

THE RIGHT OF INHERITANCE OF A CHILD UNDER INDIAN LAW: A CRITICAL STUDY

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Abstract: Under all social orders on the planet, the status of a youngster i.e. regardless of whether it is conceived genuine or ill-conceived has extraordinary result. Both in the contemporary society and in the authentic culture there is order of youngsters as real and ill-conceived. Since time immemorial, there is a social shame encompassing a youngster who isn't destined to lawfully married/wedded guardians. The ill-conceived kids never delighted in rise to status alongside the true blue youngsters. The general public dependably segregated the ill-conceived youngsters from various perspectives. Not just the general public separated them, even law has segregated them. Law has not given the ill-conceived youngsters an indistinguishable lawful rights from the genuine ones are given. Under all the individual laws the privilege to legacy of the genuine kids and the ill-conceived kids are not the comparable. Wrongness conveyed a solid social shame among all religions rehearsed in the world. ¹ Wrongness as characterized by the Oxford Dictionary implies, "(Of a kid) conceived of guardians not legitimately wedded to each other". This implies wrongness implies when the guardians of a youngster are not legally married, the kid will be viewed as ill-conceived. Premarital sexual relationship and extramarital sexual relationship are thought to be a wrongdoing in every one of the social orders. So the resultant offspring of such hostile relationship is additionally kept in a condition of transgression. It is viewed as ill-conceived. Numerous religions additionally see premarital or extramarital sexual relationship as a hostile relationship. All the individual laws in India are religion-based thus even under law, the youngsters conceived out of such hostile relationship are not given equivalent status with the kids resulting from a legitimate wedlock. ²

IndexTerms – Child, Illegitimate, Legitimate.

I. INTRODUCTION

"There are no illegitimate children, there are only illegitimate parents." -

Leon R. Yankwich

ILLEGITIMACY

Illegitimacy is a concept which means a children which are born of parents which are not married to each other. Under all societies and all over the world, the status of the children whether it is born legitimate or whether it is born illegitimate has to suffer a great consequence. Both in the contemporized society and in the historical society there are a great classification of children as illegitimate and legitimate. So, who is an illegitimate child? An illegitimate child is the one who has the certainty of his/her mother but does not have certainty of his/her father.

Who are considered as illegitimate children?

The following children are considered to be an illegitimate children in India:

1. Children who are born to couples who are not legally married to each other.
2. Children who are born of incestuous marriage.
3. Children who are born bigamous marriage.
4. Children who are born out of adulterous relationship between parents.
5. Children who are born out of marriages which are void under article 38 of the Family Code :
6. Children who are born out of couples who are below 18 years where they are married or not.
7. Children who are born out of other void marriage under Article 15.

II. ARE THERE DIFFERENT KINDS OF ILLEGITIMATE CHILDREN?

Yes there are two kinds of illegitimate children. They are:

1. An unrecognized illegitimate children – The children who is not acknowledged by his biological father, and thus have to use the surname of his mother.
2. A recognized illegitimate children – The children who is recognized or is acknowledged by his father. He is allowed to use the surname of his father.

Illegitimate children under Hindu Law

The Hindu Law relating to illegitimate children are under the following four heads:

- A. Maintenance
- B. Inheritance
- C. Joint Family Property and Partition
- D. Guardianship

A. Maintenance

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Preceding the coming into power of the Hindu selection and Maintenance Act, 1956, an ill-conceived child of a Hindu was qualified for upkeep out of his dad's coparcenary property. The Hindu father will undoubtedly keep up his ill-conceived child amid the time of minority. Ill-conceived little girls had in the past no cure under the Hindu Law. They are qualified for support under the Code of Criminal Procedure Code which is enforceable till the life-time of the putative father and get ended on his passing. Presently, under the Hindu Adoption and Maintenance Act, 1956, a Hindu will undoubtedly keep up his or her ill-conceived kids. Under this Act the obligation to maintain illegitimate children is now on both the parents i.e father as well as the mother. Under this not only the illegitimate son but also the illegitimate daughter is entitled to be maintained by her father and mother. The right to be get maintained is only available up to the period of minority. An illegitimate children in not entitled to be maintained after he/she attains the majority. An illegitimate child who has ceased to be a Hindu can apply for maintenance from his or her father under the Code of Criminal Procedure Code.

