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The Widow and Her Rights Redefined

Why was the position of women in India the focus of colonial legal reform? How did Indians themselves react to the critique of 'tradition', and how was the law seen as the tool for the reform of the status of women? To what extent did legislative intervention, whether of the punitive or the enabling kind, transform the position of women? How was the widow and her rights central to the reimagining of women's status in the 19th century and later?

Recent feminist scholarship allows us to reframe the period of 19th-century 'social reform'. For one, the extraordinary energy with which the colonial intelligentsia debated questions concerning women—for example, sati (widow immolation), widow remarriage or child marriage—were issues which concerned primarily upper-caste, middle-class women. These concerns cannot be disconnected from each other and from wider changes in the political economy of colonial India, since part of the colonial agenda was the transformation of the household as a unit. But was the Indian family to be seen as a religious unit or as an economic unit? Was it to be understood as space to be defended, an institution to be slightly modernized or a set of relations to be thoroughly recast? These questions wracked debates throughout the 19th century as the family form and conjugality were aligned with the emerging needs of capital.

The Family in Focus

The deindustrialization of India that transformed it from a manufacturing nation into a raw material producer, the assignment of property rights to *zamindar*s that underwrote their feudal powers and reduced the rights of tenants, the development of enclaves of capital in plantations and mines, the active discouragement of industry and the constant effort of the British to widen their circle of indigenous collaborators—all these had profound effects

on the family form and produced serious realignments within the family and in gender relations.

The ideology of the patriarchal nuclear family also gained ground through the efforts of colonial administrators, missionaries and educators. The ideal of companionate marriage, for example, increasingly took root amongst educated Indians. Some were therefore willing collaborators in modernizing, if not recasting entirely, gender relations.

However, as the 19th century wore on, the early optimism about cultural regeneration among liberal intellectuals such as Ram Mohan Roy and Ishwar Chandra Vidyasagar gave way to a growing disenchantment. The outcome was a form of 'nationalist revivalism' which regarded the household, and specifically conjugality, as 'the last independent space left to the colonised Hindu'.[1] Indian patriarchy was therefore recast to reflect some of these contradictory ideals, offering women new responsibilities towards race and nation and new opportunities for education. It also made the middle-class Indian woman the bearer of an Indian tradition, a spiritualized, uncolonized 'other'. Finally, it also opened up the possibility for women to claim rights as individuals.

Feminist scholars have shown that competing discourses on particular issues reveal great commonalities, rather than differences, between colonialists, nationalist reformers and traditional intellectuals who framed questions concerning the status of women.[2] Colonial reformers in the early part of the 19th century were confident of their legal authority in transforming the social sphere, but later—especially after 1857—made accommodations with, and even took lessons from, the more resolute forms of patriarchal domination in India. But the emergence of women's associations and organizations in the 20th century further challenged and transformed this hitherto male-dominated discourse, though women too sometimes concurred with, rather than differing from, perspectives of male counterparts.

Women's writings rarely reflected the same concerns as those which so seriously engaged their male counterparts in the earlier part of the century.

[1] Tanika Sarkar, 'Conjugality and Hindu Nationalism: Resisting Colonial Reason and the Death of a Child Wife', in *Hindu Wife, Hindu Nation: Community, Religion and Cultural Nationalism*, by Tanika Sarkar, pp. 191–225 (Permanent Black, 2001), p. 198.

[2] The study of 'discourse', as discussed in this work, is the study of documents and practices elaborated by Michel Foucault in *The Archaeology of Knowledge* (Pantheon Books, 1972). Following Foucault, discourse is not equivalent to, or reducible to, language but refers to 'practices that systematically form the objects of which they speak' (p. 49). The study of 'discourses' permits plotting the ways in which persistent themes emerge in simultaneous, successive, even incompatible concepts (p. 35).

Legislation was never seen as an adequate mode of transforming Indian society, and the institution of marriage, however democratized, was not always conceived as the only framework for the resolution of women's problems. The writings therefore provide fresh insights on the emerging subjectivities of women, enabling a far sharper evaluation of the 19th-century impulse to reform. The period of 'social reform' can thus no longer be seen as having been unequivocally 'good' for women in particular or Indian society as whole, but as an uneven process, instituting new possibilities for women as well as defining new boundaries.

Viewed in this light, the efforts of early Indian reformers more appropriately constitute the bridgehead of cultural nationalism. The nationalists, as Partha Chatterjee has noted, established their hegemony over the home even before they launched their political battles.[3] Yet this was not an even process across the subcontinent, and the separation of the spheres of the public and the private, hegemonized by the colonialists and nationalists respectively, cannot be exaggerated. The colonizers protected their own private/domestic spheres from 'native' scrutiny, while white women who signified racial difference were protected from Indian men.[4] Second, and more important, the colonial judicature often intervened both to preserve Indian patriarchy and sometimes to challenge it, as the case law seems to suggest. Moreover, 'it is not enough to say that the private world was publicized, for it actually gave birth to the public domain…. [T]he conjoining of private and public domains occurred for the first time over the immolation [sati] debates.'[5] Finally, the modalities of power were uneven, between British India and the princely states, between the caste-based societies and tribal ones, between regulation areas and non-regulation ones. The willingness of indigenous bureaucracies (for instance, in

[3] Chatterjee, *The Nation and Its Fragments: Colonial and Postcolonial Histories* (Princeton University Press, 1993), pp. 135–57.

[4] There was close surveillance of European prostitutes in Bombay, fearing a breach of racial stratification. Ashwini Tambe, *Codes of Misconduct: Regulating Prostitution in Late Colonial Bombay* (University of Minnesota Press, 2009), pp. 52–78; Janaki Nair, '"Imperial Reason", National Honour and New Patriarchal Compacts in Early Twentieth-century India', *History Workshop Journal* 66 (Autumn 2008), pp. 208–26. Similarly, the censorship laws of 1927 were the colonial state's attempt to prevent Indian audiences from viewing promiscuous white women on screen. Madhava Prasad, 'The Natives Are Looking: Cinema and Censorship in Colonial India', in *Law's Moving Image*, ed. Leslie Moran, Elena Loizidou, Ian Christie and Emma Sandon, pp. 161–72 (Routledge, 2004).

[5] Tanika Sarkar, 'Holy Fire Eaters', in *Rebels, Wives, Saints: Designing Selves and Nations in Colonial Times*, by Tanika Sarkar, pp. 13–68 (Seagull Books, 2009), p. 41.

princely states) to enter the field of social reform through legislation, where the colonial state feared to tread, led to a less well-defined separation of private and public domains.

Imperialism and a Critique of Indian Womanhood

A strategy which was followed by nearly all imperial powers in the 19th century was to foreground the denigrated position of women in those societies they ruled, to compare them with the purported 'freedoms' enjoyed by the European woman. This was done by singling out (usually uncommon) practices which degraded women as emblematic of the culture as a whole, and therefore worthy of reform—widow immolation (India), foot-binding (China) and clitoridectomy (parts of the African continent) are examples.

