

# Women's Rights and Widows' Pensions

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THE RULES governing widows' pensions under the legal systems of different countries depend on a combination of three factors.

The first is the place of woman in the family and in society. The need to assist a woman in the event of her husband's death is very widely recognised, but a corresponding need is much less often admitted for a widower. This is because a woman was regarded in the past as her husband's dependant and that attitude is still very common today.

The second factor relates to material difficulties created by the death of the head of the family. The dependent widow and children must receive sufficient benefit for their maintenance when there is no longer a breadwinner.

The third factor is connected with the wider question of old age. It is well known that the average life-span of a woman is longer in most countries than that of a man, and that a woman is generally younger than her husband. Thus many women survive their husbands. If a woman has had no paid occupation because she has devoted herself entirely to her home, or if she worked for too short a time or was too poorly paid to gain entitlement to an adequate retirement pension, the death of her husband may entail a considerable drop in her standard of living, or even total indigence, if she does not receive suitable benefit.

It is obvious that the first of these three factors is the most important, for it is because the wife is wholly or partly dependent on her husband during his life that she finds herself in a difficult situation when he dies. In a society where there was full legal and economic equality between the sexes and the wife shared in the same way and to the same extent as the husband in the expenses of the household the problem of widowhood would appear in a completely different light.

It would not of course be eliminated, for the death of a partner in a marriage always creates a great moral and material upheaval that any modern system of social security must seek to alleviate. The solutions would be different, however, depending on the prevailing conception of

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the relations between husband and wife and in particular on the role of the wife.

The existing systems of social security were conceived and developed in terms of the more or less tacitly accepted notion of the dependent position of women in the family. On the other hand, the present trend of thought in all modern countries is guided by the growing belief in equality between the sexes and by the suppression of discrimination between men and women. It may be asked, then, whether the time has not come to reconsider the principles governing widows' pension schemes.

### **The law as it stands**

Provisions governing widows' pensions are as variable as national social security schemes. Moreover, within a single country the rules may vary according to the husband's occupation or the circumstances of his death. Any account of the situation is thus largely arbitrary. With this proviso, existing schemes can be very roughly grouped in accordance with the principal features described below.

Widows' pensions are one element of survivors' benefit. The same legislation covers the situation of the widow, orphans, and sometimes the parents or even less immediate relations who were dependent on the deceased. It is always a question of partially making up for the disappearance of the income derived from the activity of the head of the family. The widow is the most important of the survivors, but her situation is not fundamentally different from that of the others.

The question of survivors' rights, and so those of the widow, arises when the husband, on his death, was receiving an old-age pension or fulfilled the conditions entitling him to one. This is the normal case. The rules applying to survivors are then seen as an integral part of the old-age scheme, and the same legislation and institutions provide for old-age pensions and widows' pensions. The widow's pension is generally calculated in terms of the old-age pension that the husband was receiving or would have been entitled to at the date of his death. The widow has a right deriving from that of her husband, and it is sometimes said that she receives a "reversionary pension".

It can happen, however, that the husband dies through illness or accident or is killed in a war before having qualified for an old-age pension. In such circumstances survivors' pensions may be provided for under legislation governing employment injury, war pension and general invalidity schemes. The amount to which the widow is entitled usually varies with the cause of her husband's death, generally being greater if death was due to an employment injury or service to the State, as in time of war, than if it was due to a non-employment injury. Here again the rate is mostly fixed in relation to the husband's earnings.

There is also considerable variety in the conditions governing the granting and maintenance of the pensions. These conditions are sometimes very generous: the widow receives the pension whatever her age and continues to draw it for the rest of her life. Sometimes, on the other hand, the pension is granted only if the widow is over a certain age or has young dependent children and then only for a limited period. Nearly always, the pension is stopped if the widow remarries.

All these rules, despite their differences, show how much the situation of the widow depends on that of her husband. Not only the conditions of entitlement but also the methods of calculating and paying the pension are governed by the constant concern to maintain the woman in a situation broadly corresponding to that which she would have had if she had continued to depend on her husband. The international labour Conventions concerning death of the breadwinner and employment injury or establishing minimum standards of social security naturally reflect the trends of national legislation.

It should be stressed that these approaches, though they are indicative of a turn of mind and social structures deeply rooted in the past, are often justified, or at least partly so, by the present preoccupations of the population concerned.

In the first place, all present-day social security systems aim at meeting the need for security of those who work for a living, and the worker, whether he is an employee or an independent worker, does not distinguish between his own and his family's security. He has no feeling of security if he has no guarantee that his wife and children will be shielded from want in the event of his death. This aspect of the need for security has become increasingly important in recent years. There are many contributory factors: the rise in the standard of living, the growing role of insurance, job instability due in particular to frequent transfers, and the weakening of the guarantees constituted in the past by mutual help within the family all make the risk of the breadwinner's death more threatening. The higher the occupational and social level, the more keenly this danger is felt. The great expansion of the services sector in relation to agriculture and industry constantly adds to the social groups that feel it most keenly, and insurance schemes for managers and executive staff accordingly attach special importance to the rights of survivors. The protection of widows thus remains a very topical question.

