

A CRITICAL STUDY ON THE LEGITIMACY AND THE RIGHT OF INHERITANCE TO THE CHILDREN BORN OUT OF LIVE-IN RELATIONSHIPS IN INDIA

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BEST CITATION – VISHAL N & PREETHI R, A CRITICAL STUDY ON THE LEGITIMACY AND THE RIGHT OF INHERITANCE TO THE CHILDREN BORN OUT OF LIVE-IN RELATIONSHIPS IN INDIA, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 4 (4) OF 2024, PG. 701-711, APIS – 3920 – 0001 & ISSN – 2583-2344.

ABSTRACT

This critical study explores the social and legal status of legitimacy and the rights of inheritance to the children born in the context of live-in relationships in India. The concept of legitimacy is deeply ingrained in Indian society and is closely tied to the institution of marriage. Children born out of wedlock, including those born out of live-in relationships, face social exclusion and stigmatisation. Moreover, the legal framework for inheritance rights of children born out of live-in relationships is complex and lacks clarity, leaving many children without any legal protection and inheritance rights. The study highlights the need for legal and social reforms that recognize the legitimacy of children born out of live-in relationships and ensure their inheritance rights. It also emphasises the need to change societal attitudes towards children born out of wedlock and promote their acceptance and inclusion in society. For the purpose of this research, an empirical method was followed and the data was collected through survey forms. The SPSS software by IBM was used to calculate the descriptive statistics. The sample size was 200. Dependent variables are social stigma surrounding live-in relationships, The personal laws do hinder the children from inheriting, uncertainty surrounding live-in relationships. Independent variables are Age, Gender, Marital Status, Educational Qualification, Occupation and Monthly income. Various tools like ANOVA, Chi Square, and sample t tests were used.

KEYWORDS – Inheritance, Property rights, Children, Live-in relationships, Legitimacy.

INTRODUCTION

In India, the concept of legitimacy is deeply ingrained in society and is closely tied to the institution of marriage. Children born out of wedlock, including those born out of live-in relationships, are often stigmatised and face social exclusion. This societal bias is further exacerbated by the lack of legal recognition and protection for children born out of live-in relationships, particularly with regard to inheritance rights. The legal framework in India for inheritance rights of children born out of live-in relationships is complex and lacks clarity. The Indian Succession Act of 1925 governs the inheritance rights of children, but it does not provide a clear definition of legitimacy or illegitimacy. The act only

recognizes children as legitimate if they are born during the subsistence of a valid marriage or within 280 days¹⁰⁷⁴ of the dissolution of a valid marriage. This legal framework poses significant challenges for children born out of live-in relationships, as they are not legally recognized as legitimate children and therefore have limited inheritance rights. In many cases, these children are left without any legal protection and are forced to rely on the goodwill of their parents' families for support. The lack of legal recognition and protection for children born out of live-in relationships also has wider social and ethical implications. It perpetuates discrimination and

¹⁰⁷⁴ CIVIL APPEAL SC 2023 - Aparna Ajinkya Firodia V Ajinkya Arun Firodia

stigmatisation of children based on their parents' marital status, which is a violation of their fundamental human rights. This bias also undermines the principles of equality and justice, which are the foundations of a just and democratic society. To address these issues, there is a need for legal and social reforms that recognize the legitimacy of children born out of live-in relationships and ensure their inheritance rights. The Indian judiciary has taken some steps towards this goal, with several landmark judgments recognizing the rights of children born out of live-in relationships¹⁰⁷⁵. However, more needs to be done to ensure that all children are protected under the law, regardless of their parents' marital status. In conclusion, this critical study highlights the need for legal and social reforms to address the legitimacy and inheritance rights of children born out of live-in relationships in India. It is imperative that the legal framework is updated to recognize the changing social and cultural norms of Indian society, and to ensure that all children are treated equally and justly under the law. Only then can we build a society that is truly equitable and just for all its citizens.

