Muslim law among the Jats tribes of the Jampur tahsill in District Ghazi Khan. In some cases, it had been stated that the pure Brahmans and Rajputs did not enter into such marriages. As in the case of Brahmins, it would be more correct to say that those Brahmans, who were not engaged in agriculture, and did not form of compact village community, were ordinarily governed by personal law. In these cases, two facts are established that (a) They lived in urban areas and were engaged in non-agrarian occupation, (b) They lived in rural areas, but were not engaged in agriculture and did not form a compact group.

Some high caste Hindus did not recognize them, but particularly agricultural tribes recognized them. It may further be said that upon such a marriage, where it was valid by custom, the woman would ordinarily lost all rights in the family of her

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263 J. Wilson, Shahpur District, 7.
264 Ibid., 48.
265 A.H. Diack, Dera Ghazi, 28.
266 Hindus, did not countenance the remarriage of widows, but those of Jumrapur and Rajapur said that in the event of such a remarriage, the sons born of it would share with their half-brothers, while those of Sangarh said that they would not. (Source-Diack, Dera Ghazi Khan, 24; C. L. Tupper, Punjab, 47.)
267 Diack, Dera Ghazi, Preface, ii.
268 No 98, P.R, 1890, Sartora Rajputs (Source-Rustom, Digest, 186.)
269 Diack, Dera Ghazi Khan, 58.
270 Ibid., 22.
271 Paras Diwan, Customary laws Of Punjab And Haryana, Publication Bureau, Punjab University, Chandigarh, 1978, 57.
272 Diack, Dera Ghazi Khan, 58.
273 Rustom, A Digest, 69.
first husband. So, among certain classes, a repudiated wife might marry again by the ‘Karewa form’ as among Jats. In the absence of a custom to the contrary, her remarriage even with a stranger would not deprive the widow of any future rights of inheritance to which she would have been entitled, but not for such remarriage.

Moreover, according to the custom, ceremonies were not generally necessary to validate a marriage and co-habitation for a long period would suffice to presume marriage. In a series of cases, it had been held that cohabitation was not necessary to make a marriage legally complete. The evidence of instances was very important to the proof of custom by general evidence. The law always leaned to the side presuming marriage, where there had been a long connection. As a Hindu Jat lived for 15 years with the widow of collateral and had sons, there being no ceremony, held that there was sufficient presumption of marriage, the ceremony of Chadar Andazi even being unnecessary.

Similarly, where a Hindu co-habited with a Muslim and a child was born and the father subsequently became a Muslim and acknowledged the child as his son, then the son could inherit. But in some cases, an acknowledgement of a son and cohabitation with the mother raised a presumption of legitimacy. The burden of proving that a custom prevailed overriding the law was on those who desired to have the case decided according to such custom, as in the case of Muslim Mandal family of Karnal.

It was doubtful, however, if a similar effect would be given to an acknowledgment amongst agriculturists, though if the father had a customary power of alienation, and exercised it in favour of his illegitimate son, the latter would be

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274 Rustom (ed.), A Digest, 186.
275 Rustom, A Digest, 61.
276 T.P. Ellis, Notes, 267.
277 When a man and woman had long cohabited and had been treated by their acquaintances, and had treated each other, as man and wife, such long cohabitation plus such treatment was sufficient among Jats to establish a marriage and the legitimacy of the offspring. But where the parties lived as master and concubine and had not treated each other as man and wife, and then the same legal results did not flow from cohabitation even of long date. The essential thing was intention to live as man and wife. (Source- Rustom, Customary Law, 695.)
278 C.L. Tupper, Punjab, 23.
279 38 of 1879(Source-Ellis, Notes, 267.)
280 12 Of 1872 (Source Ellis, Notes, 267.)
281 No 13, Punjab Record, 1875. (Source- Ellis, Notes, 267.)
282 Birbal versus Sawan. No 4. Punjab Record, 1874 (Source- Tupper, Punjab, 23.)
permitted to take the estate by virtue thereof. In some cases, the father’s collaterals were stopped from denying the legitimacy of the son.\footnote{283}

Among Sikh Jat, Banya, Rora, Brahmans and Hindu Tribes, generally marriage was not presumed from cohabitation. It was necessary that some ceremony must have taken place before the brotherhood.\footnote{284} In Ambala district, most tribes said definitely that cohabitation previous to a marriage ceremony was regarded as adultery only. The Jats of Amballa was less strict in their reply.\footnote{285} The reply of the Jats and Gujars of Pipli was to the effect that if a man cohabited with his brother’s widow, without any formal Karewa ceremony, their offspring was legitimate.\footnote{286} The point was one, on which usage would probably vary in the Western Punjab. In Shahpur district, among Hindu, marriage was not presumed from cohabitation only. Similarly, among all Muslims, a marriage was not valid without Nikah according to the Muslim Law.\footnote{287}

