

STATUS OF WOMAN—HER RIGHT TO PROPERTY AND INHERITANCE UNDER HINDU LAW (OLD AND NEW)

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'Woman' expression has got many shades. In Hindi we call it "Naari".

When we talk of woman she appears as mother and mother in higher degree, she appears as equal partner in life to man as wife or Ardhangini and as offspring i.e. as daughter or partner of the offspring as daughter-in-law.

She is never considered as a chattel as per Hindu way of life, leaving aside the period of 'a' thousand years of alien slavery and under its shadow.

There has been a belief and basic principle of Hindu way of life in accordance with which husband and wife were two in one. A man is only half of himself and unless he took a wife i.e. unless he was married he is and used to taken as not to have been fully born and it was taken as if he is incomplete so long he is not married. It is when he is married and he takes the wife then alone he is fully born and he becomes complete.

In his Treatise on Hindu law and Jurisprudence 1st Ed. vol. 1 the Learned Author Sri Kashi Prasad Saxena at page 29 under head Legal Fictions observes:

"Accordingly Brahmins versed in Veda declare this, "The person known as husband is verily known as wife."

"अर्धो ह व एवं आत्मनः तस्मावज्जायां नैतावत्प्रजायते। असर्वोहि तावद्भवति अध यथैव जायां विन्दते। अथ प्रजायते तर्हि सर्वो भवति। तथा चैतद्वेदविदो विप्रा वदन्ति/यो भर्तो सैव भार्या स्मृता।

The same idea is expressed by Manu (IX.45) thus, "What is known as wife, self and offspring a man consists of the same."

एतावनेव पुरुषो यज्जायात्मा प्रजेति ह।

विप्राः प्राहुस्तथा चैतद्यो भर्तो सा स्मृताङ्गना।।

One's one self, wife and the offspring, the three together constitute one identity or one unit of self. The learned Vipras as such say that one who is the husband is also in the form of wife that there is no destruction or separation or difference between husband and wife the two are one and same.

This concept of oneness of identity of wife and husband—man and woman has well been, in later stages, explained by saint poet Tulsī Das in Ramcharit Manas written or composed during 1574 to 1577 A.D. as under :

"जिय बिनु देह नदी बिनु बारी।

तैसेहि बिनु पुरुष बिनु नारी।।"

The man and woman (husband and wife) are two in one or say complementary and supplementary and interdependent of each other as body and soul, river and water, Man without wife is soul without body, Purush without

Prakriti, water out side or separate from river and a woman without man (husband) is like as soulless body, vacant space of river without water or philosophically we say Prakriti without Purush. It is said that Purush without Prakriti is ``Pangu" or lame and Prakriti without Purush is `Andhi' or blind and there can be no progress or action or movement.

In Brihaspati's Smiriti Chandrika p. 676 as referred to by author of Hindu Law and Jurisprudence there is a shloke that explains the relation of wife and husband, and to a sonless/Issueless deceased person whether it be, share of such person i.e. husband in coparcenary property or husband's self acquired property husband was taken to be alive in the form of his wife and none could inherit the property of a person when his widow (wife) was there. The Shloka reads :

“आमान्ये स्मृति तन्त्रे च, लोकचारे च सूरिभिः ।
शरीरार्धं स्मृता भार्या, पुण्यापुण्यफलेसमा ॥
यस्य नोपरता भार्या, देहार्थं तस्य जीवति ।
जीवत्यर्धरेऽर्थं कथमन्यः समान्पुयात् ॥
सकुल्यै विद्यमानैस्तु पितृमातृसनाभिभिः ।
असुतस्य प्रमीतस्य, पत्नी तद्भागहारिणी ॥

In the sacred laws, Smriticodes and as per Lokachar (popular usage) a wife is recognised by learned and wise men, to be the half body or half the body politic of the husband and that the wife is equal participator with her husband in the results of good and bad deed. Of one (who has died in common parlance). whose wife has not ceased to live i.e. whose wife exists even after him as his wife, his half of the body (in the form of wife) remains alive. Then as such one would be and is deemed to be alive with his half body (in form of his wife). Tell (say) how can any body treat him non existent and take the property or share of such a person; while agnates including the father, brother and cousin of such son less deceased person (in common parlance) remain there his property or share in property is to be taken by his widow.

A reading of the shlokas reveals the position of a woman who becomes widow qua her husband (deceased husband) and specifically qua the property of husband dying sonless.

The Manu Smriti vide its chapter X shloke 130 further reveals the position of the daughter of one who dies leaving no son nor widow, qua his property. It reads as :

“यथैवात्मा तथा पुत्रः पुत्रेण दुहिता समा ।
तस्मात्मानितिष्ठन्त्यां कथमन्यो धनहरेत् ॥

As is the position between self and son i.e. as is the self so is son (representing self) same is the position of daughter, a daughter is equal to son. A daughter like a son springs from each member of the man, and so on the existence of daughter it is self that is represented in the form of daughter and as

