

Right to Property and Maintenance of Illegitimate Children in India

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Abstract - Illegitimate children's ownership rights over their parents' property. Illegitimate children's rights to inherit their parents' property are determined by personal laws of the parents because there is no specific legislation defining what constitutes an illegitimate kid. In the past, illegitimate offspring were not accorded the same privileges as legitimate ones under Hindu law; however, in today's dynamic culture, this is no longer the case. Since neither Muslim nor Christian law acknowledges the word "illegitimate," the unborn child has no legal recourse. The law may remain unchanged, but it is the judiciary's job to adapt the law to the changing requirements of society. Section 125 of the CrPC, which supersedes personal laws and mandates the maintenance of illegitimate offspring, is mentioned in the study examining the property rights of such children, A uniform set of rules governing illegitimate children's ownership of their parents' property is urgently required. When a child is innocent, the burning must be carried by the child, which has to be changed.

Keywords - Property, Maintenance, Illegitimate Children, India, etc.

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INTRODUCTION

Legitimate denotes "anything that does not violate the rules of morality or public policy". Illegitimate children are those born outside of a legally binding union. They have been subjected to a wide range of discriminatory practices by both society and the law. Since the dawn of time, there has been a societal stigma attached to children born to unwed parents. Irregular and legitimate offspring were never given equal treatment. Most personal laws distinguish between legitimate and illegitimate offspring when it comes to inheritance rights. There was a considerable social stigma attached to illegitimacy in all of the world's major faiths. The Oxford Dictionary defines illegitimacy as "(Of a kid) born of parents who were not legally married to one another." Having sex before marriage and having sex after marriage is considered a sin in nearly every society. This means that every kid born as a consequence of an abusive relationship is doomed from the start. (1) It is regarded as a breach of trust. Contrary to civil law, a bastard could not inherit real property as a result of his father's future marriage to his mother under English law. Unless, of course, his father later married her mother and an older illegitimate son obtained possession of his father's estate after his death, in which case his father might retrospectively transfer title of the land to the sons and daughters of the father who married his mother. The land would not go to a younger non-bastard brother. In light of the ever-changing socioeconomic environment and the resulting vicissitudes in human relationships, it is common for a dominant group to lose its primacy over other groups, and the law takes its time to

articulate such social changes through an amendment process. Because of this, legislation cannot stay static in an ever-changing society. As a result, we've seen a shift in a number of personal laws. Illegitimate offspring now have a far better legal situation in various nations because to recently passed legislation. (2)

Hindu Law

Since the 1976 Marriage Laws (Amendment) Act amended Section 16 of the Hindu Marriage Act, the privileges of children born out of wedlock have been drastically altered in Hindu law. Only a few rights associated with the Sudra community had been recognized prior to this change. Section 20 of the Hindu Adoptions and Maintenance Act, 1956 provides that a Hindu would unquestionably maintain his or her ill-conceived children. When a Sudra has an unplanned kid with a for all time kept courtesan, the child has the status of a child and belongs to the family. In any case, he doesn't get to share his father's passion for the family home at his public debut. In addition, he is unable to approve a lawsuit against his father while he is still living. If a gift is made during the father's lifetime, he may receive an offer based on the father's selection. After the father's death, the 'brethren should make him an accomplice of the moiety of an offer' if a segment is made. Accordingly, the Court's perspective on the Sudras' misconceived children can be summarized as follows.. During the father's lifetime, the ill-conceived child is unable to provide permission for a section. There is a probability that the father will be

offered a block of land during his lifetime if there is one available. However, the true blue kids should make an offer of the property if there is a period following the death of their father. A legitimate child and an ill-conceived child are considered co-survivors as soon as they make it to their father's new house. Sudra's misconceived offspring, on the other hand, may or may not be his father's true blue offspring; in this case, the misconceived offspring is eligible for a request packet against the true blue offspring. According to this perspective, the Hindu Succession Act has no bearing.

As a result, the Supreme Court limited the segment's size with its sparse explanation. It was fortunate that a comparable court's progressive decisions restrained and even legitimized the same position. A decision by the Supreme Court in *Revansiddappa and Ors v. Mallikarjuna and Ors* said that such ill-conceived children should not have the right to property other than that of their parents. Despite this, the guardians' property is unaffected by the prohibition in question.. Section 16's first and second paragraphs expressly state that these young people should be genuine. If they've been declared "true blue," they won't be able to be oppressed and will be on an equal footing with other good-hearted children, making them eligible for all of their family's property rights, both self-obtained and inherited. (3)