Regarding the right of the illegitimate son, in the Dera Ghazi Khan District, the reply was unanimous that illegitimate children had no right to maintenance, among Hindus and Muslim, throughout the district.\footnote{288} They were generally held entitled by custom to receive maintenance until they were able to provide for themselves.\footnote{289} The right was to a certain extent admitted by the Bilooh tribes of Rajanpur, when the Rivaj-i-Am was first prepared.\footnote{290} They did not inherit by shares; they were, however, supported. If the father turned them a drift in his own life time, they were not even supported. If a father took care of them, in his life time, they had a right to support after his death.\footnote{291}

In central districts also, continual co-habitation might suffice to infer the existence of a marriage, where it could be presumed there was an intention of a permanent union, as in case of Hindu Ghuman Jats, Gurdaspur.\footnote{292} But co-habitation, though good evidence of a marriage, was not marriage itself.\footnote{293}
In the central hilly areas, the privilege of the widow received an extraordinary extension in the right conferred on her children by a mere liaison, provided they were born in the later husband’s house. Thus, among the Gaddis of Kangra such a child succeeded without reference to its real father, and was called a ‘Chaukandu’. But the Gaddis considered that their rights were disputable, and they could enjoy this privilege only as long as the brotherhood did not make any fuss about it. A son so born was called chaukandu rand. (Fem: randhiu). This was the valid custom among the inferior classes that the sons by a kept woman succeeded under certain circumstances.

It was held that illegitimate children were not entitled to any share in their putative father’s estate, but they could claim maintenance until they were able to earn their own living, subject to good behaviour, as among Sartoras in Kangra. Besides the remarriage, the other major factor, which deprived the widow of her right of inheritance in some tribes, was the unchastity. By village custom, unchastity would deprive a widow of her husband’s estate. The village custom making unchastity a sufficient ground for deprivation, was not in accordance with the decision in the case of Mamraj Versus Bhola and others, where the widow was not withstanding her proved unchastity, decreed to be entitled to hold her husband’s estate during her lifetime.

It followed that there was no clear defined rules; the custom of tribes varied, but generally speaking mere unchastity, unless accompanied by severance from her deceased husband’s house, did not involve forfeiture. There being no general custom

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294 As among Hindu Varaich Jats of Gujranwala, where a proprietor had lived with a woman as his wife, whom he could not legally marry, the issues, though treated as sons, were not entitled to succeed. (Source-Ellis, Notes, 267, 268.)

295 According to Rose, the deviations suggested in Punjab Notes and Queries I., Section 668, was that Chaukhandu means born within 4 years of the husband’s death, but this appeared to be wrong. (Source-Rose, Compendium, 60.)

296 C.L. Tupper, Punjab, 92.

297 H.A. Rose, Compendium, 60.

298 Rustom, A Digest, 62.

298 No 78, Punjab Record, 1869 (Source- Tupper, Punjab, 46.)
in the province. Hindu law was applied in absence of proof. The rule regarding unchastity was variously interpreted.

In Ludhiana, some tribes as Labanas, Sainis, Muslim Jats, some Hindu Jats of Samrala and a few in Ludhiana tahsil said that mere unchastity involved no forfeiture of a widow’s right, provided she did not actually leave her husband’s home. In Gurdaspur, the Sayyids, Dogars and Shaikhs of Batala asserted that if a widow acquired the reputation of unchastity, she forfeited all claim to her husband’s property, whereas it had been judicially held that among Hindu Rajputs of Shakargarh, unchastity involved no much penalty. All Rajputs of Hoshiarpur, considered unchastity, whether as before or after actual succession, involved forfeiture. Among the Hindu agriculturist of Hoshiarpur, the unchastity of the widowed mother of the last male proprietor did not involve forfeiture of her life estate, in the absence of the custom to the contrary.

In Lahore, the Arains alone said that unchastity never affected the widow’s right, as did the Chimba’s of Gujranwala, even in husband’s life. In an extract of the Rivaj-i-Am of the Sialkot district was given that “A widow or widows was or were entitled to the property of their deceased husband, so long as they were chaste and did not remarry.” As a general rule, in the case either of her unchastity or her remarriage, whether with her deceased husband’s brother or with a stranger, the widow forfeited all claims to the property.

In the hills, generally, there was a well established custom that a widow, who continued to reside in her late husband’s house could not be dispossessed, even though she openly intrigued with another man or permitted him to live in the house with her. This was the real custom also of the Ghirths and other similar castes in Kangra proper, though they did not admit the fact so bluntly. An illegitimate Son born to a widow as called the ‘Chaukandu,’ If She had continued to reside in her

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299 107 of 1888 (Source- T. P. Ellis, *Notes on Punjab*, 65.)
301 P.W.R. 1 of 1912 (Source-Ellis, *Notes*, 66.)
305 H.A. Rose, *Compendium*, 60.
deceased husband’s house. He was sometimes allowed a share in the property of her late husband.308

