

# LEGALFOXES LAW TIMES

## Succession Rights of Illegitimate Children under Hindu Law

By Mrs. Gouri Sachinkumar Nalawade

### **Abstract:**

*In all the societies and religions of the world, the legitimacy of a child taking birth, has a great effect on his or her life. His whole life gets affected in a very unpleasant way, if it turns out that by social norms and prevalent laws of the land, he or she has taken birth as illegitimate child.*

*For his whole life he bears the stigma of being an unwanted child in the society, faces the hate of the society, faces discrimination at all levels, be it maintenance or education or employment or social status. His whole life gets adversely affected and it is very heartbreaking to note that in the whole process of his birth, he nor has any say, neither has any active role. As a separate legal entity, he also doesn't have any rights to question his biological parents' act. He simply bears the burden of the act for which he cannot be held responsible in any reasonable & logical way. An innocent soul is brought into this world and is left to face the insult, insecurities and abuse, in all possible mode and manners, for no apparent fault of his. However most this abuse, insult and discrimination can be eliminated if these kids are conferred upon equal rights at par with kids who are legitimate in the eyes of law. In this article we have tried to discuss the necessity of a central legislation which recognizes the rights of illegitimate children of all classes irrespective of their religion, to inherit the parent's property of all classes, especially in Hindu law.*

*Key Words: Succession, illegitimate children, intestate*

### **INTRODUCTION**

"Illegitimate children will have a right to whatever becomes the property of their parents whether self- acquired or ancestral,"

- A bench of justices G S Singhvi and A K Ganguly<sup>1</sup>

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<sup>1</sup> Indian Express, 1 April 2011 available at <http://archive.indianexpress.com/news/illegitimate-kids-have-right-to-parents-ancestral-property-sc/770446/1>

Though illegitimate children are socially stigmatized always, and are seldom whole heartedly recognized and accepted by the parents' respective families, the laws all over the world are now changing slowly in their favour. Most of the succession laws in the world are very clear on the issue and have introduced the suitable amendments in the favour of illegitimate children. As has been rightly observed by Leon R. Yankwich (the Honorable District Judge of the United States District Court for the Southern District of California),<sup>2</sup> there are no illegitimate children – only illegitimate parents. But unfortunately, these children have to fight a long way to be accepted by their biological father's legitimate families and their legitimate siblings.

### **The Mis-concept of Illegitimacy**

In all the countries and almost all the religions the concept of illegitimate children exist and unfortunately it exists with common basis and circumstances, in all ages and till now. The

reasons why these children are detested by everyone is very apparent. The root cause of this term 'illegitimate' is basically the illegitimate and unethical sexual extramarital relationship between a man and woman which is totally against the family oriented principles and ethics of all the

cultured, sophisticated and civilized societies, who strictly adhere to the rules of family loyalty and family values. The result of this extra marital relationship which primarily emanates from the uncontrolled lust of two persons which is hell bent to defy all the rules of the society, is an illegitimate child. This momentary illegitimate pleasure destroys the life of an innocent child who is unable to understand his fault throughout his life. However after centuries of

discrimination, the society and legal systems have starting understanding the pitiful condition of such children and have started showing a certain degree of tolerance towards them. The legal system has also started minimizing the difference between legitimate and illegitimate children through various provisions in the succession and maintenance laws.

### **Who is illegitimate child?**

In common parlance, the term 'Illegitimate Child'<sup>2</sup> refers to the child who has taken birth without the proper wedlock between his parents recognized by the laws and social norms of that particular country and region. The only test to determine the legitimacy of the any child is

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<sup>2</sup> In 1927, Leon R. Yankwich the Judge, The Supreme Court bench in Los Angeles County, ruled in a case which involved a child's parentage that there aren't any illegitimate children, only illegitimate parents, and this ruling made national headlines and was later adopted by many states, for deciding the issues in registering birth of children. h <https://www.nytimes.com/1975/02/12/archives/leon-yankwich-us-judge-is-dead-author-of-elk-hills-ruling-on-oil.html>

whether his or her parents were legally wedded when they brought the child into this world. The legitimate marriage only can proceed with legitimate children, otherwise not. If at the time of childbirth, there is no relationship between parents which could be termed as legal marriage, the resultant child will be treated as illegitimate child with all the repercussions of the illegal deed.