Muslim Law

A parent's rights and responsibilities are outlined in a variety of legal frameworks, including in the Muslim law. When in question, the law recognizes the ordinary dad as the child's father; on sometimes, however, reception leads to the conclusion that someone who isn't the child's father obtains rights similar to those of a father. Islam does not value reception since the Quran despises it. However, despite the fact that filiation exists, the other frame is a 'affirmation of fatherhood'. According to Muslim law, a man's father's recognition of his son's identity grants him the status of being a legitimate child in certain instances. You must understand that there is a big difference between authenticity and the process of legitimating. Because of particular facts, a person might be considered authentic. In the truest sense of the word, there is no legitimation in Muslim law, which is why the process of legitimating is so important. An *Iqar* is a kind of legal confirmation of paternity. It is by far the most conclusive and irrefutable means of committing oneself to the person who uses it. The Court listened in *Muhammad Allahdad v. Muhammad Ismail*. (4)

The rule of affirmation or *iqar* grants a kid, whether a child or a small girl, a position of authenticity. Section 342 of Principles of Mohamedan Law explains this in further detail. It is widely accepted that in cases of vulnerability to true blue plummet, an affirmation by the father raises the assumption of authenticity except in cases where the opposite side can demonstrate that the kid whose paternity was recognized was of bad

conception. The Privy Council's choice in *Sadik Hussain Khan v Hashim Ali Khan* is the most followed case on the principle of affirmation. To use this instruction, you just need to show that marriage has occurred or that it occurred at the precise time. Assumption of a legal tie between the recognized tyke and his or her group is critical. As long as there is no perverted or double-crossing association, the rule of affirmation can't be the spot where the genuine relationship between the child's guardians is not conceivable. The notion is also irrelevant if the marriage necessary to make a tyke genuine blue is deemed to be fraudulent. An affirmation does not need that it be made public. From the therapy and direct encouragement, it may be inferred that affirmation is the result. It is essential to the validity of a claim that the physical relationship between a father and his child should be uncomplicated. When there is proof that a physical link is impossible, the presumed paternity implied by affirmation can be disproven. (5)

Right to Inherit Property

The illegitimate child is not entitled to inherit from his father under Muslim law. In the Hanafi law, the mother and her illegitimate children are entitled to the same benefits of inheritance. Ill-conceived children inherit everything from their mothers, as well as everything from every other person with whom they are linked via their mother. There appears to be "no weight" given to the father of an ill-conceived kid by "Mohammadan law" in *Pavitri v. Katheesumma Vaidiaalingam J*. The Hanafis, on the other hand, believe in the need to raise the child till the age of seven, even though Muslim law makes no mention of it. Such children can seek treatment under Section 125 of CrPC, which should ensure that all ill-conceived children are cared for by their parents. In a few instances, the courts have had the same impression.

Christian Law

A nave child is regarded as 'fillius nullius,' which means the progeny of nobody, in Christian law. Christian law does not have a provision that is analogous to Hindu law's (Section 16 of HMA, 1955) creation of a status of genuineness for the tyke. Christian property rights are protected under the Indian Succession Act of 1925. The term "kid," as used in this Act, does not include children who were created via in vitro fertilization. Specifically, in Section 37 of the Act, ill-conceived children are barred from inheriting property from their father. In any event, Section 125 of the Cr.PC does not bar such minors from seeking assistance. The mother and her relatives have sole custody of a child in Western law, as does the mother and her relatives in Hindu and Muslim law. This issue has nothing to do with the alleged father. Section 8 of the Indian Succession Act specifies this. We can see from a few decisions of the Court that the children are considered genuine if the two guardians cohabitated

for an extended period of time or if the guy sees the woman as his better half. Rameshwari Devi v. Territories of Bihar and Vidhyadhari and others v. Sukhrana Bai, among other instances, were the reason for this stoppage. Accordingly, children who aren't of sound mind are denied the right to inherit the property of their parents by Christian law; but, they are granted a right to support under the common law (Area 125 of the CPC). (6)

Legal Status of an Illegitimate Child

Illegitimate children were known as *filii nullius* under common law, meaning they had no legal ties to either their biological parents or any other family members. Because of this, the kid was not entitled to any advantages resulting from the parent-child connection, such as maintenance, succession, or inheritance. Illegitimate offspring were also prohibited from holding positions of authority or gaining public recognition for their situation in life. However, in today's world, most common law countries including Australia, the United States, and the United Kingdom have abandoned the obvious legal disadvantages that illegitimate offspring face. However, in India, the treatment of infants born to unmarried parents is still a relic of the Middle Ages. Under all personal law systems, illegitimate offspring are severely handicapped. It is in accordance with the Hindu Succession Act, 1956, that an illegitimate kid is entitled to inherit the property of just his or her mother. The father-child bond is not acknowledged. To safeguard the rights of children born out of invalid or voidable marriages, an amendment to the Hindu Marriage Act, 1956, included section 16, which became effective in 1976. An essential goal of this clause was to protect these children from being stigmatized as bastards, the Supreme Court remarked in *Revanasiddappa v Mallikarjun*. It is important to emphasize that even while the amendment is notable, the way it has been interpreted in the courts and in society reflects a demeaning view of the position of illegitimate offspring. The Ithna-Ashari school of Muslim law considers an illegitimate as a *filii nullius*. In the Hanafi school, this view has been tempered such that the mother has legal rights over the kid for the purpose of feeding and nourishing it. In addition, both the mother and the child are entitled to a share of the inheritance.