The focused attacks of the evangelicals, utilitarians and Anglicists in India were on those practices seen as indicative of the sexual depravities of the Indian people. The early age of marriage, the multiplicity of wives (or husbands) and, in some Indian households, the mysteries of the *zenana* (women's quarters) were practices which appeared particularly unjust to women and rooted in pervasive Indian notions about the insatiable sexual appetites of women. Thus, upper-caste fears about the incorrigible sexuality of widows led to the imposition of extraordinary constraints and regulations on the lives of these women. Early British rulers were convinced that interference with religious practices of the indigenous people could pose a risk to the continuation of British rule in India. This changed as British rule became more firmly established. Direct and forceful interventions in the social life of Indians became possible and emboldened British measures relating to religious questions.

In part, this was enabled by the emergence of the Indian middle class which acknowledged the need to modernize their social practices. But the intensity of anti-British feeling, especially as it was expressed in the rebellion of 1857, produced fresh anxieties and led to the Queen's solemn proclamation in 1859 promising absolute non-interference in religious matters—except on the specific request or invitation of Indian reformers. One of the principal outcomes of this period of cultural nationalism was the ambivalent link that was established between 'faith' and 'law', with important repercussions that have been felt up to the present day.

The initiatives for, and efficacy of, legislation for social change in 19th-century India will be considered in this ever-changing field of forces. This chapter will discuss the widow as she came into focus in the

19th century: the abolition of widow immolation and the legalisation of widow remarriage.

Widow Immolation and Its Abolition

In India, the practice which invited the early reforming zeal of colonial and missionary authorities was the practice of widow immolation, which Hindu religious ideology had inscribed as 'sati'. The upper-caste Hindu widow, in the newly acquired province of Bengal, was an object of particular fascination for the colonial official. Deprived of both productive and reproductive roles in society, she was not only condemned to social 'death', but in many cases was also immolated along with her husband as 'sati'. Widows posed a threat to the moral order since, as the colonial judiciary noted, 'in Bengal, the prostitute class seems to be chiefly recruited from ranks of Hindu widows'.[6] Ratnabali Chatterjee notes that the common term *rarh* was used in the early 19th century for both widows and prostitutes; only later was there a distinction made between *bidhaba* (widow) and *beshya* (prostitute).[7]

But did the 'sati' burn for a positive reason or only to escape a miserable life? Colonial officials expressed horror over a woman being publicly burnt alive, but argued that the practice appeared to enjoy the sanction of the *sastra*s. Nathaniel Halhed's version of the digest for use by English judges concluded its chapter on the duties of women by saying:

> It is proper for a woman, after her husband's death, to burn herself in the fire with his corpse; every woman who thus burns herself shall remain in Paradise with her husband 3 crores and 50 lakhs of years by destiny; if she cannot burn, she must in that case preserve an inviolable chastity, if she always remains chaste, she goes to paradise, and if she does not preserve her chastity she goes to hell.[8]

For a long time, the British refused to legislate on sati, fearful of social revolt. Yet this was at odds with their self-proclaimed role of introducing 'civilization' to India. Therefore, one early compromise was to make an elaborate distinction between 'good' (scripturally sanctioned) and 'bad' sati.

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[6] Ratnabali Chatterjee, *The Queen's Daughters: Prostitutes as an Outcast Group in Colonial India* (Chr. Michelsen Institute, 1992), p. 26.

[7] Ibid.; Tanika Sarkar, 'Wicked Widows: Law and Faith in Nineteenth-century Public Sphere Debates', in *Rebels, Wives and Saints*, by Tanika Sarkar, pp. 121–52 (Seagull Books, 2009), p. 141.

[8] Nathaniel B. Halhed, *A Code of Gentoo Laws or Ordinations of the Pundits* (Fort William, 1776), p. 253.

Thus, 'sati became … simultaneously the moral justification for empire and an ideal of female devotion'.[9] Sati invoked horror mingled with admiration.

The British obsession with the spectacle of widow immolation was boundless, producing thousands of parliamentary papers on the subject, even as the 'mortality of millions from disease and starvation, often as a result of British policy itself, received little mention'.[10] The sheer volume of documents generated at various levels of the colonial judicature have permitted analysis of the nature and incidence of the cases themselves.

The first recorded enquiry about widow immolation took place in 1789. It took 40 years for the practice to be outlawed (1829).[11] Widow immolation was first outlawed in Calcutta proper from as early as 1798 because the city fell under the jurisdiction of British law. M. H. Brooke, the collector of Shahabad, uncertain about the status of regions beyond Calcutta, prohibited the burning of a widow and sought approval for his action. Since the stated policy of the EIC was to avoid any action that would raise the indignation of the inhabitants, the governor general advised tactics of persuasion rather than the use of official authority in discouraging the practice. In 1805, an acting magistrate of Bihar, J. R. Elphinstone, similarly intervened against the burning of an intoxicated 12-year-old widow.

Until this time, there was no reference to the scriptures. But in 1805, the issue was referred to the Nizamat Adalat, with specific instructions to establish whether there was a scriptural basis for the practice and whether it precluded abolition. Pandit Ghanshyam Surmono, who was called upon to comment on the issue, declared that widow immolation did have scriptural sanction but also mentioned that it was a voluntary act intended to ensure the long afterlife of the couple. He further specified the conditions under which it was prohibited: when a woman was pregnant, intoxicated, less than 16 or coerced. Surmono's comment now formed the basis of the instructions

[9] Ania Loomba, 'Dead Women Tell No Tales: Issues of Female Subjectivity, Subaltern Agency and Tradition in Colonial and Post-Colonial Writings on Widow Immolation in India', *History Workshop* 36 (Colonial and Post-Colonial History) (Autumn 1993), pp. 209–27, esp. p. 211.

[10] Christopher A. Bayly, 'From Ritual to Ceremony: Death Ritual and Society in Hindu North India since 1600', in *Mirrors of Mortality: Studies in the Social History of Death*, ed. Joachim Whaley (St. Martin's Press, 1981), pp. 154–86, p. 174. See also Anand Yang, 'Whose Sati? Widow Burning in Early Nineteenth-century India', *Journal of Women's History* 1, no. 2 (1990), pp. 8–33, esp. pp. 11–14.

[11] Lata Mani, *Contentious Traditions: The Debate on Sati in Colonial India* (Oxford University Press, 1998), pp. 11–42. The discussion of the legislative efforts that follows in the next few paragraphs is based on Mani's account, unless otherwise specified.

which were circulated among the district magistrates, requiring them to judge whether widow immolations which occurred in their jurisdiction were being performed according to the *sastra*s.[12] The practice was not abolished but regulated according to what was perceived as the correct rendering of the scriptures.

Three further circulars, of 1813, 1815 and 1822, clarified certain provisions of the first circular. The 1815 circular specified that women with children under three would be allowed to burn only if adequate provision had been made for the children's maintenance. It also specified the difference between Brahmins and non-Brahmins, since *anumarana* (concremation, or burning with the body) for the former and *sahamarana* (post-cremation, or burning with an article of the deceased husband) for the latter were acceptable practices. The 1822 circular specified that in addition to the name, age and caste of the husband, which were already required, the husband's occupation and circumstances were to be included in the records of widow immolation. Such record keeping and surveillance also revealed a record number of inappropriate 'satis' who violated scriptural sanctions.[13]

After 1813, there was a sharp increase in the incidence of sati. Between 1815 and 1824, 6,632 cases of immolation were reported from the three presidencies of Bengal, Madras and Bombay, of which 90 per cent occurred in Bengal: within Bengal itself, an overwhelming 5,119 cases of the 8,134 reported from 1815 to 1828 were in the Calcutta division, despite the ban on the practice in the city proper.[14] The incidence of immolations among Brahmins was definitely higher than among the lower castes. It was clear that the practice was far from universal or common. But by annexing the category of *vyavahara*, or usage, to the category of law, Veena Das says, 'what may have been contextual and open to interpretation, or limited to certain castes only, became frozen as "law"'.[15] Even so, the British in India began an unprecedented effort in collating scriptural and empirical evidence which would form the basis for eventual abolition.