Furthermore, there is a need to change societal attitudes towards children born out of wedlock, including those born out of live-in relationships. Stigmatisation and discrimination based on a child's parentage is unacceptable and goes against the principles of equality and non-discrimination¹⁰⁷⁶. Education and awareness campaigns can help change societal attitudes towards children born out of wedlock and promote their acceptance and inclusion in society. Finally, it is essential to recognize that the issue of legitimacy and inheritance rights of children born out of live-in relationships is

not limited to India alone. It is a global issue that affects children and families worldwide¹⁰⁷⁷.

OBJECTIVES

- To study the status of children born out of live-in relationships.
- To analyse the legal status in this regard.
- To analyse the public perception on the very concept of live-in relationships

REVIEW OF LITERATURE

Jaya Bharti, 2021, the author states Child Rights are fundamental freedoms and the inherent rights of all human beings below the age of 18. These rights apply to every child, irrespective of the child's parent's / legal guardian's race, colour, sex, creed or other status. Children and youths have the hold similar human rights¹⁰⁷⁸ as adults and also the law itself recognizes rights even to the unborn children. Children are neither the property of their parents nor are they helpless objects of charity. **Thoko Kaime, 2011**, the author focuses on cultural legitimacy critique looks at the protection and promotion of children's rights through a socio-legal examination of the provisions of the world's pre-eminent children's rights treaty, the Convention on the Rights of the Child. **Dr. Savita Bhakhry, 2016**, the author has opined those children's childhood across the world, have broadly been construed in terms of a 'golden age' that is synonymous with innocence, freedom, joy, play and the like. It is the time when, spared the rigours of adult life, one hardly shoulders any kind of responsibility or obligations. But, then, it is also true that children are vulnerable, especially when very young. The fact that children are vulnerable, they need to be cared for and

¹⁰⁷⁵ IJALR ISSN 2582-7340; Succession Rights of Children Born Out of Live-in Relationship

¹⁰⁷⁶ UN, 1967- by Vieno Voitto Saario; STUDY OF DISCRIMINATION AGAINST PERSONS BORN OUT OF WEDLOCK

¹⁰⁷⁷ Florida Law Review, Illegitimate_Harm: Law, Stigma, and Discrimination_Against_Nonmarital_Children,

¹⁰⁷⁸ UDHR, Art. 25(2) "Motherhood and childhood are entitled to special care and assistance. All children whether born in or out of wedlock, shall enjoy the same social protection."

protected from 'the harshness of the world outside' and around. **Divya Singh, 2020**¹⁰⁷⁹, the author throws light on the legitimacy status of children born out of the live-in relationship under Indian laws, i.e. under personal laws¹⁰⁸⁰ of Hindu, Muslim and Christians. Also, the paper explores the rights of inheritance of those children who are born out of the live-in relationships. **Shrey Aggarwal, 2011**¹⁰⁸¹, Live-in relationship is a form of union where a couple shares a common household without being subjected to marital rights and obligations. However, this concept of relationship is stigmatised in Indian society, where living with someone before marriage is not socially acceptable. This type of relationship does not find any place in the current legal framework of the country. **Amartya Bag, 2012**, this article seeks to clarify the current legal status of live-in relationships in India. The article also tries to look into recent developments in the attitude of the Courts in granting various rights to live-in partners in India, and analysis of such judgments and also makes a comparative analysis of the trend in other legal systems and jurisdictions. The article also tries to identify the need of a proper legal framework for securing the succession rights of live-in partners in India, especially in case of intestate succession. **Devadharshini Balamurugan, 2020**¹⁰⁸², Marriage is a sacred consortium of two people and their families. Atop which, it is a legally recognized relationship. On the other hand, considered as a social stigma, Live-in relationships are the up-and-coming trend followed by many people post the 2010s. A live-in relationship can be defined as a relationship between two people living a life filled with freedom and liberty, with no commitment of

¹⁰⁷⁹ <http://www.penaclaims.com/wp-content/uploads/2020/06/Divya-Singh.pdf>

¹⁰⁸⁰ Classical Hindu Law, Muslim Personal Law and Cannon Law are some of the systems that treat illegitimate children as filius nullius.