In eastern Punjab, all tribes agreed that remarriage destroyed the widow’s rights and the majority of them stated that the same result followed from unchastity. The general sense of the replies was however that secret immorality was not punished with penalties.309 The rule regarding unchastity in Kaithal was that it should apparently be notorious, but in Ambala most tribes alleged that unchastity involved loss in the rights of life-interest in property, but it must be open and scandalous.310 It means that a widow must show open and as for instance, where she became the mother of an illegitimate child, in order to justify ejection. Then the unanimous opinion of the people was that she lost all rights.311

In Sirsa district also, if a widow had proved unchaste by bearing an illegitimate child, or cohabited with any but an agnate of her husband or elope from her home with any stranger, this was sufficient evidence of unchastity.312 All agree in saying that in such a case, she must give up land, house, and movables of all kinds, even clothes and ornaments, and took away with her only the garments necessary for decent covering.313 It was evident that a custom might also be proved by evidence.314

The custom of the Dera Ghazi Khan district was that all tribes both Hindu and Muslim who allowed the widow a life interest in her deceased husband’s estate said that her rights were extinguished by either unchastity. Those, who allowed her share by the Muslim Law, said that she might retain it in spite of unchastity.315 In Multan, a few tribes insisted that the widow should not only remain chaste, but should continue to reside in her husband’s house.316

309 Kensington, Ambala District, 17.
310 H.A. Rose, Compendium, 63.
311 A. Kensington, Ambala District, 17.
312 J. Wilson, Sirsa District, 123.
313 In Karnal district, Muslim Rajputs of tahsil Thanesar, however, now stated that if a woman became pregnant by an illicit connection and an illegitimate step son be born, the marriage would be annulled by Muslim Law and thus the rights of the stepson would be destroyed. The Rains, as being stricter Muslim, laid stress on the point that marriage with a pregnant woman was illegal, but even they admitted that the ordinary custom prevailed in the rare case of an actual occurrence (Source-Kensington, Amballa, 21; J. Wilson, Sirsa District, 124.
314 Similarly, in another case Mamraj versus Bhola and others (No 78, Punjab Record, 1869) evidence as to custom of exclusion of widows for unchastity, too conflicting to be accepted, in Gurgaon district. (Source-Tupper, Punjab, Volume III, 60.)
315 A.H. Diack, Dera Ghazi Khan District, 17.
316 H.A. Rose, Compendium, 63.
In Punjab, generally among all the agriculturists, unchastity in the absence of custom did not involve forfeiture, but it was sometime forfeited upon proof that the widow is leading an unchaste life.\textsuperscript{317} By unchastity, a widow did not cease to be a member of her husband’s family, and only forfeited a special recognized form of maintenance, but even then she might be entitled to maintenance by her husband’s family.\textsuperscript{318} Moreover, continued unchastity prior to husband’s death involved forfeiture of right to a life estate, as among agriculturist of Ferozpur.\textsuperscript{319} When unchastity of a widow occurred after alienation, it would not affect the interest of a bonafide alienee for consideration. Where unchastity involved forfeiture, the forfeiture dated back to the dates of unchastity and all subsequent alienations by the widow were void.\textsuperscript{320}

Now, it would have been noted that the Hindu rule of forfeiture on unchastity applied in absence of a contrary custom.\textsuperscript{321} It by no means followed that because remarriage caused forfeiture, unchastity would also do. A remarriage caused the widow to pass into another family, where she acquired other rights, and ceases to require her husband’s share for her support; she could not take that share with her for the benefit of her second husband.\textsuperscript{322}

V

In India, before the modifications introduced by the Hindu law of Inheritance Act, 1929, Hindu Women’s Right to Property Act XVIII of 1937, and the Hindu Succession Act XXX of 1956, the widow ‘only succeeded to her husband’s estate in the absence of a son, son’s son, son’s of the deceased under both Dayabhaga and Mitakshara Law.\textsuperscript{323} The estate, which she took by succession to her husband, was that estate which she held only for her lifetime.\textsuperscript{324} The Hindus had been governed by different schools of legal thoughts in different parts of the country.\textsuperscript{325}