Illegitimacy, Cultural Decline and Poor Social Outcomes

When it comes to illegitimate children in nations like the United States where there has been an increase in births outside of marriage, huge arguments have taken place that touch on issues of sexuality, race and gender. Conventional family structures, say many social observers, are in danger of vanishing forever. Unmarried parents, cohabitees, transgender couples, polygamous and polyandrous relationships, and their illegitimate children are blamed for undermining the moral fabric of society and contributing to poverty and crime, as are the illegitimate children of such unions. Illegitimate children are more likely to drop out of

college and be poorer than children born in a marriage because of their parents' "sins," according to statistical research. That a straight marriage results in happier, more stable, and more successful individuals and children is supported by research. Those who reference this statistical proof, on the other hand, are unable to provide an explanation. (7) Mistaking correlation for causation is the real problem here. Poor and uneducated people are more likely to give birth outside of marriage than more affluent people. To prove their manhood, men from the lower echelons of society engage in acts of sexual prowess, which they view as an expression of their masculinity in the face of adversity. As with males, young women are drawn to early sexual experiences that lead to pregnancies and births. Most dads refuse to assume responsibility for their child because they lack the financial wherewithal to commit to a long-term relationship. As a result, all of the responsibility for parenting a kid falls on the shoulders of newlywed moms, who frequently lack the financial resources, maturity, and emotional support necessary to complete such a monumental endeavor.

Illegitimacy: Not a Gender Neutral Concept

Several jurisdictions, including India, have laws that discriminate against the mother when it comes to illegitimate offspring. So the Hindu Succession Act of 1956's intestate succession provisions don't acknowledge the biological tie between father and son. The goal of these traditions is to link pregnancy and childbirth, giving the mother exclusive responsibility for the child's well-being. Such gendered notions have been criticized as a kind of sexist discrimination. As a result, the goal of the legislation has been to eliminate these types of behaviors. Art. 15 of the Constitution explicitly outlaws discrimination on the basis of sex and provides for providing particular provisions for women, thereby making this a constitutional guarantee. Illegitimacy laws continue to discriminate against minorities, which is antithetical to the Constitution's mission.. As a result, such rules encourage males to be arrogant and careless when it comes to their sexuality. As a result, fathers of children born outside of marriage are discouraged from being actively involved in the lives of the children they father. Finally, such legislation reflects the belief that unplanned pregnancies are the result of the mother's 'immorality.' It goes without saying that such a notion is unreasonable and typical of the patriarchal depiction of women as possessing an unbridled sexual appetite and want (that needed be controlled through marriage). As a result, unwed mothers continue to face stigma in society. (8)

Illegitimacy According To Indian Evidence Act, 1872

According to Section 112 of the Indian Evidence Act, the fact that a child was born while his mother was still legally married to another man, or within two hundred and eighty days after the dissolution of her

marriage and she remained single, is conclusive proof that he is the biological child of that man, unless it can be shown that the gatherings to which the child was subjected were not those of the mother and the other man. (9)

Social Perspective of an Illegitimate Child

- **Ancient India**

An illegitimate kid is viewed with extreme skepticism in ancient India. Irregular offspring who had no idea who their biological father was populate Hindu legend in large numbers. There is a common Hindu outlook on life expressed in this well-known epic, which appears to be a mirror of the general populace. Viewed from afar on television, the epical mind is widely browsed (perhaps in portions). Illegitimate offspring are routinely demonized in the media and by the general population. As shown in the epic, the treatment of illegitimate offspring is typical of the way Hindu society handles them. In the past, there were many stories of illegitimate children who were great persons who were exploited by the outmoded society and used as commodities to serve the genuine blue. (10)