¹⁰⁸¹ https://www.researchgate.net/publication/343627361_Inheritance_Rights_in_a_Live-in_Relationship

¹⁰⁸² <https://bnwjjournal.com/2020/06/18/emerging-trend-in-inheritance-laws-live-in-relationship/>

marriage that is no obligations or duties towards each other, although it is in the nature of marriage as held in the Protection of Women against Domestic Violence Act, 2005. **Maíra Martini, 2014**, Indian society has travelled far enough in these decades when it comes to viewing the concept of live-in relationship. It has been defined as "a domestic cohabitation between an adult unmarried male and an adult unmarried female." The mindset and the social stigma attached to a live-in relationship is gradually changing. It is evolving with time. In almost all nations around the world, particularly in India, marriage is regarded as a sacred institution. **Mridula Narayan, 2021**¹⁰⁸³, This article tries to figure out the current legal positions governing the live-in relationships in India after making a systemic assessment of these judgments. Live-in relationship between two consenting adults is not considered illegal and if the couple present themselves to the society as husband and wife and live together for a significant period of time, the relationship is considered to be a relationship "in the nature of marriage" under the Prevention of Domestic Violence Act, 2005. Consequently, the female partner is entitled to claim alimony under its provisions. **Ritu Bhatia and Manas Agrawal, 2021**¹⁰⁸⁴, A recent national poll revealed that 80% of the women in the age group of 18-35 years prefer live-in relationships. Furthermore, 26% of the participants will choose long cohabitation over marriage. Despite this inclination towards live-in relationships, it is still taboo in India. In India, marital and procreative family is the heart of family law legislation, reinforcing the conventional understanding of family. As a result, these laws are biased towards marriage and vests rights and privileges for 'family'. **Sneha R. Iyer, 2018**¹⁰⁸⁵, This paper mainly focuses on the 'relations in the nature of marriage' and legal wedlock.

¹⁰⁸³ <https://journals.sagepub.com/doi/full/10.1177/2631831820974585>

¹⁰⁸⁴ <https://lawschoolpolicyreview.com/2021/08/28/granting-inheritance-rights-to-cohabitees-and-their-children/>

¹⁰⁸⁵ <https://ijlmh.com/relations-in-the-nature-of-marriage-and-legal-wedlock/>

Firstly, it deals with the concepts and status of Legal Wedlock in India. Legal wedlock is valid, only if the marriage takes place with the fulfilment of certain conditions, which varies in each religion. The paper will focus on such conditions and determine how a marriage is determined to be valid. Further, the paper deals with the concept of 'relations in the nature of marriage'. **Ms. Anupama Yadav, 2019**, With the advancement of modernization, many foreign cultural trends have been incorporated into India's traditional culture. The live-in relationship is one of these foreign cultures. A guy lives with a woman under the same roof without being married in a live-in relationship. Live-in relationships are becoming more common in India's metro areas, such as Mumbai, Delhi, and Bengaluru. Live-in partnerships are quite rare in India's small towns. Most Indian families are very conservative and do not approve of live-in relationships. Furthermore, a live-in relationship has no legal meaning. **Shahadath Hossain, 2021**, In this paper, the author explore the effect of the passage of an inheritance law, which confers improved inheritance rights to unmarried women in India, on child height. In India, a predominantly rural country, land ownership is a critical determinant of economic and social status (Agarwal, 1994), and inheritance is the primary way to acquire it. **Jayoti Gupta, 2021**, The inherent inequality faced by women within households, communities and society, forms a critical barrier to their access to social protection. Their unequal status, reflected in various social and economic indicators, highlights specific vulnerabilities they face. **Aritra Sarkar, 2002**¹⁰⁸⁶, live-in relationships are not very common in India especially due to the social taboo that is ingrained with it. However, due to modernization and adoption of western culture, we can see more and more people