In the second place, the husband's death always causes a great upheaval in the life of the widow and it cannot fail to affect her standard of living. There must be compensation for the loss involved and this compensation is one of the natural objects of every social security scheme.

In the third place, it is often pointed out in support of a widow's rights that the contributions paid by the husband for his retirement are an absolute loss if he dies without being able to enjoy his right to a

pension or when he has enjoyed it only for a short period. In the event of the husband's death, the widow's pension would be the normal return for his contributions.

These numerous considerations seem to provide a solid foundation for the rules that continue to govern the situation of widows in relation to social security legislation and institutions.

### **Grounds for criticism**

It is no less true, however, that these rules seem today more and more open to question in so far as they are based on the idea of the woman's dependence on her husband and sanction an inequality between the sexes that appears less and less justified.

It is true that the dependent situation of the woman in the family is still widely accepted, but this attitude is becoming less common every day. Modern legislation on the family is increasingly positive in confirming the equality of the marriage partners in respect both of property rights and of relations with the children and succession rights. Increasing numbers of married women have a job, and national legislation and international instruments (such as the Equal Remuneration Convention, 1951 (No. 100), of the ILO and the European Social Charter) specify that women are entitled to the same pay as men not only for the same work but also for different work of equal value. The average earnings of women are certainly still lower than those of men, but progress in the education and vocational training of women and, once more, the expansion of the services sector, where female labour is dominant, are rapidly leading towards equality. It is becoming increasingly common for the earnings of a woman to be as high as those of her husband or even higher. A Swedish periodical, indeed, recently reported the case of a young couple who, realising that the earnings and career prospects of the wife were better than those of the husband, decided that she alone should go on with her job while he should devote himself entirely to the household and bringing up the children. Although this may be an exceptional and extreme case, the mere fact of its being possible shows the extent of the changes taking place.

While these changes reject all inequality between the sexes, no national legislation or international instrument yet places husband and wife on an equal footing in respect of survivors' rights. Whereas the notion of a widow's pension is generally accepted a widower's pension remains very exceptional and, when provision is made for it at all, it is confined to invalid widowers who were dependent on their wives. This discrepancy—another based on the idea of the wife's natural dependence on her husband—is becoming less and less justified and cannot be maintained much longer.

The very notions that seemed to provide a modern basis for the traditional widows' pension schemes do not stand up to serious examination.

The need for security, which underlies all social security schemes, is, to say the least of it, quite as much a family as an individual need. No individual can feel himself secure if he knows that those dependent on him live in uncertainty of the future and may be thrown into indigence by his death. Nothing can be called social security today that does not provide protection for survivors and at the same time protection for the spouse and dependent children against sickness. Once husband and wife can both have a job, moreover, it is impossible to understand why widow and widower should be treated differently. A married woman receiving higher pay than her husband is just as much concerned about his insecurity in the event of her death as a husband is about the insecurity of his wife if he should leave her widowed.

As to the loss for which the pension provides some compensation, that suffered by the man whose wife dies is often as great as, if not greater than, that suffered by the woman who becomes a widow. This is so not only because the earnings of the wife can be as much as, or more than, those of the husband but also because the part played by the woman in running the home and bringing up the children is an essential element in the standard of living of the household in addition to the financial contribution resulting from her occupation. On the other hand, the death of the husband, though it naturally results in an upheaval of her daily life, may cause the widow no long-term financial loss. In such circumstances the pension, if it is payable without limit of time, cannot be justified in terms of compensation for a loss suffered.

The argument, so often used, about contributions having been paid, though it has a considerable psychological effect, is the result of confused thinking. It would be valid only if the pension were, as it is too often thought to be, a reimbursement of the funded value of the contributions received from the insured person throughout his active life. This is obviously not the case. Even under a funded system, once the funding is collective and not individual, the contributions paid are calculated in terms of the pensions to be granted and on the basis of mortality tables. A scheme that provides for widows' pensions thus calls for higher contributions than one that does not. In neither event, however, are the pensions a reimbursement of the contributions paid, which are determined not individually but in such a way as to meet each year a liability assessed by actuarial calculation. This is all the truer under a pay-as-you-go system: the contributions received each year are immediately used to pay what is due on current pensions. They are an expression of the solidarity of active and contributing workers with retired persons. If a worker dies without being able to receive the pension that his contributions would have entitled him to, this does not in itself entitle his widow to claim that

the contributions he has paid should be restored to her in the form of a pension.