B. Inheritance

An ill-conceived tyke isn't qualified for prevail to his dad. Under the Hindu progression Act, ill-conceived kids are esteemed to be connected by ill-conceived family relationship to their mom and to each other. An ill-conceived tyke can acquire the property of his or her mom or of his or her ill-conceived sibling or sister. Similarly a mother can likewise acquire the property of her ill-conceived youngsters. Along these lines the father has no privilege to acquire the property of his ill-conceived youngsters. After the Hindu Succession Act, 1956, an ill-conceived offspring of a Shudra can't acquire the property of his or her dad.

C. Joint family property and partition

An ill-conceived child does not gain any enthusiasm for the familial property nor he frame a coparcenary with him, so amid the life-time of the father the privilege of the ill-conceived child is just constrained to support. In any case, the father may give his offer in the property amid his lifetime which might be equivalent to that of the honest to goodness children.

D. GUARDIANSHIP :

A mother has a right of guardianship. The father had no right to take the custody of the illegitimate son during the minority and ordinarily the mother of an illegitimate child had the right to take the custody of the child during the years of nurture. Now if the parents of an illegitimate child are Hindus, Buddhist, Jains or Sikhs by religion or if any one of the parents of the child is a Hindu, Buddhist, Jain or Sikh by religion, then the Hindu Minority and guardianship Act, 1956, applies to such a child and under Section 6 of the Act the mother is the natural guardian in the case of illegitimate boy or illegitimate unmarried girl, the mother is the natural guardian.

III. LEGITIMATE & ILLIGITIMATE CHILDREN IN INDIA

In today's time the Indian Laws have classified children into two main categories i.e. Legitimate and Illegitimate children. The Legitimate children are born from a valid marriages whereas illegitimate children are born from a marriages which are invalid, irregular or void. In today's time there are no problem while regarding the rights of legitimate children but the illegitimate children face a lot of problem when there rights are concerned¹. Recently, in the case of **Thrumurthi Ranayammal v. Thrumurthi Muthamal**² the high court created some confusion regarding the rights of illegitimate children, but it was removed by the parliament by means of Marriage Laws (Amendment) Act, 1976 which introduced a new concept of rights of illegitimate children. According to this, all the children will be considered to be legitimate child whether they are born from a void, valid or voidable marriage.

IV. PERFECT AND STATUTORY LEGITIMACY

A youngster is said to be superbly real when he/she is resulting from a legitimate or a customary marriage. If there should arise an occurrence of a statutory true blue youngster he/she is one who is posterity of a sporadic or invalid marriage. After the initiation of Section 16 of the Hindu Marriage Act, 1955 this idea of Statutory Legitimacy has been drawn up.

✓ ILLEGITIMACY ACCORDING TO INDIAN EVIDENCE ACT, 1872

Section 112 of the Indian Evidence Act characterizes illegitimacy of a kid by saying that the way that any child was conceived during the duration of a substantial marriage between his mom and any man, or inside two hundred and eighty days after disintegration of marriage and the mother stayed unmarried, till then might be decisive verification that he is the honest to goodness child of that man, unless it can be demonstrated that the gatherings to the relational unions had no entrance to each other whenever when he could have been sired.³ In custom-based law, legitimacy is the status of a child born to parents who were lawfully married to each other; and the kid was considered legitimate before they got legitimately separated. On the other hand, illegitimacy (or bastardy) is the status of a child conceived outside the marriage. Illegitimacy likewise brings up the issue with respect to right of support of child and mother from the putative father.⁴ As per Friedmann in his 'Law in a Changing Society', the minimum the law can do is to limit the setbacks of the kids who are conceived past wedlock. In any case, it can, and should, energize the authenticity of kids by resulting marriage. Legitimacy is currently perceived in number of laws. Be that as it may, this is liable to extensive constraints. Under Scottish Law, for example, a youngster couldn't be legitimated by a resulting marriage of his parents, unless they were allowed to marry at the time of its conception. In England, the position is the same with the exception of that the significant date is of the youngster. In the current Report of the Royal Commission on Marriage and separation, a minority of seven individuals contended powerfully that this separation stigmatized youngsters for the shortcomings of their parents.⁵

V. SOCIAL PERSPECTIVE OF AN ILLEGITIMATE CHILD

✓ ANCIENT INDIA

Old India has an extremely excessively critical view in regards to an ill-conceived child. The different religious messages in the Hindu folklore are bottomless with extraordinary individuals who were ill-conceived kids and had no fatherly assurance. Give us a chance to take the case of "The Mahabharata"⁶. Being a prevalent epic it resembles a mirror of the general public and gives a knowledge into Indian culture's (fundamentally Hindus') state of mind towards life. The epic likewise assumes a critical part in moulding the Indian personality as it is generally perused (might be in sections) and viewed over television.