By its very definition, sati could be neither common nor widespread since its very moral force was derived from it being heroic or exceptional.

[12] Tanika Sarkar, 'Something Like Rights? Faith, Law and Widow Immolation Debates in Colonial Bengal', *Indian Economic and Social History Review* 49, no. 3 (2012), pp. 295–320, esp. p. 306.
[13] Ibid., pp. 308–10.
[14] Yang, 'Whose Sati?' p. 18.
[15] Veena Das, 'Strange Response', *Illustrated Weekly of India* (28 February 1988), p. 31.

Anand Yang has pointed to the fact that the practice was known only to some very specific communities. The incidence of widow immolation in the Hugli district, which consistently showed higher numbers than any other part of India, amounted to 1.2 per cent of the overall number of widows; in 1824, the average number of immolations amounted to a mere 0.2 per cent of the total number of widows.[16]

Yang notes a high proportion of poor women amongst those immolated and, in many cases, these were women of advanced years. In 1881, out of 839 cases, 14.6 per cent were over 70 and only 11.6 per cent were 25 and under.[17] The caste status of the widows varied enormously, ranging from primarily upper caste in the Benares region to a more mixed population in the Santhal Parganas. These empirical analyses indicate that widow immolation was a practice confined to some social groups, was far from common even among those groups and was in many cases a solution to the dire straits in which most poor widows found themselves. Some scholars have also argued that the practice was adopted by women of lower castes as a form of 'defiance' at a time when they faced great economic and social marginalization due to colonial policies. Therefore, the extraordinary attention paid to widow immolation, and the ban on it, sometimes served to encourage the practice, providing an unusual cultural resource for a community in crisis.

Lata Mani examines the colonial record in order to uncover the dominant strands in the discourse on sati, that of the colonial authorities, of the nationalist reformers, such as Ram Mohan Roy, and of the indigenous orthodox elite. The 'problem' was not identified by everybody in the same way and neither were solutions envisaged in the same way. After all, the practice of widow immolation, however restricted, was prevalent long before India was colonized by Britain, though it entered into the public world of reform only in the 19th century. Feminist analysis has enabled us to reveal those aspects of the problem which were deliberately suppressed or overlooked in order to make a case for state intervention.

There was no doubt about the desirability of legislative intervention to abolish sati altogether, but it became feasible only when British rule in India was more assured. When colonial rule was extended across Rajputana, central India and Nepal, the governor general William Bentinck said:

[16] Yang, 'Whose Sati?' p. 22.
[17] Ibid., p. 25.

> Now that we are supreme, my opinion is decidedly in favour of an open avowed and general prohibition [of sati] resting altogether upon the moral goodness of the act and our power to enforce it.[18]

Undergirding the discourse on widow immolation was a belief in the centrality of religion in Indian life, and the centrality of scriptures to that religion. Thus, Walter Ewer, superintendent of police in the lower provinces, observed that, in many cases, widows were coerced, which went against specified scriptural injunctions. Such transgressions, he found, were encouraged by corrupt Brahmins and relatives, leaving little to no room for the widow to exercise her own will. The intervention of the colonial regime, it followed, was necessary in order to enable the Indian people to live their lives according to scriptural injunctions and allow the woman to exercise her will.

The Bengal Sati Regulation (Act 17) of 1829 outlawed sati. Perhaps no other aspect of women's lives in India is as saturated with the notion of female volition as the question of widow immolation. For, by introducing the question of female will, it became possible to ideologically produce a widow immolation as 'sati' and distinguish 'good' satis from the 'bad' ones. Thus, records of the district magistrates are replete with statements such as 'she burnt herself on the funeral pile of her husband of her own free will' or the widow burned 'in conformity with the Shaster'.[19] At the same time, despite this admission of the woman's volition, the widow who was immolated was considered a victim, either of the immediate family or of the religion as a whole. And the IPC of 1860 effectively reintroduced sati as 'voluntary culpable homicide by consent'.[20]

Most feminist historians agree that there is no such thing as a 'voluntary' sati. Others have asked whether the recognition of the woman's will was fundamentally transformative: did the woman not become 'the bearer of something like rights rather than of sacred prescriptions and injunctions alone?'[21] But to what extent did these debates disturb the insertion of women

[18] J. K. Mazumdar (ed.), *Raja Ram Mohun Roy and Progressive Movements in India: A Selection from Records, 1775–1845* (Art Press, 1941), p. 141. In her discussion of the contemporaneous campaign against 'thuggee' in colonial India, Radhika Singha suggests that 'a rhetoric of authoritarian reform' subtended the company state's elaboration of political paramountcy, of which the drives against sati and thuggee were emblematic. See Radhika Singha, '"Providential Circumstances": The Thugee Campaign of the 1830s and Legal Innovation', *Modern Asian Studies* 27, no. 1 (1993), pp. 83–146.

[19] Mani, *Contentious Traditions*, p. 28. See also T. Sarkar, 'Holy Fire Eaters', pp. 29–31.

[20] Mani, *Contentious Traditions*, p. 25. See also Singha, *A Despotism of Law: Crime and Justice in Early Colonial India* (Oxford University Press, 2000), pp. 108–20.

[21] T. Sarkar, 'Something Like Rights?'

between community and state? Did the reassertion of the 'voluntary' nature of sati instead have disturbing effects for a long time to come, opening the door to exonerating the community from the charge of murder, as happened after the Deorala incident of 1987?[22] Clearly there were ambiguous and unanticipated outcomes from the focus on 'volition'.

It was also clear that the official discourse on immolation would not entertain the ambiguities of the evidence presented by the pandits. Scriptural sources that were decisively opposed to widow immolation were deliberately overlooked. Indeed, the selective use of scriptures was a recurring theme of later state-sponsored legislation as well. The *vyavastha* of Mrutyunjoy Vidyalankar, the chief pundit of the Supreme Court, in 1817 is a case in point: it questioned the colonial government's decision to uphold scriptural sanction for widow immolation and even questioned the status of immolation as an act of virtue, but the *vyavastha* was relegated to just an appendix.