\textsuperscript{317} No. 78, P.R. 1869 (Source-Ellis, Notes, 66; Rustomji, A Digest, 32.)
\textsuperscript{318} 108 of 1913 (Source-Ellis, Notes, 67.)
\textsuperscript{319} P.L.R. 104 of 1903 (Source-Ellis, Notes, 66.)
\textsuperscript{320} C.A. 810 of 1908(Source-Ellis , Notes, 67.)
\textsuperscript{321} P.W.R. 57 of 1903; 900 of 1888(Source-Ellis , Notes, 65.)
\textsuperscript{322} Ellis, Notes, 65.
\textsuperscript{323} Hindu law of Inheritance Act, 1929, recognized son’s daughter, daughter’s daughter, sister and sister son as among the heritable persons. Hindu Women’s Right to Property Act XVIII of 1937 entitled a widow to the same share, which a son received in the property, if he was alive. Hindu Succession Act XXX of 1956 abolished the laws of Dayabhaga and Mitakshara. It also made women an absolute owner of the property. (Source- Desai, Women, 186)
\textsuperscript{324} Janaki Nair, Women And Law, 64.
\textsuperscript{325} The Mitakshara system with its four divisions (The Bombay, the Mithila, the Benaras, and the Madras Schools), had been prevailing, while the Dayabhaga system had been operating in Bengal. Under the Mitakshara Law, no female could be a co-sharer, where as under the Dayabhaga system,
The Widow Remarriage Act of 1856 had stipulated that widows about to remarry would forfeit their husband’s property. Later on, a legal loophole emerged in the ‘Great Unchastity Case’. Thus again, an adulterous widow was entitled to retain the custody and guardianship of her children, while the remarrying widow was deprived of them. The drawbacks in the law were accepted by the law makers also. So, this act was very unfair. It led to the ludicrous results, whether to encourage the remarriage of widow or immoral life. In other words, law was preferring unchastity to remarriage. So, there were most deplorable scandals about widows. The provisions of the act of 1856, as it was applied in several parts of the country were soon found ‘to some extent misleading’, especially with regard to the regions and castes among which widow remarriage was prescribed. According to the Hindu law (Banaras School), a widow could not remarry. By section 2, Act XV of 1856, all rights and interests of a Hindu widow in her deceased husband’s property upon her remarriage ceased, as if she had then died; and the next heirs of her deceased husband or other persons entitled to the property on her death should thereupon succeed to the same.

Now question has arisen in provinces, where there had been no statutory recognition custom, whether Act XV of 1856 involved forfeiture even amongst castes allowing remarriage by widows. The high court, N.W.F. had consistently held that in such cases, the act could be applied. But the Calcutta Court, the Bombay Court and the Madras High Court held differently.

In the Punjab, the question was specialized by the fact that Act IV of 1872 (The Punjab Laws Act), a subsequent act to the Hindu Widow’s Remarriage Act (XV

the widow used to get a share in the joint family property, after the death of her husband (Source- Meenakshi Thapan, Embodiment, 57; Neera Desai, Women In Modern India, 184.)

In the case of Kerry Kolitani vs Moniram Kolita case of 1873, a widow accused of subsequent adultery continued to access the property. Since she was chaste, when she came into property, and after that, the right became an absolute one. It tore upon the system that had made women’s property right conditional on her chastity. Gokul Das Kahan Dass Parekh, a reformer from Bombay Presidency observed that in several matters, the legal and social position of an adulterous widow was superior to that remarrying one. The High Courts of Bombay and Calcutta had all laid down that adultery did not divert the widow of interest once vested in her, while the widow remarriage act effected that divesture. (Source- Tapan, Embodiment, 57, 87; GiduMal, The Status, 189.)

Daya Ram Gidumal, The Status, 189.

As C. Ramchandra Aiyar, Sub Judge, Madura concluded that this law allowed a Hindu widow to lead a life of open prostitution retaining possession of her husband’s property, while the hallowed tie of matrimony entailed for forfeiture of property according to act XV of 1856. (Source-GiduMal, The Status, 193.)

J. Wilson, Sirsa District, 65.

C.L. Tupper, Punjab. 55.

Rustam, A Digest, 60.
of 1856) has enacted (Section 5) that in the Punjab, custom was to be first rule of decision in all cases of inheritance and succession. Hence, it followed that the courts in this province must give effect to a custom against forfeiture on remarriage, when proved to exist. It had however, been held that under the provisions of the Hindu Widow’s Remarriage Act, the issues of a Karewa marriage were legitimate even where, by the custom of the parties, such remarriages were not recognized. Moreover, The Hindu Widow’s Re-Marriage Act, 1856, did not override the custom under which a widow in the Punjab by marrying her deceased husband’s brother (in the Karewa form) did not forfeit her right to the estate of her deceased husband.

However, a Hindu widow by marriage forfeited existing rights only. It was held, therefore, that she was entitled on the death of her son to succeed to the property, which he inherited from his father, her first husband as in case of Roopam versus Hakim Singh in Amritsar district. Similarly, amongst Sayads and Pathans of Kharkhodah, the widow retained her life-interest in her first husband’s estate, if upon remarriage; she continues to reside in her first husband’s home.

The Sikhs of Amritsar involves forfeiture only in that case, if she was unchaste and left her husband’s house, she lost estate, as such departure involved separation from the household. In 1868, in a case, Ramdhun versus Kurm Kour (No.85), in Amritsar District, the court ruled that a Hindu widow was liable to forfeit her life-interest in the estate of her deceased husband for unchastity. An opinion of Hindu Pandits had been called for by the lower court. Later on, this was overruled in 1869 (No. 78, Punjab Record). However, there was no fixed rule for widow’s share. The right of a widow was constantly changing such as share in property, alienation, gift and will under the colonial period.

