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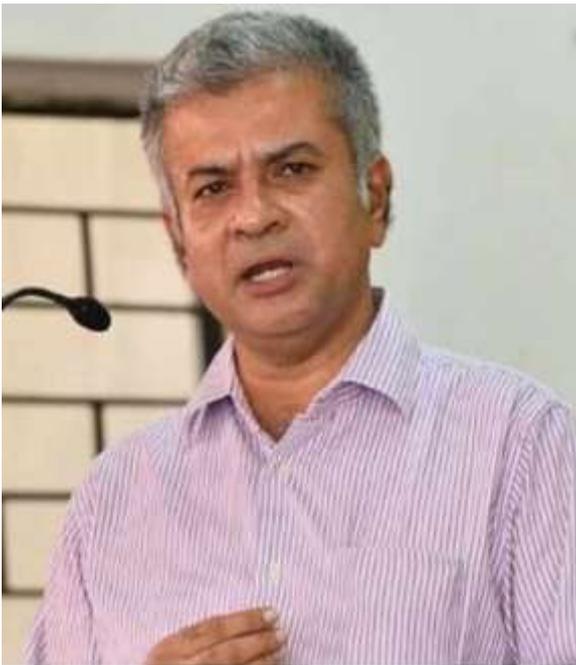
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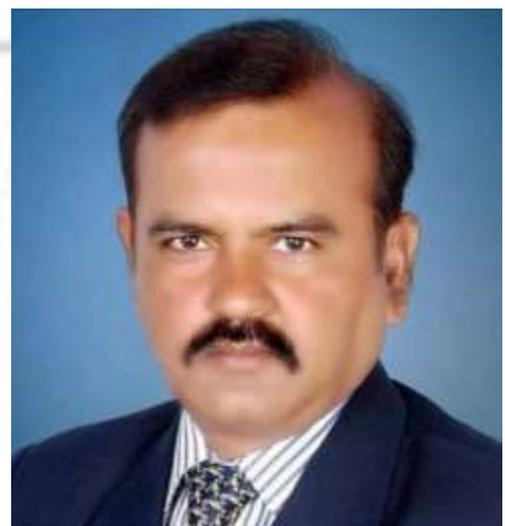


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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

ILLEGITIMACY AND LEGAL ENTITLEMENTS **UNDER DIFFERENT RELIGIOUS LAWS**

AUTHORED BY - YUVIKA GARG

ABSTRACT

Illegitimacy, traditionally related to the children born out of wedlock, had social, legal, and religious implications since time immemorial. India is a pluralistic society in which different personal laws apply to individuals of different religions and thus entitlements of illegitimate children differ widely across religions. At present Indian legislation extends certain protective rights to illegitimate children referred to as "children born out of void or voidable marriages." The purpose of this paper is to investigate those rights for illegitimate children.

This paper strives to offer a detailed explanation of the various laws and their stance concerning the legitimacy of a child. The paper is a critical analysis of the concept of illegitimacy and the shifting legal status of such children under Hindu, Muslim, Christian and Parsi personal law, and other developments in the form of statutes and case laws. The discussion revolves around major focuses of legal entitlements such as status of legitimacy, custody and guardianship, entitlement to inheritance, and provision on maintenance.

The paper also assesses a possible application of some secular statutes, which apply some protection to an independent religion. Finally, the research is aimed at contributing to a more subtle interpretation of the way Indian law responds to the rights of illegitimate children in the context of religious diversity, and encourages more consistent and child-friendly treatment of legal rights.

Keywords: Illegitimate, Custody, Inheritance, maintenance, guardianship

INTRODUCTION

"There are accidental parents, but there are no accidental children. There are illegitimate parents, but there are no illegitimate children." ~ Rick Warren

In every society it is a common practice to categorise the status of children as legitimate or illegitimate. "Anything that does not violate the rules of morality or public policy" is said to be legitimate.¹ Children born outside of a legally binding union are considered illegitimate. Both the legal system and society have subjected them to a variety of discriminatory practices. Illegitimate children have been stigmatised by society since the beginning of time. The children who were not born legally never shared the same status along with legitimate children. Under almost all personal laws in India the rights of inheritance of legitimate children and illegitimate children are not similar. Social prejudice has always been associated with a kid born to unmarried parents. Though every child needs care and protection due to mental and physical vulnerabilities, there is a subcategory of children who might need more warmth, safety, and care than others.