### **Illegitimate Children: International Scenario**

In English law, in historic reference, the illegitimate children or non-marital children were treated as filius nullias i.e. a son of nobody. However laws changed and in 1969, an act named Family Law reform Act was enacted which amended the respective provision which use to deal with the property rights of the non-marital children, to equip them via law to put their father's name in legal records, to introduce paternity test in civil courts to ascertain their rights in father's property, to register their birth in concerned government records and to nullify the difference between legitimate and illegitimate children for all the practical purposes. But the Children's Act 1989<sup>3</sup> totally eliminated the difference and brought all the children, born in wedlock and out of wedlock, at par as far as the right to property, maintenance and guardianship is related.

The United States of America under U.S. Citizenship and Immigration Services<sup>4</sup>, has brought the legitimate and illegitimate children at par long back. The difference between all the categories of kids has been eliminated and all the kids are legitimate and natural kids of their parents. The parents are supposed to provide the guardianship and other legal rights of all the categories as per the laws of USA.

Universal Declaration of Human Rights 1948, Article 25<sup>5</sup> states that all the children should be provided identical social security and status. It declares that all the human beings are equal and this they are entitled to equal rights and social security.

The European Convention on Human Rights<sup>6</sup> also emphasizes the equality of rights between all children and directs states to take all such measures which are important to preserve the welfare of the children.

<sup>3</sup> Children Act 1989, UK available at <https://www.legislation.gov.uk/ukpga/1989/41/contents>

<sup>4</sup> U.S. Citizenship and Immigration Services available at <https://www.uscis.gov/policy-manual/volume-12-part-h-chapter-2>

<sup>5</sup> Article 25 Universal Declaration of Human Rights available at <https://www.un.org/en/universal-declaration-human-rights/>

<sup>6</sup> European Convention of Human Rights available at [https://www.echr.coe.int/documents/convention\\_eng.pdf](https://www.echr.coe.int/documents/convention_eng.pdf)

The American Convention on Human Rights ( Article 17(4) & (5)<sup>7</sup>), also emphasizes that all the children irrespective of birth in or out of wedlock should compulsorily be provided all the protection and the basis of that protection should be the children's best interest whatever is appropriate and possible.

### **Illegitimate Children: Hindu Law**

In India, the legitimacy of birth of children is decided as per the personal laws, as India is home to many religions and thus there is no uniformity in personal laws. Muslims, Hindus, Parsi and Christians are all decided by respective personal succession, marriage and maintenance laws.

However in this Article we will discuss the concept of illegitimate children and their succession rights as per Hindu law. The legitimacy and illegitimacy of the child is decided by the legitimacy of marriages as per the provisions of Hindu marriage Act, 1955.

### **Hindu marriage Act, 1955:**

As per the Hindu Marriage Act, 1955, the marriage is held to be valid if the provisions of the Sec.5<sup>8</sup> are fulfilled. The Hindu marriages Act 1955 also mentions under sec.11 and Sec.12<sup>9</sup> the void and voidable marriages. Under Sec 16<sup>10</sup> of the act, the legitimacy of the children of void and voidable marriages has been enumerated. Sec.16 simply says that the all the marriages in contravention of the Sec.5 of the act shall be null and void and thus the children of this type of marriage shall have status of illegitimate children as per law. If any marriage gets annulled under Sec.12 of the Act, the children resultant of such marriages are also rendered illegitimate.