Ill-conceived youngsters in the general public frequently slandered. The treatment given to the ill-conceived kids in the epic is demonstrative of the way the Hindu society treats its ill-conceived youngsters. There are a ton of cases of ill-conceived youngsters who were extraordinary individuals before and who were abused by the old society and were dealt with as articles just to serve the true blue.

1. Vyasa

Vyasa was the ill-conceived offspring of sage Parashara and Satyawati. He was conceived of pre-conjugal relationship of his folks. Vyasa's significance in the epic is seen when he was solicited to be the lord from Satyawati's kingdom. Through, this was done not with bonafide aim by Satyawati but rather it was done as King Shantanu and his two children Chitrangad and Vichitravirya had passed on leaving no successor to the position of royalty. As the kingdom was without the successor, Satyawati first requested that Bhishma perform Niyoga on the dowagers of Vichitravirya and Chitrangad so as to have beneficiary to the position of royalty. At the point when Bhishma cannot, Satyawati summoned Vyasa. As no real child was left, Illegitimate was summoned as an issue of need! After this occasion Vyasa's ill-conceived root was not given much significance in the whole epic. He was dealt with as a typical genuine kid. So would we be able to state that if an ill-conceived youngster is found to come in some helpful reason at that point is his wrongness can be simply disregarded? Does the general public recognize the ill-conceived youngsters when they never again represent a danger to their notoriety? ⁷Most likely the transgression of youthful age loses its disgrace when one develops old and ill-conceived child turns out to be worthy, the force of wrongness goes down.

2. Karna

Karna was Kunti's illegitimate child and he was sufficiently blessed to get the same compassionate treatment that Vyasa got. All through the epic Karna was dealt with as a peasant on account of his obscure starting point. Right off the bat he was denied of his training by Dronacharya as he declined to take him as his understudy. Also, he was constantly reminded in the epic that he was a child of charioteer and was found in a bushel in a river. This demonstrates that his ill-conceived root was viewed as a major disgrace. Karna murdered a bovine of a Brahmin mixing up is as a wild creature. The epic is by all accounts betraying Karna. He was reviled by Parshurama and by the brahmin. He was denied of his normal protective layer by the sun God. He was killed when he was defenceless. Did the epic communicate something specific this is the end result for the ill-conceived tyke in the event that he tries to a high position? Then again Vyasa and Vidura get much better treatment. Does this show an ill-conceived offspring of Brahmin sage can be given better treatment however not of others?

3. Ghatotkacha

Another significance ill-conceived tyke in the epic is Ghatotkacha, the half-position resulting from the association of the Pandava value Bhima and the Rakshasi Hidimba. He was a critical character in the epic as he spared Arjun's life. Mahabharata is an epic which demonstrates the childishness and the universal heartless treatment that one could provide for a kid conceived past wedlock. At the point when at last, the fight was over in the epic Lord Krishna comes to Bhima and reveals to him that if Ghatotkacha had not surrendered his life to spare Arjun then he would have slaughtered him himself with his own hand in light of the fact that as indicated by him "Ghatotkacha was an evil soul and a disgrace to the Brahminical Society". These announcements given by Lord Krishna and the way that there is no occurrence of Bhima deploring over Ghatotkacha's passing nor his Rakshasi mother nor some other Rakshasi ladies mourning over the demise of their spouses or kids in the whole epic demonstrates that the creator of Mahabharata had an unconcerned demeanor towards the sentiments of these gathering of individuals. We can see that in the past the ill-conceived youngsters were dealt with as a soil and their status in the general public was not as amazing and glossy as that of the real kid. The way that a considerable lot of them were dealt with contrastingly because of their commitments to the general public and demonstrates the way that the general public responded diversely with various ill-conceived kids.³