opting for live-in over marriage. As the cases of live-in increase, so do the issues related to it. So, it becomes important for the courts and the legislature to take up the matter impartial from any traditional social opinion. **Manju Jamwal, 2014**¹⁰⁸⁷, the supreme court in the case of Dhannulal v. Ganeshram (2015), decided that a woman in a live-in relationship would be eligible to inherit the property after the death of her property. Further, it was held in the case of S.P.S. Balasubramanyam v. Suruttayan (1994) that, "if a man and woman are living under the same roof and cohabiting for some years, there will be presumption under section 114 of Indian Evidence Act, 1872, that they live as husband and wife and the children born to them will not be illegitimate.". **Nurkristia Tejawati, 2010**, The method used in this research is normative legal research using the case approach method by analyzing the relevant laws and regulations and examining cases related to inheritance rights for children born out of wedlock. The results confirmed the apparent support for the inheritance rights of illegitimate children is indeed in the mother's family line. Article 863 BW states that if the inheritance leaves a legal offspring or husband or wife, the illegitimate children inherit 1/3 of what legitimate children would receive. **Vinita Ghosh, 2021**¹⁰⁸⁸, This paper aims to study the current attitude of Indian youth towards heterosexual cohabitation, popularly known as live-in relationships. This paper has tried to understand whether gender-based differences play an important role in the formation of attitudes towards live-in relationships, whether live-in relationships have become a presumption for marriage and if it has taken precedence over the institution of marriage.

¹⁰⁸⁶ [https://www.rgnul.ac.in/PDF/d0fb7efc-5940-42a4-980f-7e5c2d565c44.pdf](#)
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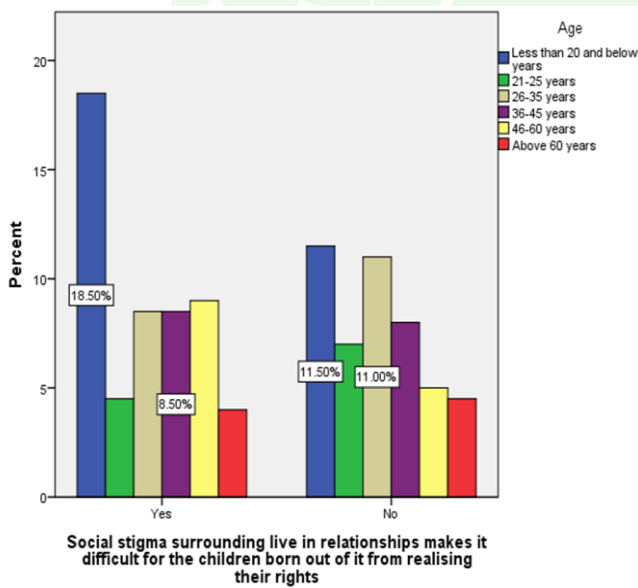
¹⁰⁸⁷ <https://www.rgnul.ac.in/PDF/d0fb7efc-5940-42a4-980f-7e5c2d565c44.pdf>
¹⁰⁸⁸ <https://ijip.in/articles/perception-of-youth-towards-live-in-relationships-in-india/>

METHODOLOGY

For the purpose of this research, an empirical method was followed and the data was collected through survey forms. The SPSS software by IBM was used to calculate the descriptive statistics. The sample size was 50. Dependent variables are social stigma surrounding live-in relationships, The personal laws do hinder the children from inheriting, uncertainty surrounding live-in relationships. Independent variables are Age, Gender, Marital Status, Educational Qualification, Occupation and Monthly income. Various tools like ANOVA, Chi Square, and sample t tests were used.

GRAPH ANALYSIS

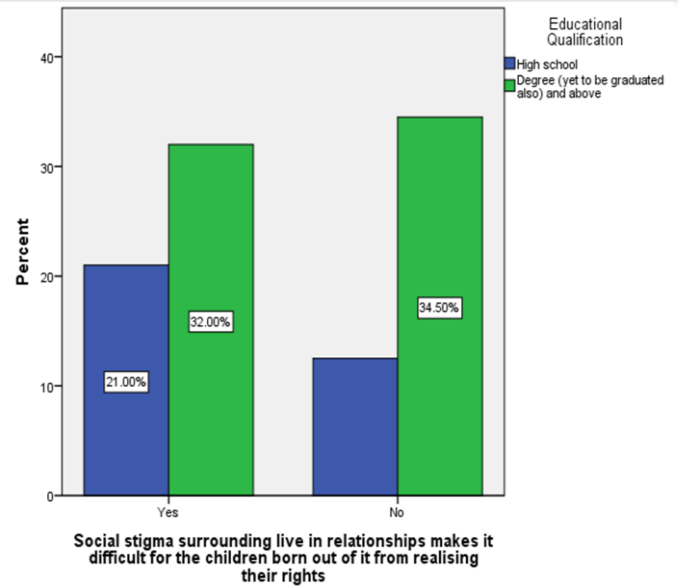
Figure 1:



Legend:

This figure shows the clustered bar graph drawn between the opinion of people about social stigma surrounding children born out of livin in relationships and their Age, with Percentage as statistics.