As opposed to the official understanding of widow immolation, was the understanding of the cultural nationalists significantly different? Here too, the terms of indigenous discourse on widow immolation were in many ways set by the colonial interest in the subject itself, focusing as it did on the centrality of the scriptures, female volition, and so on. In other words, there was a considerable degree of overlap between the manner in which the colonizers and Indian liberals saw sati as a problem to be solved by a legislative ban. Even such reformers as Ram Mohan Roy, who has been unproblematically identified as the one who ushered an age of modernity into India, did not in fact make a decisive break with the past, and their efforts were of a limited and deeply contradictory kind.[23]

Roy's early rationalism, best formulated in his Persian work *Tuhfat al Muwahiddin* (A Gift to Deists), was remarkably radical for its time, enthroning the concept of reason in ways that came close to denying religion altogether. From such a position, he gradually began to show greater willingness to accommodate the possibility of religious sanction in his discourse on sati, relying on scriptural sources to counter British attacks on Indian society. Rather than examining the necessity for such a practice at all, Roy attempted to establish whether or not such practices were sanctioned in the scriptures. Thus, in his 'Abstract of Arguments Regarding the Burning of Widows as a Religious Rite', which was written in 1830 and constitutes the sum of his arguments between 1818 and 1830, Roy began:

[22] Vasudha Dhagamwar, 'Saint, Victim or Criminal?' *Seminar* 342 (February 1988), pp. 34–39, p. 38.

[23] Sumit Sarkar, *A Critique of Colonial India* (Papyrus, 1985), p. 1.

> The first point to be ascertained is whether the practice of burning widows alive on the pile and with the corpse of the husband is imperatively enjoined by the Hindu religion?[24]

His own answer was to offer an extract from Manu as evidence that this was not the case. He then cited Yagnavalkya as proof that a widow was enjoined to live with her natal or marital family after her husband's death. Roy thus tried to replace the notion of sanctioned widow immolation with that of ascetic widowhood.

Although Roy was astute enough to perceive the ways in which Indian patriarchy operated to reduce the status of women to such a deplorable state that even death was no option, he nevertheless shared a great deal with colonial discourse by placing an emphasis on scriptural sanction, thereby conceding the religious basis of Indian tradition. By 1830, Roy had moved from 'a trenchant critique of religion derived from Islamic rationalism to a strategy arguing for social reform in terms of brahmanic scripture'.[25] For instance, in an 1830 petition sent to Bentinck, signed by Roy and 300 others, applauding the abolition of sati in 1829, it was claimed that widow immolation had no scriptural sanction. Bentinck had merely upheld Indian tradition.

The more conservative Indian intelligentsia also made references to Indian scriptures, although for completely different ends from those of the liberal reformers. In a petition to Bentinck, the orthodox intelligentsia questioned the colonial state for its choice of scriptures and for consulting 'men who have neither any faith nor care for the memory of their ancestors or their religion' on questions 'so delicate as the interpretation of our sacred books'.[26] Over 20 pandits presented scriptural evidence in favour of sati, questioning the nature of the scriptural evidence cited by their opponents and suggesting that *sruti* (the heard) be privileged over *smriti* (the remembered) in conflicts between the two.[27]

According to Mani, what all these discourses on sati had in common was their focus on tradition itself rather than on women.

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[24] As cited in Mani, *Contentious Traditions*, p. 49.

[25] Ibid., p. 68.

[26] 'Petition of the Orthodox Community against the Suttee Regulation Together with a Paper of the Authorities and the Reply of the Governor General Thereto', in *Raja Ram Mohun Roy and Progressive Movements in India: A Selection from Records, 1775–1845*, ed. J. K. Mazumdar, pp. 156–65 (Art Press, 1941).

[27] Mani, *Contentious Traditions*, p. 107.

> Tradition was thus not the ground on which the status of women was being contested.... [W]omen in fact became the site on which tradition was debated and transformed.[28]

This focus remained a constant feature of other debates through the 19th century into the 20th. Seen in this light, it is clear that it was hardly the supposed 'barbarism' of widow immolation that prompted concern, debate and reform. What was emerging was a struggle between a critique of Indian tradition initiated by the politically dominant colonial authority and the attempt by Indian intellectuals to defend that tradition by espousing a modicum of reform themselves. The process of defining women as subjects of law and consequently as free from some of the constraints of feudal patriarchy was shot through with a powerful appeal to tradition: the modernity of the social sphere therefore was as deeply flawed as the selective modernization of the economic sphere of which it was an expression. But the results of this reform effort opened up ambiguous possibilities. The focus on the consent of the widow would lay the basis for the demand for full-blown rights.[29]

Widowhood

As Rachel Sturman notes, it was ironically the widow, amongst the most abject subjects, who came closest to the rights of Hindu men without ever really becoming equal.[30] The problem of the widow in the 19th century was the problem of premature and enforced widowhood. It was therefore linked to, and sandwiched between, legislative efforts to abolish sati and end the practice of child marriage. The fate of widows in upper-caste families was referred to as 'living death' since the widow was compelled to bear the permanent marks of being inauspicious, having allowed her husband to pre-decease her and becoming devalued as sexual, economic and social person.

Yet, as recent feminist scholarship has shown through attention to case law, this was not true across castes and across the subcontinent. As Law Commission member William Hay Macnaghten noted in 1862, 'Second marriages, after the death of the husband first espoused are wholly unknown

[28] Mani, *Contentious Traditions*, p.118.

[29] Sarkar, 'Something Like Rights?' p. 302.

[30] Rachel Sturman, 'Marriage and Family in Colonial Hindu Law', in *Hinduism and Law: An Introduction*, ed. Timothy Lubin, Donald R. Davis Jr and Jayanth K. Krishnan, pp. 89–104 (Cambridge University Press, 2010), esp. p. 98.

to the Hindu Law; though in practice, among the inferior castes, nothing is so common.'[31]

In part, the terrible conditions to which Indian patriarchy condemned the widow also betrayed deep-seated fears of female sexual appetites, unrestrained by marriage. In the early 1830s, the Law Commission under Thomas Macaulay, which had undertaken the task of framing a penal code, discovered a link between the prevailing high rate of infanticide and the prohibition against the remarriage of widows. The Sadr Nizamat Adalat in 1837 in the Northwestern Provinces informed the Law Commission that child murder was a prevalent crime and recommended that 'the endeavour of a woman to conceal the birth of her dead child by secretly disposing of the body' should be made illegal.[32] In making such a connection, the Law Commission did not disagree fundamentally with the prevailing notion of a threatening female sexuality, nor did it attempt to seek solutions for the problems of widows beyond the framework of marriage.

In a letter of 30 June 1837, the Indian Law Commission sought the opinions of the *sadr* courts of Calcutta, Allahabad, Madras and Bombay on whether there were any objections to the passage of such a law, to which the Calcutta *sadr* court immediately replied saying that it would violate the pledged faith of the government to the Indians, since 'it was distinctly clear by their shastras and distinctly believed by them that the remarriage of a widow involved guilt and disgrace on earth and exclusion from heaven'.[33] The proposal was opposed on the same grounds by the *sadr* court of the Northwestern Provinces while other *sadr* and *faujdari* courts said that such a law would violate caste hierarchies and allow the Hindus of upper castes and classes to be confused with the inferior castes and tribes among whom remarriage was common. As a result, the Law Commission in its drafting of the code of 1837 appears to have bowed to the opinions of the regional courts, and no such legislation was introduced.

It was nearly 18 years before the question of a legislative challenge to the customary status of widows was raised again—this time in a campaign inaugurated by Ishwar Chandra Vidyasagar. Vidyasagar was not a member of

[31] William Macnaghten, *Principles of Hindu and Mohommedan Law* (William and Nugate, 1862), p. 60, as cited in Lucy Carroll, 'Law, Custom and Statutory Social Reform: The Hindu Widow's Remarriage Act of 1856', in *Women in Colonial India: Essays on Survival, Work and the State*, ed. J. Krishnamurty, pp. 1–26 (Oxford University Press, 1989), p. 1.