As in Sialkot, there was a strong tendency to abandon chundavand. The Kangra District Gazetteer of 1926 pointed out that during the British period, there seemed to be good deal of dissatisfaction with the chundabandh system. Where as, in the eastern Punjab, the rule of chundavand was now becoming rare, except among

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332 Rustam, A Digest, 60.
333 No 61, P.R. 1905 (Source- Rustomji, A Digest, 60, 61.)
334 Rustom, A Digest, 60.
335 No 37, Punjab Record, 1870 (Source- C. L. Tupper, Punjab, 61.)
336 Rustam, A Digest, 60.
337 34 of 1893 (Source-Ellis, Notes, 66.)
338 C.L. Tupper, Punjab, 59.
339 H.A. Rose, Compendium, 42.
340 Jonathan Partly, Caste And Kinship In Kangra, 165-166.
Rajputs.\textsuperscript{341} The Sikh Jats and Wattus said that formerly the rule of division according to the number of mother was more commonly followed and that now, division according to the number of sons was the almost universal role.\textsuperscript{342}

In several cases, the widows were refused share of the claimed partition. Among the Sikh Jats in Ambala, where the widow sued for partition of a third share in her husband’s estate held jointly by herself and his son and grandson, She was refused, as a Hindu widow, neither could claim partition, nor could she do so as representative of her missing son.\textsuperscript{343} In similar case, in Karnal, a widow in the Muslim Mandal family was excluded by custom from inheriting any portion of her husband’s estates.\textsuperscript{344} New interpretation of custom during the colonial period thus, introduced changes in customary inheritance of widows.

All this raises a question that could a widow sell her deceased husband’s property in order to liquidate, the just antecedent debts of her husband or to raise money for a legal necessity? Florde and Campbell had commented that without clear proof of real necessity, a widow’s debts could not be treated as just antecedent debts enabling her to transfer her husband’s land.\textsuperscript{345} About mortgage by a widow to defray reasonable marriage expenses of daughter, the learned Judge was of opinion that there should be reasonable expenditure by widow.\textsuperscript{346} The judge viewed that it was unnecessary to present jewellery to daughter and entertainment of guests. Even, exchange of land by widow to improve the estate was not allowed under ‘necessity’.\textsuperscript{347} If a widow sold the land, when it was contested in a court that Judges accepted sale only for ‘necessity’. As J. Rattigan opined that in these cases, court would be justified in converting the sale into a mortgage in respect of such part of the consideration money as was for necessity.\textsuperscript{348} So, also in case of Luckee and Jotee versus Bhoochee, though the widow had been in possession more than twelve years, but it was an undoubted canon of Hindu Law that a widow had no power to alienate or devise any portion of her husband’s estate, which on her death, devolved to his

\textsuperscript{341} H.A. Rose, \textit{Compendium}, 41.
\textsuperscript{342} Wilson, \textit{Sirsa District}, 117.
\textsuperscript{343} No 93, Punjab Record, 1869(Source- Punjab, 60.)
\textsuperscript{344} No 13, Punjab Record, 1875(Source- C.L. Tupper, Punjab 66.)
\textsuperscript{345} Rustom, \textit{Customary}, 539.
\textsuperscript{346} 67 P.R, 1884(Source- Rustom, \textit{Customary}, 42.)
\textsuperscript{347} Ibid., 542.
\textsuperscript{348} 33 P.R., 1911(Source-Rattigan, \textit{A Digest}, 119)
legal heirs. In a case, Ragbir Singh Versus Dya Singh, the chief court assumed that the property in a suit to be Stridhan ruled that a widow could not alienate immoveable property left her by her husband, whether that property consisted of land or houses. The Anglo-Indian courts had now substantially decided that Hindu law limited the Stridhan to property given to the women at her marriage either by her family or her husband. The real fact was that in village communities such a thing as woman’s peculium or separate property rarely existed.

In some cases, it had been observed that a widow had not power to give as donation as in the case of Kurm Kaur Versus Ramdhun in Amritsar district, No. 89, Punjab Record, 1866. In this case, the childless widow contended that the wish of her deceased husband that she should build a thakurdwara and sink a well, justified alienation. However, the court held that Ramdhun, brother-in-law, was reversionary heir, whose right could not be alienated.

However, alienations in favor of daughters or daughter’s son had been upheld in numerous cases relating to different Muslim tribes of the Jhelum district. In case of Hijjo and Hatan versus Meer Muhammad and Sheikh Kabeer (Case No54, Punjab Record, 1867), the widow Hijjo belonged to a village in Jullundur district, she executed a deed of gift in favor of her married daughter Hatan. The Wajib-ul-arz of the village contained this clause- “If any one of the share holders die without issue (La-Wuld), his widow would have a life interest”. It appeared that ‘La-Wuld’ locally meant ‘without male issue’. The Wajib-ul-Arz, signified also the consent of the community to be bound thereby following it, the deed of gift was cancelled, and the widow declared entitled to a life-interest. The Qazi of Lahore had been consulted on the law. In case of Sahabjan v Karmbaksh, the parties were Muslim Rajputs of Hoshiarpur. The plaintiff, fifth in descent from a common ancestor, claimed the property of the deceased to the exclusion of his daughter. The Wajib-ul-arz provided that on the death of the proprietor, without male issue, his widows would succeed and on her death, his Karabtian. Twenty witnesses were against and twelve for the claim

