

## PalArch's Journal of Archaeology of Egypt / Egyptology

### METAMORPHOSIS OF UNWED MOTHER'S LEGAL RIGHT: A CRITICAL STUDY

*Payashwini Sharma<sup>1</sup>, Dr. Aqueeda Khan<sup>2</sup>*

<sup>1</sup>PhD Research Scholar under the supervision of Associate Professor, Dr. Aqueeda Khan,  
Amity Law School, Amity University, NOIDA, Uttar Pradesh.

<sup>2</sup>Associate Professor, Amity Law School, Amity University, Uttar Pradesh.

**Payashwini Sharma , Dr. Aqueeda Khan: Metamorphosis of Unwed Mother's Legal Right: A Critical Study -- Palarch's Journal Of Archaeology Of Egypt/Egyptology 17(9). ISSN 1567-214x**

**Keywords: Embracing, Motherhood, Picky, Surrogate Mother, Unwed Mother.**

#### ABSTRACT

A mother is the one responsible for the primary care and nourishment of the children. Accordingly, various courts have accepted and 90% of the times, the custody of a child is awarded to the children. Also, nowadays many independent women are embracing motherhood through adoption. But, the question still remains the same. What is the legal status of such a child? Are there any special rights granted to her as a result of such adoption?

According to the 2011 census data, unwed women form 21% of India's population and are close to 73 million in number. Unwed women are looked with suspicion and are labeled as unchaste by the society. There is a lot of pressure from the family too as the family believes that the right place for a girl is her husband's house. They are accused of being selfish, picky, unaccommodating and un-adjusting when all they are doing and living their life the way they want to.

The present paper deals with the legal rights of the unwed mothers of adopting a child, guardianship rights, status of a surrogate mother, rights in case of live-in-relationship, legal issues faced by them, social response towards them and recommendations pertaining to them. It also throws light on the case of ABC v. State (NCT of Delhi) wherein the Hon'ble Supreme Court duly exercised its parens patriae jurisdiction, securing the future of several hapless children in India who have been born out of wedlock and thereafter, abandoned by

their fathers. The Apex court upholding the interests of one such child granted his unmarried mother the right —to be appointed the sole guardian without giving any notice to the ‘deserter’ father.

The objective of the paper is to discuss the status and challenges of the single women with the greater emphasis on the single unmarried women in India.

## 1. Introduction

Today’s era is of equality. Men and women walk shoulder to shoulder in every sphere of life. There is not a single field where a woman has not held a position equivalent to their male counterparts. No one is above and none beneath. The idea of equality prevails over every legal jurisprudence.

Speaking of today, people are challenging and changing the old norms of society and both genders prefer to work in every sphere of life. Having said that, there is one role we all will agree which is still, quite dependent on the females in the society, unimaginable without her involvement i.e. a mother. Therefore, in today’s light, it becomes equally important to discuss the rights of the unmarried mother over her children.

Does an unmarried mother have a custodial right over her child? Is she entitled to maintain her child? What is the right of a single mother in a live-in relationship? What are the rights of an unmarried mother if she adopts a child? And finally, what are the rights of an unmarried mother over her child after a divorce? This is a detailed article on rights of an unmarried mother over her child.

Unwed mother is the lady who has become pregnant without legal justification of physical intimacy between man and woman. Unwed Mother as defined by dictionary is, “an unmarried lady who has a dependent child or children.”

Prior to the apex court judgment, an unwed mother could not hold the sole guardianship of the child without the consent of the father. She was even forced to disclose the identity of the father in order to get the birth certificates. However, according to Hindu Minority and Guardianship Act, 1956, the legal guardian of an illegitimate child is a mother but this provision was not available to the mothers of a different religion as well.

According to section 19(b) of the Guardianship and Wards Act 1890, the minor whose father is alive and in the Court’s opinion is not unfit, the mother cannot be the guardian without his consent. Hence a mother had to disclose the identity of the father of the child, but the situation has changed entirely after the order passed in a recent Supreme Court case.