In addition, if the conditions mentioned in Sec.7 of the Act are not properly fulfilled, the marriage will not be rendered valid marriage and the children born out of that marriage would again be rendered illegitimate children. Thus, the children born out of void marriages, voidable/annulled marriages, illicit marriages, and through concubinage fall under illegitimate category. But as the children of the void or voidable marriages are not at fault, why they should be punished? So the Sec.16 of the act has given few rights to them which make them illegitimate children with

<sup>7</sup> The American Convention on Human Rights available at <https://www.loc.gov/law/help/child-rights/international-law.php>

<sup>8</sup> Sec.5 Hindu Marriages Act 1955, [https://highcourtchd.gov.in/hclsc/subpages/pdf\\_files/4.pdf](https://highcourtchd.gov.in/hclsc/subpages/pdf_files/4.pdf)

<sup>9</sup> *ibid*

legitimate rights. Though they are not considered at par with the legitimate children, yet they are not left without certain rights, which make their legitimate father liable towards them.

### **Prohibition of Child Marriage Act, 2006**

If any marriage is held voidable under provisions of Sec.3 and Sec.12 under Prohibition of Child Marriage Act, 2006<sup>11</sup>, at the behest of any party, the children born out of such marriage will also be held illegitimate, but would have rights under Sec.16 of The Hindu Marriages Act.

Under Section 6 of the Prohibition of the Child marriage Act.2006, the children born out of such child marriages shall be considered legitimate children, however it doesn't clarify the succession rights of such children. It also doesn't throw light whether they will be considered at par with legitimate children in all respects. Sec.12 of the Prohibition of Child Marriage Act, 2006 deals with those kind of marriages where minor girls are abducted and sold on the pretense of marriage or sold after marriage to carry out immoral acts, and which are finally held null and void. There is nothing given in the Act regarding the legitimacy and maintenance of children born out of such marriages.

In India, the inheritance is decided on the two elements. First the religion of the person and second the type of succession. The laws governing the succession rights are The Hindu Succession Act, 2005 (which primarily deals with the intestate succession i.e. when the father dies without leaving a will) and The Indian Succession Act, 1925 (which is applicable in cases of testamentary succession, by drafting a will in the favour of preferred persons).

### **The Indian Succession Act, 1925**

Now the point of dispute in The Indian Succession Act, 1925<sup>12</sup> is that in Sec.37<sup>13</sup> where the father has left only children and the category of the children is not given, it is difficult to say whether this section is applicable to illegitimate children only. Secondly, in Sec. 100<sup>14</sup> of the Act, it is mentioned that if the intestate has not mentioned the names of illegitimate children specifically

<sup>11</sup> Sec.3 The Prohibition Of Child Marriage Act, 2006 available at <http://legislative.gov.in/sites/default/files/A2007->

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<sup>12</sup> The Indian Succession Act 1925, available at <http://newapps.nic.in/acts/TheHinduSuccessionAct1956.pdf>

<sup>13</sup> ibi

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and has mention only one word “child or children”, then it will be presumed that only legitimate children will be eligible to inherit properties as per will. These two rules are the solid rounds of discrimination towards illegitimate children.

### **Right to Property under the Constitution of India**

Now it is to be noted that right to property is a constitutional right and Article 300A<sup>15</sup> (Chapter VI, Right to Property), The Constitution of India, ensures that all the citizens shall have the right to possess property. However these rights have to be hard fought by many children of India. But keeping in view the complexities and discriminations towards these illegitimate children few

amendment here and there are made. For example, the Supreme Court allowed the inheritance rights to the children born in live in relationship via Vidyadhari & Ors vs Sukhrana Bai<sup>16</sup> & Ors on 22 January, 2008.

### **Hindu Adoptions and Maintenance Act, 1956**

Under Hindu Adoptions and Maintenance Act, 1956<sup>17</sup>, the illegitimate children are entitled to get maintenance from their father and mother till they are minor. As per Section 21, the legitimate

children are being considered the dependents of the parents. An illegitimate son is considered ‘dependent’ till he is minor and an illegitimate daughter is considered ‘dependent’ as long as she is unmarried<sup>18</sup>. That’s it. There is no mention of any property rights in the Act. They are only

entitled to the maintenance, but what should be the measure of proper maintenance is not given in the act, which leaves so many loopholes.