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349 No. 8, Punjab Record, 1874 (Source-C.L. Tupper, Punjab, 54-56.)
350 Case No 38, P.R, 1873 (Source-Wilson, Shahpur, 103.)
351 C.L. Tupper, Punjab, Volume, 102.
352 Ibid., 101.
353 H.A. Rose, Compendium, 68.
354 Rustomji, Punjab Customary, 625.
356 No. 80, Punjab Record, 1875 (Source-Tupper, Punjab, Volume III, 66.)
of the daughter, which was rejected. The word ‘Karabtian referred to the next heirs male, the British also supported this.\textsuperscript{357} As a general rule, among Hindus in the east of the Punjab, daughters had no right of inheritance in their father’s property nor did widow have the power to alienation in favor of daughter as in case of Nepah Khan and Begam and others.\textsuperscript{358}

In another case, Agarwals of Jagadhari in his self-acquired property did not follow custom. This daughter was allowed to succeed in presence of brothers and nephews.\textsuperscript{359} The British also thought that daughters and their sons should not inherit if the daughter has married into another got. So, the courts, generally ruled that in the presence of male heirs within five degrees of kindred, daughters could not take, as in case of Wazeera and Peera v Hlako and Mango (No 81) in 1867.\textsuperscript{360} If she would inherit, provided that such succession would not be opposed to local custom, as in case (No 40) of Ram and Muthra Das and loorindee, in 1867 that unless there be a local custom to the contrary, a childless widowed daughter does not inherit property from her father absolutely, but only for life and she can not alienate any portion of it, save for proved necessity.\textsuperscript{361}

However, the conclusions of Messrs. Boulnois and Rattigan might be thus stated-

(1) Customary law with regard to the alienation of property followed strictly neither the Hindu nor the Muslim law; nor, indeed, was there any uniform customary law on the Subject.

(2) Village custom did not recognize any material distinction between gifts and wills.

(3) It had once been held to be the universal custom of the country that gifts to daughters could only be made with the consent of the male collaterals. On the other hand, there were numerous cases where gifts to daughters and sister’s son have been upheld as valid.\textsuperscript{362}

\textsuperscript{357} Tupper, \textit{Punjab Customary, Volume III}, 66
\textsuperscript{358} The parties were Pathans of a Muslim village in tahsil Palwal, Gurgaon district (110 of 1884). The widow of Jiwan Mal made a gift of property inherited by her from him to her grandsons by one daughter, the latter being residents in a different village. Plaintiffs were descended from a common ancestor with Jiwan Khan, found that by custom the widow could operate alienation only for her life time. (Source-Ellis, Notes, 24.)
\textsuperscript{359} T.P. Ellis, \textit{Notes}, 26.
\textsuperscript{361} C. L. Tupper, \textit{Punjab}, 50.
\textsuperscript{362} C.L. Tupper, \textit{Punjab}, 105.
As regards divergence of the customary law on the alienation and gifts by the widow, it lied with the degree of separation in interest effected in the village community and with the position of the donee, whether as on heir or as a stranger.

To conclude, mostly agricultural tribes followed custom in Punjab, which varied according to tribe and locality, other tribes or castes. Sometimes, in regard to land, followed customs akin to agricultural custom or followed their own special customs. It should be noted that agricultural tribes like Jats, Rajputs, etc., almost invariably followed custom. About Jats, it could be concluded that they were almost universally governed by custom. The customs was not applied to those, who had altogether drifted away from agriculture as their main occupation and had settled for good to urban life and had adopted trade, industry or service as their principal occupation.

In regard to Hindu Law, where they were agriculturists, they generally followed custom and the castes, which did not follow it, were usually engaged in business or in priestly function. As a general rule, it might be assumed that Brahmins did not observe customary law, but an exception to this rule was to be found only in those cases, where the parties were shown to have more or less assimilated themselves to their peasant neighbors. A fair test of this was, whether they had given up their priestly functions and directed their attentions mainly to agriculture. It could not be denied that there were many Brahmins, who were governed by customary law in the Punjab. Moreover, the members of non-agricultural tribes were not to be held to follow custom simply because they owned land and live with agriculturists. In some cases, the mere acceptance of service by an agriculturist did not abate him from customary law. So, while deciding the case, British take consideration of this fact, whether a tribe, not primarily agricultural, followed custom or law. The fact that if a tribe is was not an agricultural tribe under

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365 Ellis, *Notes*, 10.
366 P.L.R. 105 of 1911, Ludhiana District (Source-Ellis, *Notes*, 13.)
368 Ibid., 12.
369 Ibid., 18.
the Land Alienation Act, then it did not follow custom, nor per contra was the fact that a tribe was gazette proof that it followed custom.\textsuperscript{372}

It appeared difficult to lay down a rule of general application. Much would depend upon the facts of each case and the constitution of a village, or in which the community was a compact one, the probability was that heirless land would be taken possession of by the tribes’ men or the community and the strangers would be excluded.