✓ MORDERN INDIA

The attitude of the Indian individuals have changed a considerable measure and now as opposed to considering as far as religious philosophy, the Indians have now received levelheadedness as the new key which could just open the entryway of a splendid Indian future. The different judgment of the apex court in our nation with respect to cases including rights to an ill-conceived kid have been founded on significant law as well as based on humankind. In one such case in the year 2011, Supreme Court of India held that the ill-conceived kids were not just qualified for an offer in the self-obtained property of guardians yet in addition in tribal property. A seat of Honourable judges G.S. Singhvi and A.K. Ganguly said in a judgment that such youngsters can't be denied of their property rights as what was viewed as ill-conceived in the past may not be so in the present evolving society. It additionally said that the court needs to recall that connection between guardians may not be authorized by the law but rather the introduction of the kid in such a relationship should be seen freely of the relationship of guardians. As indicated by the auspicious bench,⁸ "A kid because of such a relationship is honest and he is qualified for every rights which are given to other kids conceived of substantial marriage. Right to property is not any more major however it is a protected right and Article 300 A contains an assurance against hardship of property right."⁴

VI. ILLIGITIMATE CHILD – RIGHT TO PROPERTY

The case Rohit Shekar v. Narayan Dutt Tiwari and Others has mixed up numerous inquiries that stay unanswered in the laws administering Hindu social connections and legacy when the fatherly connection of Congress pioneer ND Tiwari with Rohit Shekhar was demonstrated after a DNA test. One imperative alteration was completed in 1976 to Section 16 of the Hindu Marriage Act, 1956, giving the privilege of legacy to father's property on kids resulting from void or voidable relational unions, regardless of whether proclaimed by the official courtroom. The incomparable Court in Jinia Keotin v. Kumar Sitaram Manjhi⁵ stated, "Area 16 of the Act, while engrafting an administer of fiction in appointing kids, through ill-conceived, to be honest to goodness despite the marriage was void or voidable, picked additionally to keep its application, so far as progression or legacy by such youngsters are worried, to the properties of the guardians as it were". This implied that the ill-conceived kid could acquire the property of his dad just and had no privilege to acquiring the genealogical property of his dad which an honest youngster could. In case of live-in relationship where there is no relational unions between the couple, the noteworthy Supreme Court of India has said that it would assume that the couple in a live-in-relationship would be husband and spouse on the off chance that they had been living under a similar rooftop for a drawn out stretch of time⁶. In S.P S. Balasubramanyam v. Sruttayan⁷, the preeminent Court has stated, "if a man and lady are living under a similar rooftop and living together for various years, there will be assumption under Section 114 of the Evidence Act that they lie as a couple and the kids destined to them won't be ill-conceived." The condition for the child born out of a Live-in relationship to be treated as a legitimate child and not as an illegitimate child is that the live-in couple should have been living together as a husband and wife as recognized by the society and also living together for a long period of time. If these pre-requisites are not there and the couple are having a 'walk in and walk out relationship' then it is not possible for him/her to be tagged as a legitimate child as stated by the Honourable Supreme Court in the judgment given by it in the case of Madan Mohan Singh v. Rajni Kant⁸. Talking of the rights of a child born out of the walk in and walk out relationship, where a DNA test proves the biological relationship between the child and the father though the mother was in a subsisting legal married relationship with another man, the court is yet to answer and solve this problem. Even if one applies the 1976 amendment to Hindu Marriage Act in the widest possible amplitude, then too the mother of the child must first claim marriage or sufficiently long relationship, without her having access to any other man, for the law to bestow right of inheritance on the offspring to the father's property. On account of Dr. Vijay Mohan Arbat v. Kashi Rao Rjaram Sawai⁹, the Honourable Supreme Court said that the Section 125 of Code of Criminal Procedure gives an obligation on the youngster to keep up his organic father or mother and it doesn't exonerate a wedded girl of this duty. In Kamti Devi case¹⁰, the Honourable Supreme Court said, "The consequence of a veritable DNA test is said to be deductively exact. Yet, even that isn't sufficient to escape from the convincingness of Section 112 of the Evidence Act, for instance, if a couple were living respectively amid the season of origination however the DNA test uncovered that the kid was not conceived of the spouse, the indisputableness of law would remain un-rebuttable." This may look hard from the perspective of the spouse who might be constrained to endure the parenthood of an offspring of which he might be blameless. In any case, even in such a case, the law inclines for the honest youngster from being bastardized if his mom and her life partner were living respectively amid the season of origination.¹¹