If the problem of widows' rights is to be clearly understood, the last traces of the old idea of individual insurance that still linger must be removed. We must look resolutely to the future and reason in terms of family and social changes that are gradually eliminating what is left of inequality between the sexes and the notion of dependence of a woman on her husband.

### **Outline of a system of widows' financial rights**

The rights to be accorded widows must be defined not on the basis of theoretical or legal considerations deriving from the marital status they have lost but on that of the needs resulting from widowhood. Investigations have already been carried out in this connection, particularly in the Federal Republic of Germany, but they have not yet led to changes in legislation.<sup>1</sup>

The normal goal is to maintain for the widow a standard of living comparable to that which she enjoyed while her husband was alive—in other words to compensate for the cessation of his earnings.

For the sake of simplicity the question of supporting children in the home will be left aside. It will be assumed that their maintenance is covered by family allowances or orphans' pensions or allowances and that it does not affect the widow's standard of living.

### **Necessity of temporary aid**

At the beginning widowhood involves a complete upheaval of the conditions of the household. The husband's contribution disappears but family expenditure does not go down correspondingly. The house or flat remains the same, for a time at least, and the general expenses of running it continue without reduction. Nor is this all, for additional expenses may arise through the frequently great changes that have to be made in the surviving spouse's way of living. These happen, moreover, at a time when the psychological and spiritual distress of the survivors makes them particularly painful. Time is always needed for the widow to adapt her living conditions to the new situation.

To face its material consequences she requires temporary assistance. Under present legislation this often takes the form of a lump sum, which may be paid at a flat rate or on the basis of the last earnings of the deceased (for example, three months' or a year's earnings). Such a lump

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<sup>1</sup> For the various possibilities that have been considered in the Federal Republic of Germany see, for example, the article by Horst Fenge on widows' pensions and the reform of social security for women in *Soziale Arbeit*, No. 2, 1970, pp. 49-59.

sum is generally provided not just for the benefit of a widow but more broadly for that of the closest dependants at the time of death, including a widower, children, parents, and even less immediate relations.

Accordingly a grant of this type, to which a widow has a natural entitlement, implies no dependence of the wife on the husband and fully respects the rights of women.

### **The widow's chances of maintaining a suitable standard of living**

When this critical period is over the question is how to enable the widow to maintain an appropriate standard of living. Let us consider, first of all, the case of a widow who has not reached the age entitling her to an old-age pension, where the problem is to ensure the maintenance not of an elderly person but of a person young enough to have a job.

The responses offered by the legislation in force range from refusal to provide the widow with any kind of aid to provision of an income enabling her to achieve a standard of living which is sometimes higher than that of the household before the breadwinner's death. The variety of responses is due to historical circumstances and the unequal strength of the pressure groups influencing public opinion and the public authorities. It seldom follows any logical pattern.

Separate consideration must be accorded legislation based on a more or less confused notion of responsibility towards the widow whose husband has died as a result of activities carried out in the interests of the community—whether through employment injury, active military service, or an injury or illness otherwise due to war. The grants and allowances provided for in such circumstances are based less on concern to maintain the widow's standard of living than on the notion of compensating her for an exceptional burden that the community has placed on her, and they reflect at least in part a collective responsibility derived from equality in the face of public duty. It may seem legitimate that the benefit accorded, which is intended to compensate both material loss and moral prejudice—in fact the total upheaval in the woman's way of life—should sometimes place her in a more favourable situation than she was in while her husband was living.

Setting aside these special cases to concentrate strictly on the question of maintaining a widow's standard of living, the principle must be that a woman who is of an age to have a job should normally ensure her livelihood in this way. There are, however, several variants.

The first is that of the widow who before her husband's death already had a job which enabled her to contribute to the resources of the household and who goes on with her job, or of the widow who, although she had no job while her husband was alive, finds paid work within a reasonable time as a result of previously acquired vocational training. If

her earnings allow her to maintain a standard of living comparable to that which she enjoyed before, there is no reason to pay her any pension or allowance at all—unless, of course, there are dependent children whom she has to maintain and educate. Once the critical period immediately following her husband's death is over, a widow in this situation is not very differently placed from an unmarried woman.

It may be, however, that the widow has not had a job while her husband was alive, and that she lacks the vocational training that would enable her to find one. It is then legitimate, and even necessary, to provide her with maintenance during the period of readaptation, on the condition that this period is actually devoted to efforts to acquire training and a paid activity. For this purpose a temporary pension or allowance should be paid to the woman for a year or two.

In either of the cases just considered it is quite possible, of course, that the widow's job, whether obtained immediately following the death of her husband or after a period of readaptation, will not provide her with sufficient income to maintain the standard of living she enjoyed when her husband was alive. This happens whenever the husband's earnings were greater than the wife's, either because his qualifications were higher or because women are often paid at a lower rate than men. This problem is difficult to solve, for there is no obvious reason why a widow should be treated more generously than an unmarried woman. Furthermore, if there is compensation for the drop in the standard of living of a widow, a widower whose occupational earnings are lower than those of his wife should also, though the situation is much less common, be compensated for the drop in his standard of living due to his wife's having died before him.