However, in the central hilly areas as in the Kangra district, land was not ordinarily held on tribal principles, and a village community. There was something very different from a village community in the plains.\textsuperscript{373}

It will be noted that the general truth of these remarks had been appeared from the examination of different districts of the Punjab. Briefly it would have seen that on the frontier, in its greatest perfection, in its disintegrated tribe; the eastern and the central Punjab form the special home of the village community.\textsuperscript{374}

It may be said that the account of Punjab Customary Law did not relate to any specific tribe, or any specific locality or village, still less does it relate to all tribes and all villages.\textsuperscript{375} To ascertain, we may observe that the features of western Punjab was quite distinct from other parts. It might be stated that in regard to certain Muslim tribes, even though engaged in agricultural pursuits, there was a tendency to adopt some rule of Muslim Law, particularly where the tribe has a quasi-sacred origin like Sayyads and Koreshis or where they reside in a largely Muslim Tract, as the Western Punjab.\textsuperscript{376} The Muslim widows were entitled to a life-interest without power of

\textsuperscript{372} Eills, Notes, 29.
\textsuperscript{373} In theory, a Punjab village in ordinarily a piece of land, originally waste acquired by conquest, purchase or other manner, and brought under cultivation by one or more members of a single tribe or families belonging to two or more tribes associated for this purpose. The entire proprietary right belonged to the founders or their descendants. But in the hills before the advent of British, each Raja was theoretically the landlord of the entire area in his raj. There was formerly no ownership, no village community. The expression “village community” was used in a popular sense to denote a body of persons bound together by the tie of residence in one and the same village, amenable to village customs and subject to the administrative control of village officers. (Source-Ellis, Notes, 51; Rustom, Digest, 231.)
\textsuperscript{374} Tupper, Punjab, Volume II, 66.
\textsuperscript{375} Tupper, Punjab, Volume II, 77.
\textsuperscript{376} Having glanced at the composition and salient characteristics of the Muslim tribes of the western Punjab, the total population of the tract in 1885 was nearly six and half million. But 87 percent of the population was Muslims. 12 percent and one percent was Hindu and Sikh population respectively. Of the whole population, 91 percent was rural and of that population 92 percent were Muslim. We find that quite two-third of the resident of towns were Hindus. But these people cut off from the rest of the world by desert and hills, the people were caged in their surroundings, and, like birds born in captivity, had small desire for anything else. Moreover if west is compared with the north, we found
alienation except for necessity. The idea of an absolute power of alienation in one member of the family was not found in customary law.

It was also known that in the Punjab, the Hindu and Muslim, though differing in religion were often united together in the village community. As it was natural that they should be bound by the same common rules, regulating the devolution and dispossession of property which, in theory and frequently in practice, was recognized as involving a community of interest. It had been felt that on the habits and customs of the rural population that neither the Shara nor the Shastras really exercised any direct influence among them in regard to such matter. Thus, in the Muzaffargarh district, the Brahmans had declared their adherence to Jat custom and it was said that there was scarcely a Brahmin there, who had the slightest knowledge of the Hindu Law books, or was even acquainted with their names.

It is most remarkable that the Punjabis though adopted Hinduism or Islam as their religion, yet declined to be governed in their secular matters by Hindu or Muslim Law. They were regulated by a variety of customs, which were different from the personal law Hindu Law and Muslim Law. It was then inferred from the tribal origin of property that kinship still operated to regulate its enjoyment. Rattigan found that custom excluded females and their offspring from the succession with varying degrees of strictness. As a rule, daughters and their sons, were excluded by near male collaterals was traceable in some cases. We have also found that there was among Jats, a customary right of representation, which extended to collateral as well as lineal succession. Jats had quite some different customs in the Punjab due to the importance of female labour. Hugh Kennedy Trevaskis, Director of Land Record, Punjab, wrote that during the war, when I was at Sonepat, my wife used to visit the houses of those Hindu Jats widows, who had lost their husbands in the war, and was
much struck by their splendid physique and their practical sagacity. The Jats were also partly Hindu, partly Muslim, and partly Sikh. However, Hindu Jats were exceptionally free from any restraints.

In cases, where the parties were high castes Hindus as Khatris, Aroras and Bania, the burden of proof was on the party, who alleged that custom, and not personal law applied. Once it was established that a caste was a compact village community and its principal occupation was agriculture, the initial presumption stood rebutted and it would be governed by customary law.