## 2. Supreme Court's Ruling:

ABC v. State (NCT of Delhi) Civil Appeal No. 5003 of 2015

The order came on a plea by a Christian woman, who had challenged orders passed by a trial court and Delhi high court. Both directed her to reveal the name of her child's father when she sought guardianship of the child to make him nominee of her property. The child, born in 2010, was raised by the woman without any assistance from his biological father.

The case was decided by a bench of Justices Vikramajit Sen and Abhay Manohar Sapre and the verdict of the case goes like:

"In situations such as this, where the father has not exhibited any concern for his offspring, giving him legal recognition would be an exercise in futility. In the present case, we do not find any indication that the welfare of the child would be undermined if the appellant is not compelled to disclose the identity of the father, or that court notice is mandatory in the child's interest. On the contrary, we find that this may well protect the child from social stigma and needless controversy....."

The order, however, would not affect the child's right to know the father's identity. It further emphasizes on the Uniform Civil Code in India as Christian unwed mothers in India are disadvantaged when compared to Hindu counterparts, who are the natural guardians of their illegitimate children by virtue of their maternity alone. This order is the first step towards the triumph and implementation of the Directive Principle of Universal Civil Code which had been nothing more than an unaddressed constitutional expectation.

This order not only emphasizes on Uniform Civil Code but also stresses on equal rights of men and women. Earlier only men could be the legal guardian of the child but after this judgment an unwed mother can also be the legal guardian and the child can inherit her financial assets.

Besides this, the case also focuses on the welfare of the child. Welfare of the child is the paramount consideration while appointing the guardian for him and if the father is so indifferent towards the child or he does not even care to know about his offspring then it's better to choose the mother as a guardian.

Besides this The court agreed with the woman, who preferred anonymity and is known only by the acronym 'ABC' on court records, that it would be beneficial if the father's name is not disclosed now.

Hence, it can be understood as a step towards change and a perfect way to showcase the modernity in thinking patterns of Indians who used to consider a single mother as a taboo earlier but now have provided them with guardianship rights along with the equal treatment.

### 3. Legal Rights:

A couple often living for long in a live-in relationship develops the urge of having a child. But when there is a problem between the couple, the rights of the child are often confused as there is no specific law in India on this matter.

In cases of custody of the child, the matter is often dealt under the personal law if the couple is of same religion, otherwise, any central legislation which is binding on all religions.

### 4. Hindu Personal Law:

Before deciding the issue as to whether the custody should be given to the mother, the High Court must –

- Take into account the wishes of the child concerned.
- Assess the psychological impact, if any, on the change in custody, after obtaining the opinion of a child from a psychiatrist or a child welfare worker.

- 

### 5. Natural Guardian of a Hindu Child:

The law governing this issue is Hindu Minority and Guardianship Act. The act talks, among other things, who is natural guardian of a child.

The natural guardian of a Hindu minor, irrespective of minor's will in both property and person is as follows-i

- Till the age of five, the natural guardian is the mother of the child, irrespective of whether the child is a boy or a girl.
- After five, father is the natural guardian of the minor and after father's death, right is of the mother.

After making an interpretation and concluding as to whether the unmarried mother will have right over her child after the breakdown of a live-in relationship, the answer is negative. Mother has no right of custody of her child in the above said situations under Hindu laws.

But, there are situations where this strict interpretation of law is ignored and a liberal approach is taken up by the court.

In a precedent, the apex court has given the right of guardianship of the child to a divorced mother. The court held a liberal view and restated the legal position. If the father of the child takes or shows no interest in the welfare of the child, he ceases to be the guardian of the said child.

The child is not a toy which can be rolled from one corner to the other. As the saying goes –

“There is no illegitimate child, only illegitimate parents.”

## 6. What is Custody?

In legal sense, custody signifies the following –

- The right to enroll the child in school.
- The right to obtain medical treatment.
- The right to get legal benefits, maintenance, inheritance for the child.
- The right to do things which a parent in legal custody can do.
- The right to decide who sees the child and for how long.

