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**PROPERTY RIGHTS OF A HINDU WIDOW, LEGITIMATE CHILD  
AND ILLEGITIMATE CHILD – HINDU LAW**

**Abstract**

*This article is analysis of the property rights of widow whether on husband's property or fathers of both kind ancestral as well as self-acquired. This analysis will also be about the property rights of legitimate child and illegitimate child.*

*In Vedic occasions widow was not offered right to acquire her husband's property. a lady as maiden, as a spouse and as widows enjoyed extremely restricted legitimate and financial status during Vedic occasions. The hypothesis that Hindu ladies are avoided from legacy was begun with the content of Baudhayana, the reputed author of one of the schools of Black Yajurveda. He was answerable for not giving heritable rights to ladies. He would never view ladies as fit for having an autonomous status. As per him ladies were not known to be qualified for opportunity. On the side of his perspectives, he contend: "The father protects woman in her childhood; the husband during her youth; the son in the old age; woman ought not to have freedom".*

*Then Hindu Succession Act came which changed the whole phenomenon. Hindu Succession Act 1956, accorded those property rights to the women whereby she can constitute her independent rights of inheritance and independent stock of descent.*

*Traditionally, legitimacy of children in India has been a concern of the family law and, therefore, it is important to look at the Hindu and Muslim individual laws identifying with legitimacy of children. Under the Hindu law, a child who has taken birth after the marriage of its parents, but was conceived before the same, will be illegitimate. Ill-conceived kids here experience the ill effects of numerous social difficulties and lawful inabilities. There are references to illegitimate children in the Hindu Marriage Act, 1955 and other similar laws; but all of them are silent as to under what conditions a child will be considered to be legitimate,*

*except that they mention that children conceived out of void and voidable relationships will be genuine. Problems faced by the children because of the illegitimate relationship between their parents.*

### **Keywords**

*Succession, Inheritance, Intestate, Testament, Legitimate child, illegitimate child, Hindu marriage Act.*

### **Literature Review**

*Widow Remarriage Act of 1856:* Traditionally widow's property rights were cease if she remarries after the death of her husband, then Class-II heirs were given that property. <sup>1</sup>

*Hindu Succession Act, 1956:* Under the scope of this act, which acts as the property law for the individuals who are Hindu, Buddhist, Sikh or Jain, the properties of a Hindu male who dies without a will, goes to his Class-I heirs which includes his sons, daughters, widow and mother equally.<sup>2</sup>

Legal necessity was held by the Hindu law as a condition where the widow needed to sell her deceased spouse's property. These were conditions where she required cash for making gifts or playing out custom's in memory of her late spouse.

### **Background**

During widowhood, pre 1956 i.e., over Stridhan. Stridhan is whatever a female obtains during her life time. <sup>3</sup>The woman has an absolute and unlimited right of alienation of property, independent of the fact whether it has been obtained before or after the passing of the spouse.

Thus, she can alienate the properties with no limitation. So far as the question of succession to the property of a lady of bad character is concerned, her awful character doesn't douse the blood relationship. In this way her close relatives, who have not professed the profession of bad character, can inherit the property Her real son will subsequently prohibit her ill-conceived girl and her husband will exclude his ill-conceived son.

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<sup>1</sup>Available at:

<https://indiankanoon.org/doc/144532805/#:~:text=%2DAll%20rights%20and%20interests%20which,a%20limited%20interest%20in%20such> {Available at 25/07/21, 3:45 PM}

<sup>2</sup>Available at: <https://www.legalserviceindia.com/legal/article-4098-rights-of-a-hindu-widow.html#:~:text=Under%20the%20provisions%20of%20the,over%20her%20deceased%20husband's%20property.> {Available at 25/07/21, 4:55PM}

<sup>3</sup> Available at: <https://www.legalserviceindia.com/legal/article-4098-rights-of-a-hindu-widow.html#:~:text=Under%20the%20provisions%20of%20the,over%20her%20deceased%20husband's%20property.> {Available at 25/07/21, 5:20PM}

## **Introduction**

India is known for its age-old and ethnic variety alongside the element of personal laws filling in as a cherry on the top. The fundamental structure for inheritance shifts based on religion in India and not on the nature of assets. Legacy rights play an essential role in institutionalizing the very basis of family by controlling the family possessions, influencing the futuristic opportunities of the coming ages. Property laws in India reflected a sceptical attitude because of predominance of man centric society in personal laws. The situation of ladies in India regarding progression is very unfair in pretty much every religion practiced and requires prompt separation from religions and a uniform common code to ensure that the laws are simply in genuine sense. The succession laws for Hindus, governed by the Hindu Succession Act, 1956. There is no difference between movable or immovable property and is applicable to both males and females. The Act is pertinent where there is no will or to intestate progression and to any person who has changed over to the Hindu religion. The said Act has no effect where there is already a will or in case of testamentary succession. Section 14 of the HSA eliminated the inability of a female to hold property as an absolute owner, and converted the right of a woman in any estate previously held by her on the date of the beginning of the Act as a restricted proprietor, into an absolute owner.