It follows then, from the independence of women and equality of the sexes, that, subject once again to relief of the burden due to the existence of dependent children, a woman who is of a suitable age to have a job and who is helped to resume her occupation or to find a new one must earn her living from it and so ensure her personal independence. Where readaptation is difficult the widow's income should be ensured through the machinery for helping the unemployed.

### **Widows' old-age pensions**

This personal independence must also be an element in the situation of the woman who becomes a widow at an age that normally gives entitlement to an old-age pension.

The essential problem here is to get away from any notion of a right attached to widowhood as such, of a reversionary pension, of a woman's right being based on that of her husband, and so to eliminate as far as possible the principle of a woman's dependence on her husband. A woman, like a man, should in all circumstances have a personal right to an old-age



pension. This is achieved in legislation under which all, without distinction of sex, are entitled to an old-age pension at a certain age and is true of the basic pensions of the Scandinavian countries. Broadly speaking, however, old-age pension schemes, when establishing the right to the pension and the starting date and amount, take into consideration the period during which the person concerned has had a job, the period during which he has paid contributions and the earnings on which the contributions have been based. A woman can receive a pension of a satisfactory amount in her own right only if the time she has spent on bringing up her children and running her home can be counted on her behalf as well as the time she has been able to devote to a job. It is all the more reasonable that this should be done as the bringing up of children and the running of a home are essential tasks which, if not directly recompensed in money, contribute no less substantially to the economic development and the welfare of the community in general.

The following factors should thus be taken into account in establishing a woman's right to a pension and in calculating the amount: (a) the years during which she has had a job (this presents no problem); (b) the years she has devoted in her home to bringing up her young children (no contribution should be demanded, but she might be regarded as having received, during the corresponding periods, fictitious remuneration equal to a fraction, perhaps half, of her husband's earnings); (c) the years she has devoted to her home in the absence of young children (here a contribution should be required, and it might be calculated on the basis of a fraction, perhaps half, of the earnings of her husband, who would be expected to pay it).

In this way a woman would be entitled to an old-age pension at the normal age on the grounds of her own activity, both domestic and occupational and irrespective of the death or survival of her husband. The very idea of a widow's pension would disappear.

Nevertheless this would not solve all the problems of creating a perfect social security scheme.

One outstanding problem is that of a married woman without an occupation who on becoming a widow is too young to be entitled to an old-age pension but too old to hope to take up or resume a job. Without prejudice to the possibility of unemployment assistance, the right to an early pension should be accorded her, for she is in circumstances that would justify a lowering of the age of entitlement to an old-age pension.

The most serious problem occurs when the old-age pension granted a woman under the terms outlined above is too small to ensure for her a standard of living corresponding to that which she enjoyed while her husband was alive. The earnings of husband and wife are often very unequal and the pensions they are entitled to are thus also likely to be very unequal. For the present at any rate it is generally the earnings of the woman that are lower, and a widow reduced to her own pension and

nothing else finds that her standard of living has dropped, perhaps considerably. The same situation can arise if the woman's pension is based wholly or partly on the years spent in her home, and this solution is out of keeping with the concern for security that underlies the relevant legislation.

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The answer to this problem might be found in insisting on the family nature of the standard of living that is to be maintained and deciding that when the husband or wife dies the survivor's old-age pension would never be less than half the amount of the old-age pensions they were receiving or would have been entitled to receive together. This rule would naturally apply irrespective of sex, and so to the pension of the man who becomes a widower as much as to that of the woman who becomes a widow, though in fact it is the woman who would generally benefit from it. This would show clearly that a woman's independence of her husband by no means excludes family solidarity but that this is understood as implying relations of complete equality between the partners.

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In short it would seem that current trends as regards women's rights must normally lead to the disappearance of widows' pensions. If the notion of widowhood retains a social sense this can only be based on respect for the equality of husband and wife, of widower and widow, and strictly confined to situations where widowhood gives rise to special needs, in other words, first during the critical period immediately following the death of the spouse, secondly where there is need of early entitlement to an old-age pension, and thirdly where the widow's or widower's old-age pension has to be increased because it is less than half the amount of the two pensions taken together.

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The ideas expressed here may cause some surprise. It is certain that they depart widely from present trends of thought. It is also certain that to give effect to them would call for long periods of study and longer periods of transition. But it is precisely because of this that they call for urgent consideration. Ideas change so fast today that we are seldom abreast of economic and social realities. The transformations required by changing ideas must be worked out in advance if legislation and institutions are not to become quickly out of date and the essential reforms are not to be overtaken by events even before they can be put into effect.