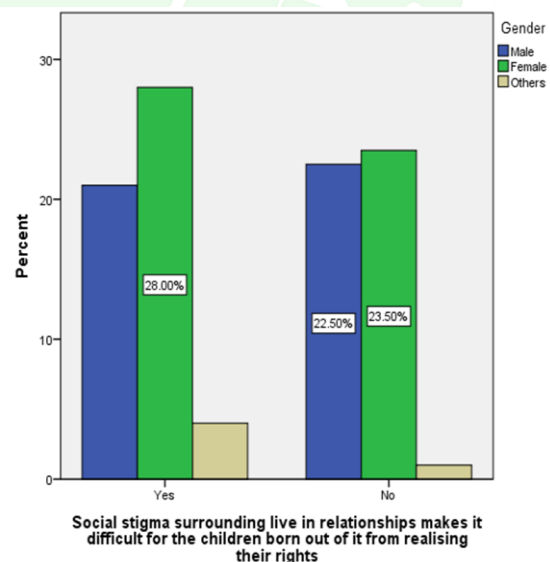
Figure 2:



Legend:

This figure shows the clustered bar graph drawn between the opinion of people about social stigma surrounding children born out of livin in relationships and their Educational Qualification, with Percentage as statistics.

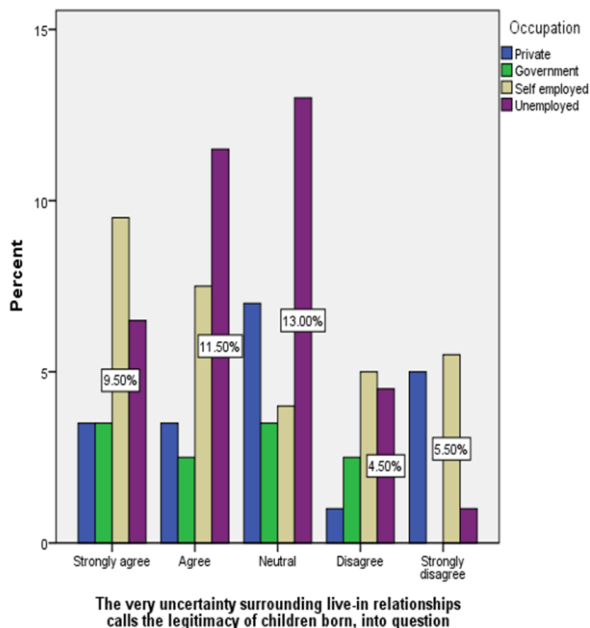
Figure 3:



Legend:

This figure shows the clustered bar graph drawn between the opinion of people about social stigma surrounding children born out of livin in relationships and their Gender, with Percentage as statistics.

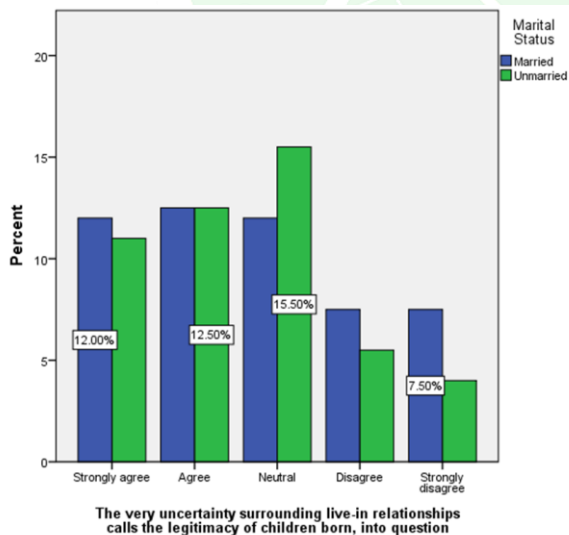
Figure 4:



Legend:

This figure shows the clustered bar graph drawn between the opinion of people about the legitimacy of a child born and their Occupation, with Percentage as statistics.