The recent ruling by Supreme Court in Revanasiddappa & Anr vs Mallikarjun<sup>19</sup> states that children born in illicit kind of relationship are innocent by birth and thus they are also entitled to all the rights which are considered for the legitimate children. The legitimacy of the status of children should be considered independent of their parent’s relationship.<sup>20</sup>

<sup>15</sup> Article 300A, The Constitution of India available at [https://www.india.gov.in/sites/upload\\_files/npi/files/coi\\_part\\_full.pdf](https://www.india.gov.in/sites/upload_files/npi/files/coi_part_full.pdf)

<sup>16</sup> Vidyadhari & Ors vs Sukhrana Bai & Ors on 22 January, 2008 available at <https://indiankanoon.org/doc/350765/>

<sup>17</sup> Hindu Maintenance and Maintenance Act, 1956, available at <https://tcw.nic.in/Acts/Hindu%20adoption%20and%20Maintenance%20Act.pdf>

<sup>18</sup> Smt. Teejan Bai Chandrakar vs Rajeshwari Chandrakar on 10 September, 2008 available at [available at https://indiankanoon.org/doc/1680054/](https://indiankanoon.org/doc/1680054/)

<sup>19</sup> Revanasiddappa & Anr vs Mallikarjun & Ors on 31 March, 2011 available at <https://indiankanoon.org/doc/138849/>

In Digambar Namdeo Munjal and Ors vs Kashibai Digambar Munjal And Ors on 13 February, 2020<sup>21</sup> ruled that though illegitimate children do have right to share property of their parents, yet they cannot be treated as coparceners in joint family property and thus do not have any right to claim share in any property including ancestral property. Secondly he is entitled to share property only if his father dies intestate. Thirdly, he doesn't have any of coparcenary rights which a legitimate child is entitled by birth in joint Hindu family. Fourthly, as he doesn't have any right by virtue of birth, during the life time of his parents and till they are alive, he is only entitled to maintenance, not share in property.

As per GS Singhvi and AK Ganguly, the Supreme Court ruled in 2011<sup>22</sup> in a judgement that illegitimate children have right to parent's property whether it is self-acquired or ancestral.

### **Conclusion and Suggestion:**

Children are not illegitimate, but illicit, extra marital and lustful relationships are. Void and voidable are marriages, not children. Children are children and they have parents.

The mere

existence of children prove that they have parents. Medical science has made so much progress that identity of father cannot be hidden. It can be proved through blood tests. Indian laws have made supervisions that illegitimate children are also entitled to maintenance and property inheritance rights, to a certain limits. It is now very irrelevant to deny the total rights to illegitimate children which are enjoyed by legitimate children. The need of the hour is to

eliminate the stigma of the term "illegitimate" and let these children breath openly in fully legitimate atmosphere, where no one can look down upon them. What are needed, are changes in all the laws relating to maintenance and succession of property and a single term 'children' should be used universally. Irrespective of their birth circumstances, children of all the religions should be entitled to all the rights equally, including inheritance to their parents' property of all classes especially in Hindu Law.

<sup>20</sup> Kusumbai Ashok Pande And Others vs Satyawani Sukdeo Nhavi And Others on 10 October, 2019 available at <https://indiankanoon.org/doc/2796617/>

<sup>21</sup> Digambar Namdeo Munjal And Ors vs Kashibai Digambar Munjal And Ors on 13 February, 2020 available at <https://indiankanoon.org/doc/110941955/>

<sup>22</sup> Indian Express, 1-April 2011, <http://archive.indianexpress.com/news/illegitimate-kids-have-right-to-parents-ancestral-property-sc/770446/1>

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- The New York Times, Feb. 12 1975, [www.nytimes.com](http://www.nytimes.com),. Leon R. Yankwich, U.S. Judge is Dead In 1927, Leon R. Yankwich the Judge, The Supreme Court bench in Los Angeles County, ruled in a case which involved a child's parentage that there aren't any illegitimate children, only illegitimate parents, and this ruling made national headlines and was later adopted by many states, for deciding the issues in registering birth of children. h <https://www.nytimes.com/1975/02/12/archives/leon-yankwich-us-judge-is-dead-author-of-elk-hills-ruling-on-oil.html>