Major Factor which Court Looks at while Deciding the Custody of the Child

- Mental and physical health of the parent.
- Track record of the parent- Is there any criminal case pending or settled against the petitioner or not.
- Social relationship of the parents– The relationship between the family members etc.
- Financial stability of the parent.
- The wish of the child is also taken care of.

Therefore, the unmarried mother can be the sole guardian of the child.

## 7. Unmarried Women and Adoption:

The matter gets complicated when a single woman desires to adopt a child. Strictly for Hindus, laws regarding this are laid down in Hindu Adoption and Maintenance Act 1956.

## 8. The pre-requisites for a valid adoption are–

- The person adopting has the capacity and also the right to take in adoption.
- The person giving in adoption has the capacity to do so.
- The person adopted is capable of being taken in adoption.

## 9. When can a female Hindu adopt a child?

- Any female Hindu-
- Who is of sound mind;
- Who is not a minor;
- Who is not married, or if married, whose marriage has been dissolved or whose husband is dead or has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind, has the capacity to take a son or daughter in adoption.

Therefore, an unmarried Hindu mother possesses all the rights to adopt a child.

### **10. Rights of an Unmarried Mother over her Adopted Child:**

- An adopted child shall be deemed to be the child of her adoptive mother for all purposes with effect from the date of the adoption and from such date all the ties of the child to the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family.
- Any property which vested in the adopted child before the adoption shall continue to vest in such person subject to the obligations, if any, attaching to the ownership of such property including the obligation to maintain relatives in the family of his or her birth. An adoption does not deprive the adoptive mother of the power to dispose of his or her property by transfer inter Vivos or by will.
- Where a widow or an unmarried woman adopts a child, any husband whom she marries subsequently shall be deemed to be the step-father of the adopted child.
- No adoption which has been validly made can be canceled by the adoptive mother, nor can the adopted child renounce his or her status as such and return to the family of his or her birth.

### **11. Rights of a Surrogate mother:**

For couples who cannot have children, a surrogate mother is a viable and increasingly popular option. A surrogate mother is a woman who has agreed to become pregnant in order to deliver a child specifically for a couple.

In most surrogate contracts, the woman who carries the baby relinquishes all parental rights to the infant once it is born. In an embryo transfer situation, the pre-birth court papers list the couple as the child's biological parents. Their names are listed on the birth certificate and the surrogate mother has no rights to the child at all. She cannot demand custody of the child. A surrogate mother is not genetically related to the child. Before entering into an agreement of surrogacy, the surrogate mother undergoes a series of counseling. A surrogate mother is not biologically connected to the child.

In India, commercial surrogacy has been legalized since 2002. India is one of the major surrogacy related tourism because of the low cost of surrogacy in India. The cost of surrogacy in India is 1/3rd compared to the price of surrogacy in the UK.

### **12. Study:**

Studies revealed that typical reactions of the alleged father to the news of the pregnancy would be annoyance, fear, anger and a desire to escape from the entire situation. Another set of reactions to pregnancies were the boys would react proudly when they learned of their prospective parenthood, and would offer to marry their pregnant girlfriends.

Reviewing the responses of men by whom tribal girls in Kerala were impregnated. They placed responsibility and blame of out of the wedlock pregnancy on the victims, denied fatherhood of the conceptions, persuaded women to go for abortion and also refused the responsibility of household and children rearing.

It was also reported that men were forced to provide financial security for households and child rearing in the context where they were questioned either by formal and non-formal institutions of justice . The same study revealed that unwed mothers live through a series of positive and negative emotions and psychological responses in their initial periods of pregnancy while some of them felt very happy because during initial periods because they enjoyed their men's support and physical proximity. These mothers reported that, by being impregnated, they could find new meaning for their life and relationships. However, this was not the case for many other unwed mothers. They learned about their pregnancy with shock, disbelief and denial and experienced uncertainty about future, became fearful, felt giddy and weak .Some of them experienced anger towards self which were associated with occasional suicide ideation and actual suicidal attempts. Many perceived that every one stopped loving them and are left alone.