Subsequently what can be said is that there is no uncommon change in the Indian Society however unquestionably there are changes that are occurring.⁹

VII. LEGAL PERSPECTIVE OF ILLEGITIMATE CHILD

✓ SECTION 125 OF THE CODE OF CRIMINAL PROCEDURE, 1973

As indicated by Section 125 of the Code of Criminal Procedure, 1973 an ill-conceived youngster can get support from his dad or mom in the event that he/she can't look after himself/herself whether wedded or not. He/she if has achieved dominant part, and by chance because of any physical or mental variation from the norm or damage can't look after himself/herself at that point can likewise get upkeep under this area.¹⁰ This is the fundamental area of the Indian Law that is a help for ill-conceived youngsters (who can't look after himself/herself) as it gives fast and true blue support to ill-conceived kids.¹²

✓ SECTION 20 OF THE HINDU ADOPTIONS AND MAINTENANCE ACT, 1956

As indicated by this Section of the Hindu Adoption and Maintenance Act, 1956 any genuine or ill-conceived youngster can or has the privilege to support from both of his parent so long they are minor and they are not in a circumstance to look after themselves.¹³ The proclamation peruses as "Support of kids and matured guardians:

- 1) Subject to the arrangements of this area a Hindu is bound, amid his lifetime, to keep up his or her honest to goodness or ill-conceived youngsters and his or her matured or sick guardians.¹¹

- 2) A genuine or ill-conceived kid may guarantee support from his or her dad or mom insofar as the tyke is a minor.
- 3) The commitment of a man to keep up his or her matured or weak parent or a girl who is unmarried stretches out in so far as the guardians or the unmarried little girl, by and large, can't keep up himself or herself out of his own income or other property."

✓ SECTION 16 OF THE HINDU MARRIAGE ACT, 1955

As indicated by this Section of the Hindu Marriage Act, 1956 any youngster resulting from a substantial/general, invalid/unpredictable, void or voidable marriage should be thought to be legitimate child of that couple. The way that the marriage was in contradiction of the laws does not change reality that the kid was a legitimate child of the couple. The proclamation peruses as "Legitimacy of Children of void and voidable relational unions":¹²

1. Despite that marriage is invalid and void under Section 11, any child of such marriage who might have been legitimate if the marriage had been substantial, should be legitimate, regardless of whether such kid is conceived previously or after the beginning of the Marriage Laws (Amendment) Act, 1976 (68 of 1976)¹⁴, and regardless of whether a declaration of nullity is conceded in regard of that marriage under this demonstration and regardless of whether the marriage is held to be void generally than on an appeal to under this demonstration.¹³
2. Where a declaration of nullity is granted in regard of a voidable marriage under section 12, any child generated or considered before the decree is made, who might have been the legitimate child of the gatherings if at the date of the decree it had been broken down as opposed to being repealed, should be esteemed to be their authentic youngster despite the declaration of nullity.
3. Despite anything contained in sub-area (1) or sub-area (2) might be interpreted as presenting upon any child of a marriage which is invalid and void or which is abrogated by the announcement of nullity under Section 12, any rights in or to the property of a man, other than the guardians, on the off chance that where, yet the death of this demonstration, such youngster would have been inadequate having or getting any such rights by reason of his not being the true blue offspring of his folks.¹⁵

VIII. ILLEGITIMATE CHILD'S RIGHT TO MAINTENANCE AND PROPERTY ACCORDING TO THE HINDU COPARCENARY CONCEPT

On the off chance that we are to talk about the privileges of a child who is conceived past a wedlock or an ill-conceived tyke, at that point the different choices given by different courts in our nation goes to a ton of assistance. One such case is the Sujata v. Krishna Prasad where the noteworthy court watched; that however the kids conceived out of void relational unions are influenced honest to goodness, to area 16(3) of Hindu Marriage Act restricts the conferment of any privilege on them in the property of any individual, other than the guardians.¹⁴ Along these lines, the legitimized child can't get an offer in the property which has a place with coparcenary of which his dad is a part and that the legitimised child should prevail to the property on the demise of his folks.