[32] Law Commission of India, *Eighty First Report on Hindu Widows Remarriage Act of 1856* (Law Commission of India, 1979), app., p. 15.

[33] Ibid.

the Bengal Brahmo Sabha but collaborated with that organization and with the Tattvabodhini Sabha to initiate several written pleas for the reform of the institution of marriage, including the abolition of *kulin* polygamy.[34] His public efforts culminated in the publication of a book, *Marriage of Hindu Widows*, which attempted to cite appropriate sastric authorities for the remarriage of widows.[35] Indeed, he argued, 'a total disregard for the shastras and a careful observance of mere usages and external form is the source of the irresistible stream of vice which overflows the country'.[36]

Vidyasagar saw the bill to legalize the marriage of widows, especially of brides who had never left the natal home or consummated their marriage, as a logical second step to the ban on widow immolation. Yet even his commitment to the idea of social reform was marked by an ambiguity remarkably similar to the one that Roy's career of reformism. Whereas he had written against child marriage without invoking the authority of the *sastra*s, and even held them as outmoded and senseless, his tracts on widow remarriage relied heavily on sastric authority.[37] Asok Sen has suggested that this was prompted by strategic considerations,[38] but the value of discourse analysis has precisely been to unveil the inconsistencies and silences of the discourse of reform. Did the campaign to legally permit widow remarriage bear greater similarity to the discourse on widow immolation, given its reliance on sastric authority, or less? How was the widow positioned both as a victim and as sexually dangerous? What threats did she pose to the structure of inheritance?

Vidyasagar's book was widely debated by supporters and opponents and established his credentials as a scholar of Hindu law.[39] He referred to the ways in which the prohibition of widow remarriage contradicted Hindu tradition and was unnatural and therefore 'highly prejudicial to the interests of morality and is otherwise fraught with the most mischievous consequences to society'.[40] Both those concerned about reform and those opposed to it were anxious about the sexuality of the dangerous non-wife, outside the protective influence of husband or father. Both sides therefore raised the spectre of

[34] Charles Heimsath, *Indian Nationalism and Hindu Social Reform* (Princeton University Press, 1964), p. 79.
[35] Ishvarchandra Vidyasagar, *Hindu Widow Marriage*, trans. Brian A. Hatcher (Columbia University Press, 2012).
[36] Ibid., p. 80.
[37] Asok Sen, *Iswar Chandra Vidyasagar and His Elusive Milestones* (Riddhi Publishers, 1977), p. 54.
[38] Ibid., p. 75.
[39] Law Commission of India, *Eighty First Report*, p. 15.
[40] Heimsath, *Indian Nationalism*, p. 83.

declining morality.[41] Thus, 784 petitioners of the United Provinces and Calcutta said that legalizing widow remarriage would bring back the same state of affairs as under the nawab, namely 'whosoever may wish will run away with any one's wife'.[42]

Also striking was the reference by both protagonists and antagonists to the authority of the scriptures. Scriptures such as the Vedas, the code of Manu, the first book of the Mahabharata, *Aditya Purana*, *Ratnakara*, *Niranya Shudhos*, *Hemadri* and *Madan Parijata* were cited by 991 professors of Hindu law from Nadia, Trabani, Bhatparah and Bansbaruah to say:

> The marriage of widows, the gift of a larger portion to the elder brother, the sacrifice of a bull, the appointment of a man to beget a son on the widow of his brother and the carrying of an earthen pot as the token of an ascetic, these five are prohibited by Kaliyuga.[43]

Thus, although 5,191 prominent Bengalis supported the bill, an overwhelming 51,746 signed petitions against any such measure. But it is an indication of the distance travelled by the colonial state, from its earlier reluctance to alter the customs of the indigenous people by legal fiat, that it now chose to ignore the majority. One member of the Bengal legislative council, J. P. Grant, argued: 'If the learning, reason, and conscience of a single Hindu father directed him to save his little child from life-long misery or vice, the law of the country should not stand in the way.'[44] Some historians have taken this to mean that the Law Commission was fulfilling a commitment to women's rights, since it gave the Hindu widow the right to marry and raise children.[45] But granting the father the right to act according to his conscience was hardly the same as according women more control over their own lives, children, property or sexuality. What it did instead was to legally strengthen the protective hold of the father.

The Hindu Widows Remarriage Act, or Act 15 of 1856, produced meagre returns. Vidyasagar himself expressed dismay at the lack of enthusiasm for implementing the new measure. Indeed, in the first few years after the act

[41] T. Sarkar, 'Wicked Widows'.
[42] Law Commission of India, *Eighty First Report*, p. 16.
[43] As cited in the Law Commission of India, *Eighty First Report*, p. 16; Heimsath, *Indian Nationalism*, p. 85.
[44] Heimsath, *Indian Nationalism*, p. 85.
[45] Ibid.

was passed, he paid for numerous widow remarriages until he was in debt.[46] Worse still, Vidyasagar found that those who had married widows threatened to desert their wives if he did not meet their unreasonable demands.[47] But the repercussions of the discussion and the legislation were felt for several decades across India, leading to varying outcomes. A very different field of forces prevailed when the Child Marriage Act of 1929 was finally passed.

The failure of Vidyasagar's campaign to effect significant changes has been interpreted as a sign of the gap between his unwavering commitment and social consciousness on the one hand and the objective difficulties of translating such commitment into practice on the other, in the absence of a social class willing to carry it forward. Others have suggested that the 19th-century reform process was intended as no more than a reconceptualization of tradition, of which the legislative effort was only a part.

However, the 'gains' or 'losses' were not merely symbolic. For one, women's own writings and testimonials from the late 19th century force us to revise these evaluations of legislative transformation. Many women did not see the resolution of their problems within the framework of marriage and sought educational and work opportunities for widows instead, aspiring to economic independence rather than a return to the domestic fold. Many others detected the contradictions between the avowed British commitment to the protection of women and the colonial authorities' readiness to comply with the demands of a new patriarchal order. Above all, especially from the 1920s, the question of female desire—including that of widows—was addressed in writings in different languages: *Matar Marumanam* (Tamil), *Stri Darpan* and *Chand* (Hindi), and autobiographies of women like Anna Chandy (the first female judge of a high court in India; Malayalam), which understood the 'womanly' as more about a new form of power than about the space of domesticity.

Tarabai Shinde and Pandita Ramabai Saraswati, both from Maharashtra, were among those whose writings displayed an acute awareness of the realignments of patriarchy that were enabled by colonial legal reform. Tarabai Shinde's incisive analysis in *Stri Purush Tulana* (A Comparison of Men and Women) was prompted by the tragic case of a young Brahmin widow, Vijayalakshmi, who murdered her illegitimate child in 1881 and was condemned to hang for her crime by the sessions judge in Surat. As Padma Anagol and Rosalind O'Hanlon have shown, the ground for such a judgment

[46] A. Sen, *Iswar Chandra Vidyasagar*, p. 62.
[47] Ibid., p. 60.

was not social deprivation but moral depravity.[48] The sentence was commuted to life imprisonment in the high court and later reduced to five years, but not before it had provoked a furious debate by male writers on women and immorality in leading Maharashtrian papers such as *Subodh Patrika*, *Bombay Savavchar* and *Pune Vaibhav*.