Custody disputes mostly occur in divorced households, but they become more complex when the child emerges from an unmarried union. The term "illegitimate" brings both social discrimination and legal conflict when considering matters of parental care since it affects parental rights and authority of guardianship with protecting children's welfare. India lacks a cohesive solution to protect illegitimate children from discriminatory treatment throughout the nation. The law surrounding child custody becomes difficult to handle because it requires evaluation of emotional connections, psychological traits and legal documentation. When children emerge from non-married parents the legal questions arise about parental custody rights and children's inheritance rights. The question of parental rights and legal protections becomes most pressing because of conflicting personal laws and secular convictions that result in unpredictable decisions. However, in *Khurshid Ahmad Khan v. State of U.P.*, the Supreme Court reiterated that children born out of illegitimate relationships are entitled to equal protection of the law and dignity under Article 14 and 21 of the Constitution.²

¹ Merriam-Webster Dictionary (definition of "legitimate")
<https://www.merriam-webster.com/dictionary/legitimate>.
² *Khurshid Ahmad Khan v. State of U.P.*, (2015) 8 SCC 439.

CONCEPT OF ILLEGITIMACY

The term 'illegitimate child' generally refers to a child born outside a valid marriage. According to Black's Law Dictionary, an illegitimate child is "a child born out of lawful wedlock."³ As defined by the Oxford Dictionary, an illegitimate child is one "born of parents not lawfully married."⁴ The word 'illegitimate' originates from the Latin term 'illegitimus,' which signifies something that is against the law or not legally recognized.

An illegitimate child is identified by the marital status of their parents and is thus regarded as "nullius filius," indicating no legal ties to either parent. A child is deemed 'illegitimate' if born to parents who were not married at the time of birth, and this status remains even if the parents marry later. A child's status is determined by the legitimacy of their parents' marriage. In India, the following children are considered illegitimate:

1. Children born to couples not legally married.
2. Children from concubinage.
3. Children from bigamous marriages.
4. Children from adulterous relationships between parents.
5. Children from void marriages.
6. Children from voidable marriages.
7. Children born to couples under 18, regardless of marital status.

There is no single statute defining "illegitimate child" in India, but the term is used indirectly by the following:

- Under Section 16 of The Hindu Marriage Act, 1955 a child born out of a void or voidable marriage is considered legitimate.⁵
- Under Section 6 of The Hindu Minority and Guardianship Act, 1956, the mother is considered as the natural guardian of an illegitimate child.⁶
- Under Section 125 of The Code of Criminal Procedure, 1973 provision for maintenance of illegitimate children is included.⁷

³ Illegitimate Child, Black's Law Dictionary (11th ed. 2019).

⁴ Illegitimate, Oxford English Dictionary (Oxford Univ. Press, 3ed ed. 2010).

⁵ The Hindu Marriage Act, 1955, Section 16.

⁶ The Hindu Minority and Guardianship Act, 1956, Section 6(b).

⁷ The Code of Criminal Procedure, 1973, Section 125.

- Section 112 of the Indian Evidence Act, 1872 presumes that a child is legitimate if the child is born during the continuance of a valid marriage or if the child is born within 280 days after the dissolution of marriage, provided the mother remain unmarried.⁸

In *Savitaben Somabhai Bhatiya v. State of Gujarat*, the Court held that an illegitimate child can claim maintenance from the father under Section 125 of the CrPC⁹ Under Muslim law also, a child born out of the wedlock (termed *walad-ul-zina*) is not recognized as a legal heir of the father. Muslim law lays down a gestation period of 6 months to determine the legitimacy of a child. If the child is born after 6 months of the marriage of the couple, the child is presumed to be legitimate.¹⁰

RIGHTS OF ILLEGITIMATE CHILDREN UNDER DIFFERENT PERSONAL LAWS

The rights of children born out of wedlock have undergone substantial changes over the centuries, influenced by shifts in the socioeconomic landscape. From the 20th century onwards, various personal laws have been amended to ensure that illegitimate children receive the same treatment as legitimate ones, preventing discrimination against them.¹¹ This effort to eliminate discrimination is also evident in international law and numerous international conventions. For instance, Article 25(2) of the Universal Declaration of Human Rights¹² explicitly states that all children, regardless of whether they are born within or outside of marriage, should receive equal social protection.¹³ Additionally, the United Nations Convention on the Rights of the Child, 1989, asserts that every child, irrespective of their parents' or legal guardians' race, colour, sex, language, religion, political or other opinions, national, ethnic or social origin, property, disability, birth, or other status, should not be subjected to any form of discrimination.¹⁴ It further ensures that children are safeguarded against all types of discrimination or punishment based on their status, activities, and so on.

Hindu Law

In India, before the Hindu Code Bills were drafted, and the Hindu Personal Laws were enacted;

⁸ The Indian Evidence Act, 1872, Section 112.

⁹ *Savitaben Somabhai Bhatiya v. State of Gujarat*, (2005) 3 SCC 636.

¹⁰ Mulla, Principles of Mahomedan Law, Section 260–262 (LexisNexis, 22nd ed. 2016).