- **Modern India**

As opposed to religious philosophical conjecture, the Indian people have embraced wisdom as the new key that may just unlock a bright Indian future. The viewpoint of the Indian people has altered significantly. Even in instances involving an illegitimate kid's rights, our nation's highest court has relied on both sound legal reasoning and a genuine concern for that child in reaching its decisions. According to a Supreme Court of India decision from 2011, illegitimate offspring in India were eligible for both parental property and tribal property as well as the self-gained property of their parents. Such children can't be denied property rights since what was considered as illegitimate in the past may not be so in the current growing society, according to a court ruling by Honorable justices G. S. Singhvi and A. K. Ganguly. In addition, the court was reminded that a link between the parents may not be permitted by law, but rather the birth of a child in such a relationship should be viewed as a reflection of the relationship between the parents. Is honest "and the kid is eligible for all the rights that are accorded to other children conceived of valid marriage, according to the advantageous connection seat." As a protected right, the ideal of property is no longer required, but Article 300A has a certification against hardship of property rights spared by experts in law." (11)

Legal Perspective of an Illegitimate Child

- **Section 125 of the Code of Criminal Procedure, 1973**

Whether married or not, an illegitimate child can get support from his or her father or mother under Section

125 of the Code of Criminal Procedure, 1973. Those who have made it big but can no longer care for themselves due to a physical or mental difference from the norm or harm may also be eligible for support under this provision if they have obtained the lion's share. Illegitimate children (who are unable to care for themselves) are provided with prompt and honest-to-goodness maintenance under this key aspect of Indian law.

- **Section 20 of the Hindu Adoptions and Maintenance Act, 1956**

For as long as they are under 18, any kid can or should have the right to receive financial support from both of their parents under the Hindu Adoptions and Maintenance Act, 1956. Children and mature parents are the focus of the announcement, which reads "Maintenance."

- In accordance with the provisions of this section, a Hindu must care for his or her legitimate or illegitimate children and his or her elderly or sickly parents during his or her lifetime.
- As long as the kid is a minor, he or she has the right to make a maintenance claim against either his or her biological or adoptive parent.
- As a general rule, a man's obligation to support a grown or weak parent or an unmarried small girl extends as far as he or she is unable to support them.

Section 16 of the Hindu Marriage Act, 1955

According to this clause of the Hindu Marriage Act 1956, children born out of a substantial/customary, invalid/unpredictable, void or voidable marriage are considered to be the genuine children of the couple. Children of void and voidable relational unions": (12)

- Regardless of whether or not a nullity announcement is granted in relation to that marriage under this Act and regardless of whether the marriage is declared invalid and void under section 11, any child of such a marriage who might have been genuine if the marriage had been substantial should be authentic, regardless of when the child was conceived.
- Despite the fact that the marriage has been declared null, any child born or imagined prior to the announcement of nullity, who would have been considered the real child of the couple if their union had been broken up rather than repealed as stated in section 12, should be treated as their true blue child.

Although nothing in subsection (1) or sub-sections (1) and (2) is intended to grant any child of an invalid and/or null marriage any rights in the property of any

man, other than the parents in the event that, despite his death, such child would have been unequipped for having or securing any such rights by reason that he was not the genuine child of his paramour, he is still entitled to any such rights.

Illegitimate Child's Right to Maintenance according To the Hindu Coparcenary Concept

Various options provided by different courts in our country come in handy if we're talking about the rights of a kid born outside of marriage or an illegitimate offspring. When it comes to cases like *Sujata v. Krishna Prasad*, it's important to remember that even if children born from invalid marriages are affected honestly, the Hindu Marriage Act's section 16(3) forbids anybody but their parents from bestowing any rights on those children. The legitimated kid can't obtain an offer on property that has a location with coparcenaries, and that the legitimated child should triumph to the property after the death of his parents.

Muslim Laws That Regulate the Rights of an illegitimate child

There is no technique or approach that may give an illegitimate kid some honorable standing in the eyes of Muslims. Customary Muslim law does provide for the affirmation of legitimacy, but this administration cannot legitimize an illegitimate kid for a variety of other reasons. Due to the fact that Muslim marriage is a contractual agreement rather than a sacred requirement, many instances of illegitimate relational unions can be found. It is reasonable to wonder about the validity of any children born as a result of such a union. Muslim law grants a father the authority to accept his child's paternity under specific legal situations because of this.

CONCLUSION

Finally, it may be said that while illegitimate offspring have a claim to their parents' property, the individual circumstances of each case always play a significant part in determining whether or not they do. Independent of today's diversified culture; parents of ill-conceived children confront societal shame that affects their public image. Such youngsters are still abused by society in nations like ours. Parents' religious views and personal laws will be taken advantage of because there is no universal code to address queries about this subject. The Supreme Court has endeavored to defend the rights of illegitimate children born out of wedlock, notwithstanding the lack of law in present settings. Laws must be updated to keep pace with society's evolving requirements, which necessitate regular revisions. Due to the ever-changing nature of society, the Supreme Court has made adjustments to its precedents in order to remain relevant. As a result of society's liberal and reasonable thinking, illegitimate offspring now have the same right to share in their parents' property as lawful ones.

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