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PROPERTY RIGHTS OF ILLEGITIMATE

CHILD UNDER INDIAN LAWS

- A SOCIO LEGAL STUDY

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INTRODUCTION:

Throughout history, illegitimate children or children born out of wedlock were treated harshly under the laws of inheritance and property rights. They often were denied any rights at all to inherit from their unmarried parents. However, as time passed children born out of wedlock began to receive some inheritance rights. But these rights were still much more limited than those of children born to married couples. An illegitimate child is a child born to parents who are unmarried at the time of birth. Even if the parents get married later, the child is still considered illegitimate. Many states have abandoned the use of the term “illegitimate” due to its negative connotations. Instead, they use the terms “out of wedlock” or “non-marital” children.

Historically, these children had no legal rights to their parents’ estates. Under common law, a child born out of wedlock was not a legal child of either parent. Thus, they had no right to parental support or property. Fathers who did not wish to acknowledge their non-marital children could typically disinherit them.

In India, prior to the drafting and passing of the Hindu Code Bills and the eventual enactment of Hindu Personal Laws, the people and communities were generally governed by their own customs, usage, etc. Therefore, inheritance was governed solely by custom and usage. Hindu women were not permitted to hold and purchase property apart from their “Stridhan”, and if any immovable property devolves upon a Hindu woman, she only has life interest in the property and cannot alienate it according to her wishes. Further, illegitimate children were given no rights of inheritance or maintenance and were treated as outlaws. However, the enactment of the Hindu Code Bill streamlined and codified the laws governing Hindus and by extension, gave certain rights to illegitimate children. Further, through various amendment and precedents, the ambit of rights of illegitimate children have expanded.

Today, every state gives an illegitimate child the right to inherit from their maternal relatives. However, it is generally more difficult to establish the right to inherit from a child's unmarried father. Most states do not automatically presume that the child is the legal child of their father. In these states, paternity must be established. However, it should be noted that many of these same states require that paternity be proven during the father's lifetime.

An ill-conceived child does not obtain any enthusiasm for the Property in the hands of his father nor does he can be a coparcenary in a Joint Hindu Family. He is additionally not qualified for uphold segment against the family. The point of the examination is to discover about the substantial Hindu Marriage Act and break down about the joint Hindu family property under the Act. This paper aims to study about the valid marriage under Hindu Marriage Act and to study the joint family property and partition under the Act.

NEED OF THE STUDY:

Right to Property is when there is an inheritance right to the person concerned. Under Hindu Succession Act, 1956 it gives right and tells that a legitimate child has the right including both son and daughter from Class I heirs in the Joint Family Property. But in Hindu Law, the child which is illegitimate could only inherit the property from his/her mother's side and not the alleged father. The legitimacy of a child has always been a topic of debate and legitimacy has always been considered a major factor while considering the inheritance rights under Hindu Law. Courts have but always said that a child born out of the wedlock will not be denied the inheritance of property when born after a reasonable period of time. In the event that the child is born out of a void or voidable marriage, there does not exist any presumption of legitimacy and the legitimacy of the child is dictated by the personal laws of the child or that of the parents. But discrimination against illegitimate child in case of property right is prevailing since from ancient period. For progress illegitimate child, equality in all areas including maintenance and property is very needful one. In this juncture, it is very significant to study and critically analyze. Hence an attempt is made in this study.

REVIEW OF LITERATURE:

Nowadays there is a sense of ambiguity in the realm of succession and inheritance rights of illegitimate children in India. Number of legal scholars writing books and articles about it. Here the study investigates its legalization and right of illegitimate.

In 2014 Arezo Rashidi wrote on "*The illegitimate children parentage*". The author had discussed details about significance of parentage regarding illegitimate child.

In 2015, Kujal Arora in "*Illegitimacy under Hindu Law*". Under this article he had discussed in details about rights of born out of wed lock child regarding Maintenance, succession and Guardianship with case analysis decided by Supreme Court and High Court. Finally he expressed the law should be amended towards the illegitimate children on Hindu Law.

In 2018 Syed Afridi and Arul Kannappan wrote on "*A critical analysis of property rights of illegitimate children*" examined the status of inheritance rights of ill – conceived kids and the authors had discussed about validity of marriage under Hindu marriage act. He analyzed the lawful rights of ill-conceived child under personal laws in India. He gave clear cut details about property rights of illegitimate child. He did not emphasize ancestral property.

In 2018, "*The Right of Inheritance of a child under Indian Law: A critical study*" by Jai Shankar Ojha, Gouri Agarwal. He focused there are no illegitimate children, there are only illegitimate parents. The author focused on Section 112 of Indian Evidence Act.

OBJECTIVES OF THE STUDY

The specific objectives of the study are,

1. To study about the valid marriage under Hindu Marriage Act.
2. To study the joint family property and partition under the personal laws.
3. To study about maintenance under personal laws.
4. To critically evaluate the role of legislature and judiciary on illegimates property right

RESEARCH QUESTIONS:

The following hypothesis are formulated the purpose of the study

- Whether the Illegitimate children are entitled to all rights in the property of their parents, both self-acquired and ancestral or not?
- Whether the rights of illegitimate child governed by personal laws in India or not?

- Whether the children born in out of wedlock is legitimate and have the same rights as in case of children from the valid marriage or not?
- Whether the illegitimacy has recognized under personal laws in India or not?
- Whether the illegitimate child enjoy the equal property rights of inheritance in India or not?

METHODOLOGY:

The study is collected from national and international journals, books and publication from various websites which give importance to property rights of illegitimate children.

CONCLUSION:

It is thus submitted that something immediately be done to solve the problem of illegitimacy in India and more so confer rights of property and maintenance on them. It is left to imagination what the plight of illegitimate daughters has been over the years, as they suffer doubly because of their illegitimacy and more importantly because of their belonging to the exploited sex.

It is, therefore, an urgent need to analyze the various provisions relating to the position of illegitimate children their right to property and their right to maintenance under various personal laws in India in order to have a simulative thinking on the problem.

PLAN OF RESEARCH:

The study is derived into Five Chapters. Those chapters are discussed as follows:

The **FIRST CHAPTER** focuses on Introduction, Need of the Study, Objectives, Research Questions, Methodology and plan of Research.

The **SECOND CHAPTER** is the conceptual analysis of Legitimacy in India.

The **THIRD CHAPTER** consist two parts. The first part is validity of marriage under personal laws in India. The second part briefly analyses the property rights of illegitimate child in India.

The **FOURTH CHAPTER** is about property Rights of illegitimate child under Muslim law and Christian law.

The **FIFTH CHAPTER** is on conclusion and suggestions.

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