Shinde's *Stri Purush Tulana* was an irreverent and impressive riposte against the male charge of female immorality. It was a critique of patriarchal society that went far beyond envisaging remarriage as a solution for the problems of widows. It showed up the inconsistencies of the sastric record and pointed to the disjuncture between scripture and reality:

> Can adultery be considered an act of the most heinous nature? Our shastras certainly do not seem to think so! There is no need to think that such things did not happen in the past. In fact, those very shastras most freely sanctioned such practices in several circumstances.[49]

Shinde's writing was an indictment of male hypocrisies, but was equally a call for a notion of justice that did not force women to shoulder the burden of morality alone. *Stri Purush Tulana* recognized, above all, the complicity between British and Indian patriarchy in refusing to acknowledge the responsibility of men for sustaining moral standards and suggested that 'the man should get twice as much punishment as woman gets'.[50]

A far less easily daunted critic of British imperialism and of Indian nationalist patriarchy was Pandita Ramabai Saraswati. After a remarkable childhood education in the scriptures under the able guidance of her parents, her marriage and early widowhood, Ramabai campaigned consistently and vigorously for women's education and their right to a life of freedom and dignity. After a successful tour of England and America, during which she also chose to convert to Christianity, she arrived in India in 1889 to start Sharada Sadan, a home for widows intended to make them financially and

[48] Padma Anagol, *The Emergence of Feminism in India, 1850–1920* (Ashgate Publishing, 2005), pp. 160–65; Rosalind O'Hanlon, 'Issues of Widowhood: Gender and Resistance in Colonial Western India', in *Contesting Power: Resistance and Everyday Social Relations in South Asia*, ed. Douglas Haynes and Gyan Prakash, pp. 62–108 (Oxford University Press, 1991), esp. p. 64.

[49] Tarabai Shinde, *A Comparison between Women and Men: Tarabai Shinde and the Critique of Gender Relations in Colonial India*, trans. Rosalind O'Hanlon, with an introduction (Oxford University Press, 2000).

[50] 'Stri Purush Tulana', in *Women Writing in India*, vol. 1: *600 B.C. to the Early Twentieth Century*, ed. Susie Tharu and K. Lalitha, pp. 223–35 (Feminist Press, 1991), p. 234.

emotionally independent. She, too, chose to expose the contradictions in the sastric record vis-à-vis upper-caste Indian women. Her efforts met with little support from male reformers. Reflecting the spirit of the politics of cultural nationalism, which valorized tradition, they viewed her conversion to Christianity with great suspicion and hostility. Her book, *The High Caste Hindu Woman*, was also an important intervention in the celebrated case of Rakhmabai, who was married at the age of 11 to Dadaji Bhikaji, but whose marriage was not consummated when she reached puberty some years later since she refused to join her consumptive and illiterate husband.[51] In 1884, her husband moved the court for the restitution of conjugal rights, an act which received the support of hundreds of men across the country. Rakhmabai contended that Bhikaji was unable to earn a decent living, was immoral, uneducated and unhealthy. So the lower court did not insist on her going to live with her husband. However, as Ramabai put it, 'the conservative party all over India rose as one man and girded their loins to denounce the helpless woman'. Large sums of money were collected to help the aggrieved husband file an appeal, but Rakhmabai refused to join her husband even after the Bombay court ordered her to do so under Act 15 of 1877 (which permitted the restitution of conjugal rights), preferring court arrest.[52]

This incident helped Ramabai to pierce the veil of social reform and perceive with astonishing clarity the complicity between the supposedly reformatory impulse of the colonial legal system and reconstituted Indian patriarchy, which only increased the oppression of women.

> The learned and civilised judges … are determined to enforce, in this enlightened age the inhuman laws enacted in barbaric times four thousand years ago.... There is no hope for women in India whether they be under Hindu rule or British rule.[53]

She then went on to express open scepticism about the claims of the British to protect the rights of women: 'We cannot blame the English government for

[51] Uma Chakravarti, 'Whatever Happened to the Vedic Dasi? Orientalism, Nationalism and a Script for the Past', in *Recasting Women: Essays in Indian Colonial History*, ed. Kumkum Sangari and Sudesh Vaid, pp. 27–87 (Rutgers University Press, 1990) p. 73.

[52] Uma Chakravarti, 'Law, Colonial State and Gender', in *Rewriting History: The Life and Times of Pandita Ramabai*, by Uma Chakravarti, pp. 121–99 (Kali for Women, 1998).

[53] Pandita Ramabai Saraswati, *The High Caste Hindu Woman* (Jas P. Rodgers Printing Company, 1888), p. 66.

not defending a helpless woman; it is only fulfilling its agreement made with the male population of India.'[54]

In his detailed analysis of Telugu women's journals, Mahaboob Basha notes that important shifts were taking place on the question of the status of widows: away from a description of widows' sufferings to an advocacy of widow remarriage, including that of adult widows; away from a reliance on *sastra*s to an assertion of rights, not just to marriage and property but to an active sexual life.[55] Women such as Gade Chudikudutamma, Achanta Rukmaniamma, K. Ramabayamma and Sooryakantamma campaigned for increasing the age of marriage of girls, postponement of marriage consummation if age could not be raised and post-puberty marriages, particularly emphasizing the 'consent' of girls and urging legislation rather than mere propaganda.[56] While some cited scriptures, others cited the 1956 legislation as a fresh start that had rendered the scriptures irrelevant.

There was, too, the concern about augmenting family resources: the wide age gap between child wives and adult husbands was sometimes encouraged in anticipation of the child widow inheriting her husband's estate.[57] But the question of the socio-economic bases for either promoting or discouraging widow remarriage was overshadowed by concerns about the moral regeneration of the upper-caste family.

The damaging effects of the new law on the rights of widows to the husband's property can be seen in the flood of cases that followed. Regional disparities and differences of caste/ethnicity are crucial to this account; they reveal that widows might even have been among the privileged in certain classes and often fought to retain that privilege. During the debate on the abolition of sati in 1819, G. Forbes of the Calcutta Court of Circuit said: 'There are no less than 57 civil suits, involving property amounting to four lacs of rupees, now pending in this court, in which Hindoo ladies are parties.'[58]

Debates over widow remarriage continued for many decades after the passage of the 1856 Act. The Bombay Widow Remarriage Association was started by Vishnu Sastri Pandit, who sought the sanction of the highest

[54] Saraswati, *The High Caste Hindu Woman*, p. 67.
[55] Mahaboob Basha, 'Print Culture and Women's Voices: A Study of Telugu Journals, 1902–1960', unpublished PhD thesis, Jawaharlal Nehru University, New Delhi, 2015, pp. 204–97.
[56] Ibid., p. 212ff.
[57] Saraswati, *The High Caste Hindu Woman*, p. 57.
[58] As cited in Mani, *Contentious Traditions*, p. 89.

religious authority in the land.[59] A debate was staged in 1870 between supporters and opponents of the act under the auspices of the Shankaracharya of Karve and Sankeshwar, after which 10 arbitrators decided against the reformers. Mahadev Govind Ranade, the Maharashtrian social reformer, addressing the Bombay Social Conference in Satara, in 1900, estimated that no more than 300 remarriages of upper-caste widows had taken place since the bill was passed.[60] This is hardly surprising given the restricted nature of the prohibitions on remarriage, which excluded nearly 90 per cent of the population.[61]