Legitimacy and illegitimacy of children's is not a new concept in India from the Mahabharata times, in that epic there were many illegitimate children's which were not given any rights even the name of their parents openly. Most famous character was Karna, Kunti's illegitimate child who was constantly reminded in the epic that he was a child of charioteer and was found in a bushel in a river He was killed when he was defenceless. Now conditions are changing about which we will be dealing below.

## **Objectives**

- This research focuses to study the possessions rights of Hindu widow.
- The purpose of the study is to analyse how women can claim their rights and till what extent.
- This paper also focuses on property rights of legitimate child and illegitimate child.

### **Succession And Widow**

A wife is qualified for an identical part of her spouse's properties like other living and entitled beneficiaries. If there could be no other sharers, the wife has the full option to procure the entire property of her deceased spouse. "Section 10 of the HSA, 1956 property can be given to widow as she comes under Class-I heirs".<sup>4</sup> Widow has every right in her deceased husband's property as it is mention in class I of the schedule. A widow under Hindu law can use the property freely without any interference from anyone till she is alive, given just that she doesn't harm the revision. *Nagappa Narayan Shetti v. Mukambe Venkataraman Shetti*<sup>5</sup>, in this case law, it had been accepted that a widow has property rights in the deceased husband's property and she cannot be excluded.

The Widow Remarriage Act of 1856: According to this act widow traditionally have no right to their deceased husband's property when she remarries. However, this Act has been repealed. Under the provisions of the Hindu Succession Act, 1956 widows who choose to remarry do have a right on their deceased spouse's property. The Bombay High Court (HC) decided that a widow who remarries doesn't have to surrender her rights over her deceased spouse's property.

In 2015, "in *Sanjay Purshottam Patankar v. Prajakta Pramod Patil*<sup>6</sup>, a two-judge bench concluded that a widow even after remarrying"<sup>7</sup>, has a right over her past spouse's property. In this specific case, the appeal was documented by a man against his past sister-in-law, who had stated the right over her deceased spouse's property after she married another man. In this, the brother depended upon the provisions under the Hindu Widows Remarriage Act, 1856, which expressed the obliged right and interest which a widow had in her deceased partner's property would cease to exist in the event that she gets remarried without the express consent, and the following beneficiaries of her deceased spouse or others entitled for the property will immediately prevail to the same. The court in the following case concluded that the provisions under the Hindu Succession Act, 1956 would prevail the Hindu Widows Remarriage Act, 1856 which has been revoked. The court furthermore noticed that extensively after remarriage she would qualify as a beneficiary under Class I and the relative of the spouse would, regardless, be under Class II beneficiaries. Further noticing the court expressed that a lady doesn't lose her privileges over her deceased spouse's property, regardless of whether it may be movable or immovable even if she gets remarried. Now, under Hindu law, widow is getting many property rights and awareness among females is even encouraging for different amendments.

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<sup>4</sup> Available at: <https://indiankanoon.org/doc/324040/> {Available at 22/07/21, 8:15PM}

<sup>5</sup> Available at: <https://indiankanoon.org/doc/704466/> {Available at 25/07/21, 2:15PM}

<sup>6</sup> Available at: <https://indiankanoon.org/doc/122967615/> {Available at 22/07/21, 10:15PM}

<sup>7</sup> Available at: [https://blog.ipleaders.in/law-protecting-rights-widows/#Property\\_Rights\\_after\\_remarriage](https://blog.ipleaders.in/law-protecting-rights-widows/#Property_Rights_after_remarriage) {Available at 24/07/21, 1:15PM}

### **Property Rights of Legitimate Child**

The law of marriage pertinent to Hindus, Sikhs, Buddhists and Jains is currently to be found in the Hindu Marriage Act, 1955. Under this Act. a marriage is annulled in the following circumstances:

- (a) when it is a bigamous marriage.
- (b) Where parties to the marriage fall within sapinda relationship.
- (c) when they are within prohibited degrees.

Further in the following circumstances the marriage will be voidable at the option of the aggrieved party:

- (a) when the other party was senseless at the time of marriage.
- (b) when the other party was powerless at the time of marriage.
- (c) when the wife was pregnant at the time of marriage by some person other than the husband (without the latter's knowledge).
- (d) when the consent of the other party (or the guardian's consent in regard to a minor bride) was obtained by force or fraud.