### **13. Challenges faced by the unwed mothers:**

**Social problems:** The society boycott the family of unwed mother and family loose their relationship with the society which leads to isolation and hence result in psychological trauma on family.

**Economic problems:** As unwed mother lacks support from family and society, therefore she faces great economic problems.

**Health and psychological problems:** Both mother and child are at great risk of serious health problems. This may be due to lack of support (emotional , Nutritional) both to mother and baby, unsafe delivery practices which are usually conducted at unhygienic places to hide unwanted pregnancy from society or due to improper guidance for rearing of child. Support system available to unwed mother Support system to unwed mother is more available in western societies than traditional one.

### **14. Legal Issues:**

Social norms and legal systems that encourage or do not censure men's multiple sexual partners are likely to leave many of the women who become mothers through such unions economically vulnerable. Few men have sufficient wealth to adequately support multiple families and invest equally in each mate and her offspring, yet men continue to father children with multiple partners .

In addition, structural violence in the forms of stigmatization and discriminations coupled with sexual harassment and violence is likely to

restrict women's ability to seek legal redress and even deny access to or fare treatment from locally available non-formal judicial systems. For example, when men responsible for pregnancies deny or refuse to shoulder the responsibility of fatherhood, cases filed in police stations, not even reach to the courts. But most of the time, such cases are settled outside the courts with nominal financial assistance and a promise to bear a share of the household and child rearing expenses by men.

Investigations need to focus on the process and outcomes of both institutional and non-institutional conflict resolutions models in practice that govern the lives of women because very minimal knowledge base is available in this regard .

Similarly, a few social activists and a very limited number of NGOs have taken up the issue on their agenda but they too could not do much to stop the exploitation, resulting inadequate civil society response to facilitate and strengthen access to socially marginalized women's groups. Thus, it is vital to identify what are the capacity building needs of civil society organizations and strengthening them to effectively respond to human rights concerns.

### **15. Recommendations:**

Well designed and well implemented sexual and reproductive health education: It can be provided to young people , so that they can engage in a safe and responsible sexual behavior;

Supply of contraceptives : Government has made easy access to contraceptives therefore people should avail it;

Abolition of prostitution: Prostitution should be banned or prostitutes should be informed about the use of contraceptives.

Role of a nurse as educator: Nurse should play a vital role in providing sex education to youngster to prevent occurrence of unwed mother.

As an advocator: She must inform the unwed mother about her legal rights which are provided by government to them so that mother can take benefit of them.

As a helper: Helper must provide free services to the mothers which are provided by government agencies to help them.

As a researcher: As a researcher, she should make research in the best preventive measure to avoid the occurrence of unwed mother.

Government initiatives: The Government must take initiatives to ameliorate the status of unwed mothers through proper and relevant legislations pertaining to live in relationships and surrogacy and their implementation;

Social awareness: The society must be educated at large to make them aware of the sex education and the challenges faced by an unwed mother.

## **16. Conclusion:**

The status of a single mother is quite pathetic in the present scenario. Therefore, it is of vital importance to dwell upon the position of single women in the existing state of affairs of the Indian society, the problems faced by them, the probable remedies and above all on the proper implementation of the remedies. More researches must be conducted in order ascertain the exact scenario of the unwed mothers and the call for their upliftment.

Single women are going to command and be commended. Certainly, they are bound to play a very active and all-important role in the all-round peace, progress and prosperity of the country in this 21st century.

## **References**

(Times of India May 17, 2016)

Civil Appeal No. 5003 of 2015, Supreme Court

Mamta v. Ashok Jagannath Bharuka, (2005) 12 SCC 452

Alan Guttmacher Institute. Teenage pregnancy: the problem that hasn't gone away. 1981, New York.

Saran, 1999

Jose et al., 2010c