About the menial and artisan classes, it was only necessary to mention that they were shown to have adopted agricultural custom, then otherwise one had to follow personal law as in case of Lahore (87 of 1879), succession was done by personal Law. However, it was the discretion of the government to interpret custom, as like as the British gave conflicting judgments in different cases of Karewa. In one case of Rajputs of Gurdaspur, the case was decided in the favor of Karewa widow’s right to inherit, on the ground that no sufficient custom was proved to upset the law contained in section I of Act XV of 1856, which expressly legalized widow marriages among all Hindus. But in another case, Zoolfoo versus Ahmed and Others, parties were Rajputs of Amballa. Zoolfoo’s grandmother was a Karewa wife. In that tribe, by custom, the descendants of a Karewa marriage did not inherit. Zoolfoo had inherited his father’s property. His claim, which was through the grandmother, to collateral property was rejected by British.

Among agricultural tribes in the Punjab, a widow, who had no son inherited as a rule only a life interest in her deceased husband’s land. Her right was indisputable, but it was one that was viewed with great jealousy by the ultimate heirs, where her property consisted of a share in a joint holding they were very loath to allow her separate possession from a fear, often well founded, that she would manage it badly and probably in the end attempted to alienate it. Where the holding remained

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388 Every rural community maintained a staff of village servants, such as Scavengers, Carpenters, Leather-workers, and Blacksmith, who received for their services fixed grain payments at harvest time. There was also in every village a number of low caste professionals- Barbers, Weavers, Potters, Oil-pressers, Dyers and Washers, who like in addition to practicing their hereditary callings also worked as field labourers. (Source- Thorburn, *The Musalmans*, 19; Ellis, *Notes*, 10, 28.)
undivided, the widow often found at difficult to obtain her fair share of the produce. If, however, satisfactory arrangements could be made to secure for her the due enjoyment of her life interest without partition, it should be disallowed. A widow’s application for partition was often strongly opposed by the other-co-sharer.\textsuperscript{391}

It points out that family quarrels came with the demand of property by widows. It had been held that in respect of property, the girl or married women was wholly under the power of her father, or her husband, or her near male agnates.

There were the many forces acting against widows. These forces were operative in the form of family, relation, village’s community, tribal council and government. When a person, died, leaving no male offspring, his brothers, or his nephews, of the full blood, assumed the right of succession, to which the widow or widows became competitors.\textsuperscript{392} The limits to the proprietary rights of the widow were set by the expectations and authority of her husband’s kin. Kinship was thus the paramount influence in regulating property and obligations.\textsuperscript{393} The adoption by the widows was not allowed, and the female line was entirely excluded from the succession, to prevent the estates merging in the possessions of another family.

The Sikhs, with a view to avoid an open and direct violation of a known law, had a custom termed Karewa, or Chadurda\textit{na}, which was obtained in every family.\textsuperscript{394} The Muslim and Hindu Laws on inheritance, as inculcated by the Shura (Shara) and Metakshara (Mitakshara), to be made the leading principle in succession to landed property, were very few.\textsuperscript{395} Where usage conflicted as it exceedingly often did. We could notice in the rulings of the courts. But the reason lied, either in the cecadence of this type, because family feeling had been relaxed or severalty had broken up the village, or Muslim law had dominated custom. This view explained at once the similitude and the diversity of Punjab custom.\textsuperscript{396}

This raises a question that how far this marginal group, widows might be showed their attitude in matters related to property. Steinbach noted that ‘the custom acts as a counteractive to the many evil attendants on female rule. If the free will of a

\textsuperscript{391} Hugh Kennedy Trevaskis, \textit{The Punjab Of To-day, Volume I}, Civil And Military Press, Lahore, 1931, 166.
\textsuperscript{392} Steinbach, \textit{Punjab}, 79-80.
\textsuperscript{393} C.L. Tupper, \textit{Punjab, Volume II}, 84.
\textsuperscript{394} Steinbach, \textit{Punjab}, 80.
\textsuperscript{395} Steinbach, \textit{Punjab}, 81.
\textsuperscript{396} C.L. Tupper, \textit{Punjab, Volume II}, 77.
widow was consulted, it was scarcely to be doubted that she would prefer the possession of power and charms of liberty, to the alternative of sacrificing her claims to her brother-in-law and taking her station amongst his rival wives'. It was not to be expected that if a widow had taken the property in her hand, she had right of alienation. She could not do so except necessity, as defined by British. She had right only for life term. She was dependant on collaterals. Accordingly, necessity, not choice, must have led them to yield to the adoption of a usage.97

The breakup of land and resource was perceived as inevitable, if a widow was allowed to have her way.98 Thus the anxiety of the British, to preserve the old order in Punjab was quite simply because it was these sturdy Jat peasant communities on which the revenue was settled. The prevention of the fragmentation of landholdings was a prime concern of the British even as late as 1936 and especially after the 1856 act served to keep property within the patriarchal family and to the exclusion of widows.99

97 Steinbach, Punjab, 80.
98 Moris R. Jakobsh, Relocating Gender In Sikh History, Oxford University Press, Delhi. 2007. 77.
99 Janaki Nair, Women And Law, 65.