The Hindu Marriage Act originally provided that when a void or voidable marriage was declared to be void or annulled by a court, then child begotten through this marriage would be considered to be legitimate offspring of such parents. be considered to be legitimate children of such guardians. section 16 of the Hindu Marriage Act, (HMA) 1955 presents the legitimacy on the children of void and annulled voidable marriages. But in traditional view Before the 1976 amendment, , children of void marriage were genuine only if a pronouncement of nullity was conceded in regard of such marriage under section 11 of the Act. In the event that no pronouncement was acquired the kids couldn't be legitimized. In the Bharata Mata case (***Bharata Matha & Ors. v R. Vijaya Renganathan & Ors***<sup>8</sup>), the Court held that a child born out of a void or voidable marriage was not entitled to claim inheritance in ancestral coparcenary property but was entitled to claim only self-acquired properties. Even the child born by live in relationship couple is considered legitimate because in the landmark case of supreme court of ***Tulsa and ors. v Durghatiya and ors.***<sup>9</sup> held that when a man and a lady have lived together for an extensive stretch of time they will be viewed as married except if there is a proof to the contrary. This judgment outlines the courts attempts to treat a live in comparably to marriage. The Supreme Court in ***Vidvadhari v Sukhrana Bai***<sup>10</sup> wherein the Court permitted inheritance to the children brought into the world from the live-in relationship being referred to and ascribed them the status of “legal heirs”. Nowadays, children are more declared legitimate because of the awareness and new laws and also give many rights to them.

### **Property Rights Of Illegitimate Children**

All through history, there is in all likelihood no other word related with such a lot of scorn as jerk or criminal. can prevail to the property of their dad and mom. Yet, ill-conceived youngsters

<sup>8</sup> Available at: <https://indiankanoon.org/doc/1513913/> {Available at 25/07/21, 9:15PM}

<sup>9</sup> Available at: <https://indiankanoon.org/doc/988131/> {Available at 24/07/21, 10:15PM}

<sup>10</sup> Available at: <https://indiankanoon.org/doc/350765/> {Available at 23/07/21, 1:15PM}

can prevail to their mother only. Under the Hindu Succession Act 1956 (HSA) legitimate children can prevail to the property of their father and mother. But ill-conceived children can prevail to their mother only. There are many conditions under which child is called as illegitimate. Void marriage is given under Section 11 of the Hindu Marriage Act, 1955, which says that if the marriage doesn't satisfy the conditions set down in provision (I), (iv) and (v) of Section 5 of the Act, then, at that point, the marriage will be considered as invalid and void. The child who is conceived out of this marriage will be considered as an ill-conceived child.

- (a) Children who are born to couples who are not legally married to each other.
- (b) Children who are born of incestuous marriage.
- (c) Children who are born bigamous marriage.
- (d) Children who are born out of adulterous relationship between parents.
- (e) Children who are born out of marriages which are void under article 38 of the Family Code.
- (f) Children who are born out of couples who are below 18 years where they are married or not.
- (g) Children who are born out of other void marriage under Article 15.

Under Hindu Law the ill-conceived kids are considered to be legitimate and are granted a right to acquire the property of their parents. In the case of *Revanasiddappa vs. Mallikarjun*<sup>11</sup>, the Supreme Court maintained that the constitutional values secured in the Preamble of the Indian Constitution focus on the idea of uniformity of status and pride of a person. The Apex Court added that the Court ought to remember that a connection between the guardians may not be legal however a youngster conceived out of such a relationship must be seen in separation of the relationship of the guardians.

In a landmark case *Dimple Gupta v Rajiv Gupta*<sup>12</sup>, wherein the Supreme Court held that even an ill-conceived youngster conceived out of an unlawful relationship is entitled for maintenance under Section 125 of the CrPC (Code of Criminal Procedure 1973) which gives support to kids whether real or ill-conceived while they are minors and after they attain majority where such kid can't keep up with himself/herself.

Illegitimate children had no right of inheritance; however, they could inherit their mother's stridhana. Under the Hindu Succession Act, 1956, even an illegitimate son of a Shudra is not entitled to inherit his father's property. Under the Act of 1956 there is a clear provision 7 that illegitimate children are deemed to be related to their mother and to one another and their legitimate relatives are considered to be identified with them and to each other by legitimate family relationship. They can therefore succeed to one another. However, legitimate children are not related to illegitimate children of the same father or mother and they cannot inherit to or from each other.

### **Conclusion And Suggestions.**

There is the critical need to adopt few measures at the social level moreover. Law has played its job effectively first by enacting the Hindu Succession Act, 1956 which is viewed as Magna

<sup>11</sup>Available at: <https://indiankanoon.org/doc/138849/> {Available at 25/07/21, 11:15PM}

<sup>12</sup>Available at: <https://indiankanoon.org/doc/1686487/> {Available at 25/07/21, 10:15PM}

Carta, so far as the women's property rights are concerned. Then, further changing it by the Amendment Act of 2005 whereby even the gender discrimination existed under the Act of 1956 is removed in one stroke. Hence, presently it is the turn of the general public to acknowledge and execute the current law for the general advantage and upliftment of the females as in our general public there is distinction among percept and practice. There is a genuine need to change the heart and the mentality of individuals. No child should be called illegitimate child as it was not their mistakes, because their parents were wrong not just because of this their rights should be compromised. Especially in cases of rape by the man, women were not wrong neither the child born from that sexual assault. Declaring a child illegitimate is destroying the dignity of the person, not because he/she is illegitimate he also has dignity and should be treated with equality this is covered under Indian Constitution also. Article 21 gives all rights to both legitimate as well as illegitimate child. Along with these legal enactments, social mindfulness among normal masses is the need of the day.



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