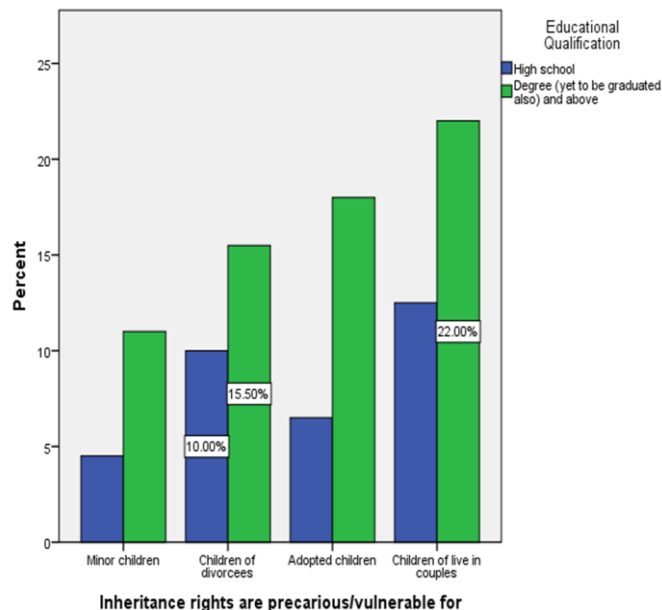
Figure 5:



Legend:

This figure shows the clustered bar graph drawn between the opinion of people about the legitimacy of a child born and their Marital Status, with Percentage as statistics.

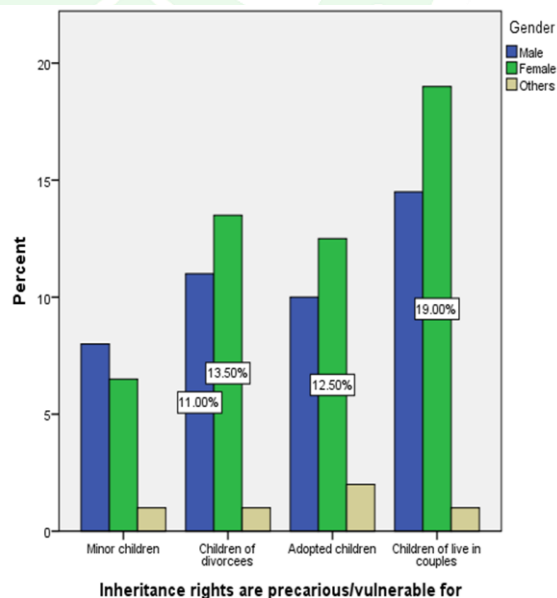
Figure 6:



Legend:

This figure shows the clustered bar graph drawn between the opinion of people about vulnerability of inheritance rights and their Educational Qualification, with Percentage as statistics.

Figure 7:

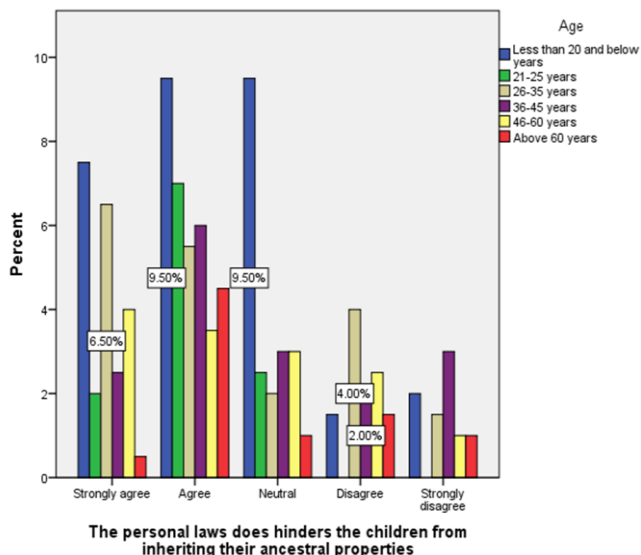


Legend:

This figure shows the clustered bar graph drawn between the opinion of people about

the vulnerability of inheritance rights and their Gender, with Percentage as statistics.