✓ IN CASE OF PARTITION OF A COPARCENARY PROPERTY:

There are two expansive stem of schools that arrangement with the segment right of an ill-conceived kid.¹⁵ The Mitakshara Law/School and the Madras and Bombay School. As indicated by the Mitakshara School of Legitimacy, a kid conceived as a Perfect Legitimate child or Statutory Legitimate child will have the privilege to request parcel of the hereditary/coparcenary property from his dad amid his lifetime and after his demise to his Grandfather. As indicated by the Madras and Bombay School, a child conceived as a Perfect real kid or Statutory Legitimate Child won't have the privilege to request parcel of the ancestral/coparcenary property from the Father during his lifetime. In any case, after his demise he can ask to his granddad.

✓ MUSLIM LAWS THAT REGULATE THE RIGHTS OF AN ILLEGITIMATE CHILD

To the extent Muslim marriage is concerned, there is no such procedure or technique by which some dignified status is allowed over an ill-conceived youngster. Be that as it may, there are extent of conventional Muslim law which gives the affirmation of authenticity, yet it is seen that the possibility of this administration isn't to legitimize an ill-conceived tyke yet for another reason. Since a Muslim marriage is an authoritative commitment and not a hallowed obligation, consequently it is seen that there are a considerable measure of occasions of invalid relational unions. With this outcome authenticity of the youngsters conceived out of such marriage is by and large questioned. It is simply because of this reality that Muslim law empowers a father to recognize the paternity of a child under certain legitimate circumstances. It might be noticed that under Muslim law a youngster to be authentic more likely than not been a posterity of a man and his better half or a man and his slave. Rest every one of the kids are dealt with to be ill-conceived. They are off springs of Zena, which implies unlawful association. The affirmation must not be simply of sonship but rather should be made such that it demonstrates that the affirmation intended to acknowledge the other, as his child as well as his true blue child. At the end of the day under Muslim law just real children can be subjected to affirmation and there is no administer which may give the status of authenticity upon an endorsed ill-conceived child.¹⁶

IX. CONCLUSION

The Indian Society is a powerful society thus it is experiencing a change organize which comprises of two general classifications of individuals with two particular belief systems.¹⁷ One of the gatherings has confidence in the standard techniques for Hindu religion where having an ill-conceived youngster is a forbidden and being one is a greater disgrace.¹⁸ They have faith in virtue of life and the act of virtuousness. The other gathering in the general public comprises of individuals who are normal and liberal in their viewpoint and don't think about wrongness as a shame. They don't accuse an ill-conceived kid for his/her reality rather

accuses the flighty couple. The laws in the general public are additionally being altered as needs be as the time and the circumstance requests. Along these lines what we can state is that the Indian Laws are the mirrors picture of the Indian Society.

REFERENCES

¹ Leon Rene Yankwich (September 25, 1888 – February 9, 1975) was a United States Federal Judge.

² AIR 1974 Mad 321.

³ The Indian Evidence Act, 1872.

⁴ [http://en.wikipedia.org/wiki/Legitimate_\(law\)](http://en.wikipedia.org/wiki/Legitimate_(law)) (Visited on 13 April 2018).

⁵ Friedmann, W., Law in a changing Society, Page 210.

⁶ The Mahabharata or Mahabharata is one of the two major Sanskrit epics of ancient India, the other being the Ramayana. Its author is Vyasa.

⁷ Ibid.

⁸ This is taken from an article by an anonymous author from a reputed newspaper of the country “The Times of India”: TNN Apr 14, 2018, 05.02am IST, The Times of India, Illegitimate kids have stake in property.

⁹ Date of commencement 27-05-1976.

¹⁰ 2003 (1) SCC730.

¹¹ D. Mahapatra, TNN Apr 15, 2018, 03.20AM IST, How legitimate is an illegitimate child’s right to property?, The Times of India.

¹² AIR 1992 SC 756.

¹³ (2010) 9 SCC 209.

¹⁴ Ibid.

¹⁵ 1987 (2) SCC 278

¹⁶ 2001 (5) SCC 311

¹⁷ The Hindu adoptions and Maintenance Act, 1956

¹⁸ Ibid.