Even the tactic of using advertisements, especially in newspapers of the south, to locate widows testified more to the personal courage of a handful of reformers rather than to widespread enthusiasm for the measure. In the Madras Presidency, it was Veeresalingam Pantulu who started the Rajahmundry Widow Remarriage Association in 1878. Pantulu's effort largely focused on regenerating the upper-caste Hindu family, campaigning as he did for women's education and for widow remarriage, against child marriage and *kanyashulkam* (bride price), all the while citing the support of the *sastra*s.[62]

Mahboob Basha's listing of 103 widow remarriages in the Andhra region of the Madras Presidency between 1881 and 1937 is revealing, not so much of the meagre returns of the legislation but of the extraordinary symbolic effect that each such marriage had on wider society.[63] The stealthy way in which Kondapalli Koteswaramma was married to Kondapalli Seetharamaiah (a member of the Communist Party of India) in 1929, defying the dominant Reddy caste norms, was one such symbolic event.[64] Their defiance was matched by Nawal Kishore Bharti of Kanpur, whose marriage to a widow set off a sustained campaign by conservative Marwaris to prevent the marriage and later to socially ostracize the couple.[65]

Yet the new act had less of an impact on encouraging the remarriage of upper- caste widows and was more effective in transforming, in a very material sense, control of the property of the widow. The clauses in the 1856 act on property rights, however, made remarriage more difficult for widows belonging to castes and tribes that had never placed restrictions on widows. It produced

[59] Heimsath, *Indian Nationalism*, p. 86.
[60] Ibid., p. 85.
[61] Carroll, 'Law Custom and Statutory Social Reform', p. 2.
[62] Basha, 'Print Culture and Women's Voices', pp. 48–55.
[63] Ibid.
[64] Ibid., pp. 335–38.
[65] Neena Shukla, 'Social Process Underlying Widow Remarriage: A Case Study from Kanpur (1927)', *Proceedings of the Indian History Congress* 66 (2005–06), pp. 747–50.

nearly a century of dramatic judicial controversy among the high courts of the British legal system.

Widows and Property, Law versus Custom

Before the modifications introduced by the Hindu Women's Right to Property Act, or Act 18 of 1937, and the Hindu Succession Act, or Act 30 of 1956, under both *Dayabhaga* and *Mitakshara* law, the widow 'only succeeded to her husband's estate in the absence of a son, son's son, son's son's son of the deceased and the estate which she took by succession to her husband was an estate which she held only for her lifetime'.[66] At her death, the estate reverted to the nearest living heir of her dead husband. The *Dayabhaga* school allowed such succession whether or not the husband was a member of an undivided coparcenary, whereas the *Mitakshara* only allowed succession if he were separate. Importantly, such succession in both cases was contingent on the chastity of the wife.[67]

The provisions of the new act were applied in several parts of the country and were soon found to be ambiguous, even misleading, especially with regard to the regions and castes where widow remarriage was permitted. Rochisha Narayan shows that widows in late-18th-century Benares were active in claiming and transacting on property using the opportunities provided by the indigenous legal system, which were reversed by emerging colonial Anglo-Hindu law, which decreed that under the Hindu joint family system, only male agnates could inherit while daughters were entitled only to maintenance.[68]

Support for widow remarriage was also expressed by Dayananda Saraswati who founded the Arya Samaj in 1875 in Punjab. In this region, customary law allowed the woman to inherit property in the absence of male lineal descendants, and British officials found to their alarm that a widow often alienated property for her own maintenance, daughter's marriage or payment of revenue, but not for sale.[69] These forms of self-assertion by widows had become so common that in the late 19th century, officials felt constrained to

[66] Carroll, 'Law, Custom and Statutory Social Reform', p. 3.
[67] Ibid.
[68] Rochisha Narayan, 'Widows, Family, Community, and the Formation of Anglo-Hindu Law in Eighteenth-Century India', *Modern Asian Studies* 50, no. 3 (May 2016), pp. 866–97.
[69] Prem Choudhry, 'Customs in a Peasant Economy', in *Recasting Women: Essays in Indian Colonial History*, ed. Kumkum Sangari and Sudesh Vaid, pp. 302–30 (Rutgers University Press, 1990), p. 316.

take action prohibiting the partition of land 'in the wider interest of preserving the "village community" or the "cohering community"'.[70] Instead, they chose to give increasing judicial support to *karewa*, the custom of widow remarriage that was practised among Jats. Petitions from widows who resisted the efforts of the husband's family to remarry them within the family became very common by 1921, yet the 'customary law of the land backed by the full force of the colonial administration safeguarded the landed property from a woman's possession', thus retaining patrilineal hold over the property.[71] Cases of polyandry and of fathers marrying their son's widows were not uncommon. The 1881 census of the Bombay Presidency similarly noted how the provisions of the 1856 act were used to prevent property from moving outside the family. Nor was this practice confined just to the upper-caste families; middle- and lower-caste families were affected in equal measure.[72]

Kumaoni custom likewise permitted the widow 'with the permission of the village community, [to] keep a tekzva or "live in" companion, and continue in the house of her deceased husband; or she could marry again, but her second husband would have to pay a sum of money to her deceased husband's kinsman'.[73] But these customs were increasingly seen as 'wife sales' and increasingly criminalized, even as nationalists attempted a 'reform' of bride price and introduced ideas of widows' chastity as essential to an increasingly Brahminized practice.

The British wished to preserve the old order in Punjab because it was these sturdy Jat peasant communities on which the revenue was settled.[74] At a time when agriculture was being commercialized and property rights were being privatized, a redefinition of the family form itself was an imperative. The result was also the 'masculinization' of the economy.[75] Similarly, in western India (where indebtedness and the economic viability of the small holding was the issue), the joint Hindu family was seen as imposing needless constraints on agricultural productivity. Beginning in 1880, an amendment to the Watan

[70] P. Choudhry, 'Customs in a Peasant Economy'.
[71] Ibid., p. 319.
[72] O'Hanlon, 'Issues of Widowhood', esp. p. 70.
[73] Vasudha Pande, 'Law, Women and Family in Kumaun', *India International Centre Quarterly* 23, nos. 3–4 (Second Nature: Women and the Family) (Winter 1996), pp. 106–20, esp. p. 107; see also Rashmi Pant, 'Matrimonial Strategies among Peasant Women in Early 20th-century Garhwal', *Contributions to Indian Sociology* 48, no. 3 (2014), pp. 357–63.
[74] P. Choudhry, 'Customs in a Peasant Economy', p. 318.
[75] Veena Talwar Oldenburg, *Dowry Murder: The Imperial Origins of Cultural Crime* (Oxford University Press, 2002).

Act, or Act 5 of 1886, 'effectively eliminated women's claims to vatandar status entirely by "postponing" all females in the line of heirs to any potential male heir'.[76] However, there was simultaneously both an expansion and contraction of the rights of women, especially of widows, as owners: from being tenant for life in 1859 (*Pranjivandas Tulsidas v. Devkuvarbai*), the widow was allowed to alienate property in 1883 (*Bhagirathibai v. Kanujirav*).[77]

The actual operation of the 1856 act was therefore quite different from the stated intentions of reformers such as Vidyasagar or Pandit. It was often invoked in ways that curtailed possible economic independence of widows. The paradox arose precisely because widow remarriage had not been proscribed in most communities of India, and in many cases, customary law allowed enjoyment of the property of the husband. The contentious interpretations of the statutes of the Hindu Widows Remarriage Act of 1856 referred especially to communities where remarriage and inheritance by widows was common.