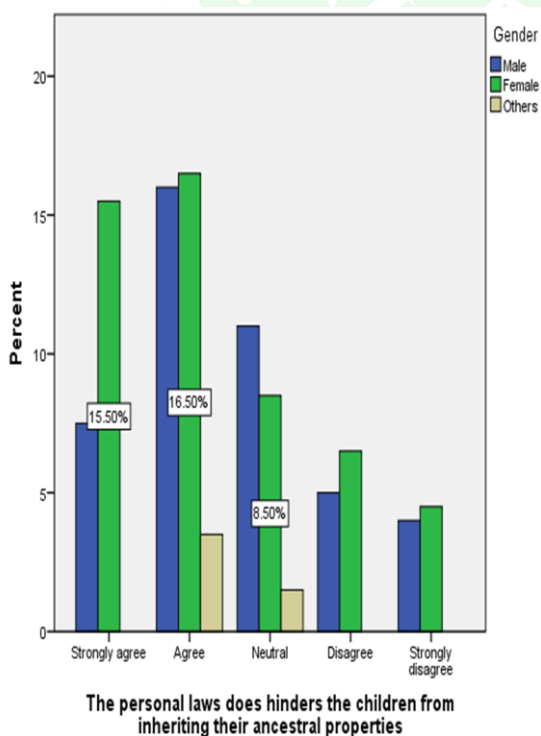
Figure 8:



Legend:

This figure shows the clustered bar graph drawn between the opinion of people on hindrance caused by personal laws and their Age, with Percentage as statistics.

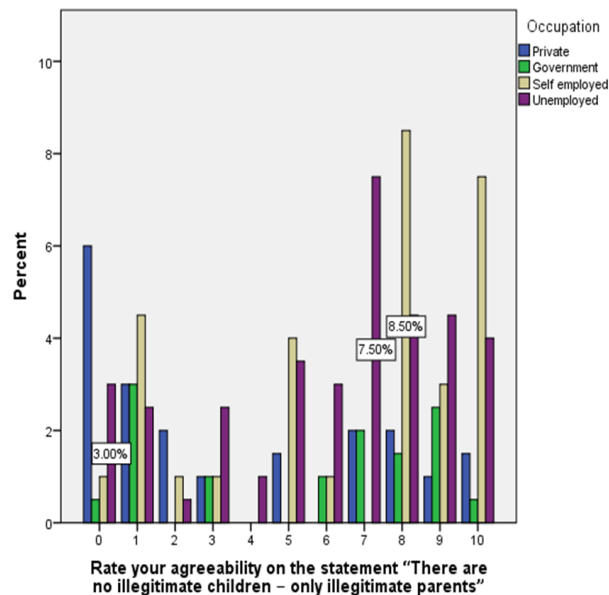
Figure 9:



Legend:

This figure shows the clustered bar graph drawn between the opinion of people on hindrance caused by personal laws and their Gender, with Percentage as statistics.

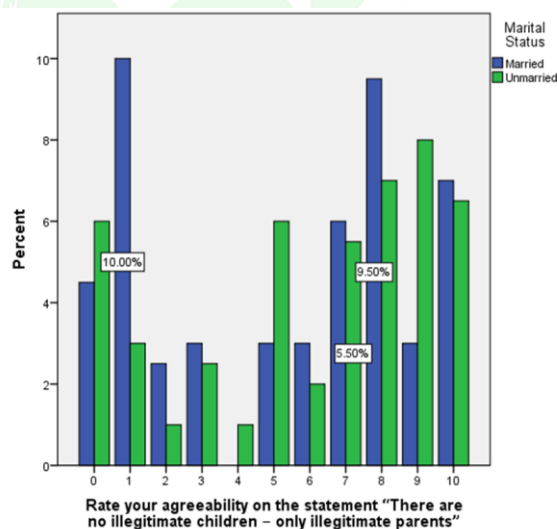
Figure 10:



Legend:

This figure shows the clustered bar graph drawn between the opinion of people on the statement and their Occupation, with Percentage as statistics.

Figure 11:



Legend:

This figure shows the clustered bar graph drawn between the opinion of people on the

statement and their Occupation, with Percentage as statistics.

RESULTS

In figure 1 it can be observed that the respondents of the majority of the age group have agreed that there is a social stigma surrounding live in relationships to an extent of maximum 18%.

In figure 2 respondents holding a degree as an educational qualification with a difference of 2% open that the stigma makes it difficult for the child to realise its rights.

In figure 3 it can be observed that female respondents have agreed to an extent of 28%.

In figure 4 it can be observed that most of the unemployed respondents do significantly agree to the statement that the very uncertainty surrounding live in relationships is the problem.

Figure 5 shows that most of the unmarried respondents do strongly agree to the uncertainty surrounding live in relationships and the complexity it creates.

Figure 6 shows us that degree holders' opinion that children born out of live-in couples are vulnerable of their inheritance rights.

This figure 7 shows us that children of divorces face problems in realising their right of inheritance.

In figure 8 to an extent of 9 to 10%, people who are aged less than 20 do agree that personal law hinders its children from exercising their right.

In figure 9 same as the result of figure 8, it can be seen that most of the respondents strongly agree to the hindrance created by personal loss.

In figure 10 it can be observed that up to 8% of the self-employed respondents have agreed to the statement.

In figure 11 it is very much evident that it is due the marital status. The respondents have significantly agreed to the scaling question about the legitimacy of parents.

DISCUSSION

As the main objective of this paper was to understand the complexity and the problems faced by children born out of live in relationships for which when people were asked to put up their opinion on the stigma. The social stigma surrounding the living relationship makes it difficult for the children born out of such a relationship from realising their rights for which they have strongly agreed to because most of them do feel the existence of social stigma around search relationships though we were in a modern society (**Figure 1-3**). The next aspect of analysis was about the uncertainty surrounding live-in relationship is the factor that calls into question the legitimacy of the children born out of such a relationship, for which a divided response was obtained from the people (**Figure 3-5**). As assumed by the researcher with the hypothesis that children born out of a live in relationship will be the one to suffer. The most that is to face difficulties in realising the property inheritance rights as to the opinion of the people or those children, after which the children of divorce is really suffer a lot because of the unstructured family (**Figure 6, 7**). As to the very fact that personal laws do create a lot of exceptional cases and a complexity against the generally existing laws which is well understood by the people and they have significantly agreed to it because of that factor (**Figure 8, 9**). At last when people were asked to rate their agreeability on the statement that there are no illegitimate children only when parents which is a controversial observation, for which they have chosen a neutral point of view (**Figure 11-13**).

LIMITATION

- The restrictive sample size of 50 was the first limitation to the study,
- One of the major limitations is the use of convenience sampling methods that give input data from randomised people which cannot be avoided.

CONCLUSION

These findings clearly point out that there is a long way to go for the society that we live in to mature itself and handle such modern concepts to its fullest of its intention i.e. to provide the couples in live-in relationships a greater opportunity to know each other better together with a freedom to exit it, however this should not affect the child born at any cost which is imperative upon the couple, also the chief responsibility is on the society to simply not to stigmatise which will bring out a monumental change in the legal recognition of inheritance rights of children born out of wedlock. The uncertainty surrounding the legitimacy of children born out of such relationships is also a factor that calls into question their rights. The findings have also shown that personal laws create exceptional cases and complexity, which make it difficult for children born out of such relationships to access their rights. It is evident that these children face a lot of difficulties, especially when it comes to realizing property inheritance rights. While people were divided in their opinions on the legitimacy of children born out of live-in relationships, they were neutral when it came to the statement that there are no illegitimate children, only illegitimate parents. Thus, there is an imminent need to address the stigmatization and legal challenges faced by children born out of live-in relationships to ensure they have equal access to their rights.

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