Lucy Carroll demonstrates that the high courts of Bengal, Bombay and Madras uniformly held that 'Section 2 [of the act] involving forfeiture of the deceased husband's estate upon remarriage applied to all Hindu widows whether or not the validity of their marriages were [*sic*] solemnized by ceremonies prescribed in Section 6'.[78] The Allahabad High Court alone consistently held that the act was inapplicable to individuals who were permitted by customary law to remarry prior to the passage of the act. The landmark case for this was *Har Saran v. Nandi* (1889), in which Nandi, a woman of the sweeper caste, inherited two *kotha*s of land after her husband died and she subsequently remarried. The husband's brothers contested the right of the widow to continue to retain the property under the 1856 act, which the lower court upheld. However, the high court overruled the lower court's decision in the name of caste privileges which antedated the act and to which the act was not intended to apply.

Further confusions arose about where the statutes of the act ended and Hindu law took over, as in *Matangini Gupta v. Ram Radian Roy* (1891). A childless widow, Gupta succeeded to her husband's property, then converted to the Brahmo sect and remarried under the Special Marriage Act of 1872. Under this act, she declared she was not a Hindu. Her right to her husband's property was therefore challenged by the reversioner under Section 2 of the

[76] Sturman, *The Government of Social Life in Colonial India: Liberalism, Religious Law and Women's Rights* (Cambridge University Press, 2012), p. 100.
[77] Ibid., p. 127.
[78] Carroll, 'Law, Custom and Statutory Social Reform', p. 5.

Hindu Widows Remarriage Act of 1856.[79] The court ruled that the widow should forfeit the property on the grounds that 'where second marriages are sanctioned by custom … such remarriages entailed a forfeiture of the first husband's estate'. Reliance was placed on the metaphor of widow as 'half the body' of the deceased man: 'The estate of a Hindu widow can only last as long as she continues to be the wife and half the body of her deceased husband.'[80]

The universal application of a law that was intended to facilitate remarriage among a small section of upper-caste Hindus had regressive material consequences for the majority of castes among whom widow remarriage was customarily practised. Thus, in the newly Hinduized groups, such as the Rajbansis of the Darjeeling Terai, widows were divested of the first husband's property even though it was established that the customs of the community had long permitted remarriage without affecting the inheritance of the woman.[81]

From the number of cases which came before the Bombay High Court in the decade from 1875 to 1884, widows, especially those from wealthy families, appear to have pursued litigation with some vigour. By customary law, widows could inherit the husband's property if there were no sons, grandsons or coparceners. Not surprisingly, widows were participants in nearly half of the cases involving women: very often suits were initiated by widows against debts charged to their estates. Many other cases concerned maintenance of widows by the husband's family. A large number of these were decided in favour of the widow who was awarded assured and adequate means of maintenance.[82]

Yet this maintenance was often granted under very strict terms which reinforced that the widow herself could not be allowed to stray away from the husband's household. In 1887, Justice Westropp of the Bombay High Court ruled that a widow could not live with her own family as long as she received maintenance from her husband's family. He said:

> She does not lose her right to maintenance by visiting her own relatives, but a widow is not entirely her own mistress, being subject to the control of her husband's family, who might require her to return and live in her husband's house.[83]

[79] Carroll, 'Law, Custom and Statutory Social Reform', p. 8.
[80] *Matangini Gupta v. Ram Radian Roy*, ILR 19 Cal 289, p. 295, as cited in ibid., p. 9.
[81] Carroll, 'Law Custom and Statutory Social Reform', p. 20.
[82] Sandra Rogers, 'Hindu Widows and Property in Nineteenth-century Bombay', in *Class, Ideology and Women in Asian Societies*, ed. Gail Pearson and Lenore Manderson, pp. 47–63 (Asian Studies Monograph Series, 1987).
[83] As cited in ibid., p. 57.

Keeping a widow in the husband's house was a way of confirming the continued chastity of the woman. Between the courts' general belief that widows had to be provided adequate maintenance and the insistence on chastity, the court often chose to uphold the latter by sacrificing the former.

Similarly, Nita Verma Prasad's examination of cases in the Allahabad High Court between 1875 and 1911 shows that 'widows adopted sons, kicked adoptive sons out of their homes, brazenly lied about the legitimacy of their sons, presented competing family trees and genealogies, and capitalized on their role as mother or sister, instead of widow—all in order to retain and expand their proprietary rights', and two-thirds of them won the cases.[84] Similarly, despite the increasing tendency of the colonial legal system to confer alienable rights on men and only maintenance on women, peasant women in the Garhwal region used several strategies to pass on their marital property to their chosen heirs: through co-resident sons-in-law, by claiming endowments by husbands in polygamous unions and taking on substitute husbands to carry on duties in the (dead) husband's household.[85]

A permissive measure such as the Widows Remarriage Act aimed to reduce popular illegalities such as infanticide and sexual relationships of women outside marriage, by extending the protective arm of the state where familial patriarchy could not reach. A law, in other words, which aimed to make an 'honest' woman of the widow, often succeeded in making her propertyless.[86] Yet if one of the intentions of codification was to attain a degree of homogeneity, even this was not achieved. The princely state of Mysore, for example, did not pass the law for eight decades after 1856; although repeated attempts were made, beginning in 1912,[87] the law permitting the remarriage of widows was only passed in 1938.[88]

Much judicial discussion occurred in Madras as late as 1951 over whether chastity was a requirement of the Hindu Women's Rights to Property Act of 1937. As Mytheli Sreenivas demonstrates, the struggle in the 20th century

[84] Nita Verma Prasad, 'Remaking Her Family for the Judges: Hindu Widows and Property Rights in the Colonial Courts of North India, 1875–1911', *Journal of Colonialism and Colonial History* 14, no. 3 (Winter 2013).

[85] Pant, 'Matrimonial Strategies among Peasant Women'.

[86] Carroll, 'Law, Custom and Statutory Social Reform'.

[87] File no. 52-.12, Sl. no. nil, Legislature: Of the Widow Remarriage Act XV of 1856 into Mysore, Karnataka State Archives (KSA).

[88] File no. 41-35, Sl. no. 1, Legislature: Bill to Remove All Legal Obstacles to the Marriage of Hindu Widows, *Proceedings of the Mysore Legislative Council* (*PMLC*), July 1937, KSA.

concerned the ways in which competing visions of family and economy were reconciled with emerging norms of conjugality and the needs of capital on the one hand and agnatic kin groups mired in non-capitalist relations on the other. Although widows were granted some limited ownership rights in 1937, the jurisprudence tended to reinforce them as dependents entitled to maintenance rather than as coparceners in their own right.[89]

[89] Mytheli Sreenivas, 'Conjugality and Capital: Gender, Families, and Property under Colonial Law in India', *Journal of Asian Studies* 63, no. 4 (November 2004), pp. 937–60, esp. p. 957.