¹¹ B.M. Gandhi, Family Law 151–153 (Eastern Book Company, 5th ed. 2022).

¹² Universal Declaration of Human Rights, 1948, Article 25(2).

¹³ Office of the High Commissioner for Human Rights, Universal Declaration of Human Rights at 70: 30 Articles on 30 Articles - Article 25, Press Release (04 December 2018).

¹⁴ Convention on the Rights of the Child (CRC), art. 2(1), Nov. 20, 1989, 1577 UNTS 3.

individuals and communities typically followed their own traditions and practices. As a result, children born out of wedlock were denied inheritance or maintenance rights and were often marginalized.¹⁵ However, with the introduction of the Hindu Code Bill, laws governing Hindus were codified, granting certain rights to illegitimate children. These rights were established to safeguard the fundamental rights of children born out of wedlock, including: -

Maintenance

Before the Hindu Adoptions and Maintenance Act of 1956 was enacted, under Mitakshara and Dayabhaga law, a Hindu illegitimate son had the right to receive maintenance from his father's both coparcenary and self-acquired property. The father had an obligation to maintain his illegitimate child, irrespective of his financial status. The illegitimate daughters, on the contrary, could not have such recourse under the Hindu law then. They were only entitled to seek maintenance under the Code of Criminal Procedure, which only subsisted as long as the alleged father was alive.

According to the Hindu Adoptions and Maintenance Act, 1956, a Hindu is required to maintain his or her illegitimate children during their lifetime. Section 21 of the Act clarifies that minor illegitimate sons, as well as unmarried daughters, are dependents of Hindu males and females and the responsibility of maintenance lies on both parents.¹⁶ Both illegitimate sons and daughters are entitled to get support from their parents, but this right is limited to their minority. Once they reach adulthood, they are no longer entitled to get maintenance from their parents. Furthermore, Section 20(1) of the Hindu Adoptions and Maintenance Act, 1956 clarifies that an illegitimate son of a deceased Hindu, provided he is a minor, and an illegitimate daughter, provided she is unmarried, is entitled to be maintained by the heirs of the deceased or those who inherit the estate.¹⁷ But Section 24 of Hindu Adoptions and Maintenance Act, 1956 disqualifies a person who has ceased to be a Hindu by his conversion to another religion to claim maintenance under the Act.¹⁸

However, when an illegitimate child turns to another religion he/she could still claim maintenance under Section 125(1)(b) & (c) of the CrPC provided he/she is mentally or physically disabled or in case the minor child is not capable of maintaining himself/herself.¹⁹

¹⁵ Paras Diwan, Modern Hindu Law 120–122 (Allahabad Law Agency, 22nd ed. 2020).

¹⁶ The Hindu Adoptions and Maintenance Act, 1956, Section 21.

¹⁷ The Hindu Adoptions and Maintenance Act, 1956, Section 20(1).

¹⁸ N.R. Raghavachariar, Hindu Law: Principles and Precedents, page 806 (8th ed. 1987).

¹⁹ The Code of Criminal Procedure, 1973, Section 125(1)(b) & (c).

In *Badshah v. Urmila Badshah Godse*,²⁰ the Court emphasized the objective of social justice in maintenance laws, ruling in favour of a child born from an invalid marriage.

Inheritance/ Succession

Section 16 of the Hindu Marriage Act, 1955 governs the rights to inheritance of illegitimate children. After the amendment in 1976, Section 16(3) clarifies that children born out of the void and voidable marriages can only claim the property of their parents and not any other family member.²¹ This implies that a child born out of wedlock is able to inherit self-acquired property of his father but has no rights over ancestral property and that of other family members.

Section 16 of the Hindu Marriage Act, 1955 validates the birth of children born in void and voidable marriages. These children have the right to inherit the property that their parents have acquired independently. They however do not have coparcenary rights in ancestral property in a Joint Hindu family. This creates a distinction between children born in valid marriages and those from void marriages, although the basic right to property from parents is protected. In *Revanasiddappa v. Mallikarjun*,²² the Court took a progressive approach, advocating for a broad and liberal interpretation of Section 16 to uphold the constitutional validity of equality under Article 14 and non-discrimination under Article 15.

A child born out of wedlock is not entitled to inherit from his father. However, the Hindu Succession Act, 1955 states that legitimate heirs are thought to be somehow related to every individual by legal lineage,²³ while illegitimate offspring are thought to be connected by illegitimate families to one's mother and one another. The property of their mother or their illegitimate siblings is entitled to an illegitimate child. The assets of an illegitimate kid could also be obtained by a mother. The father doesn't appear to be entitled to the possessions of his illegitimate child.

Under Mitakshara and Dayabhaga school of law an illegitimate son is not entitled to a share on partition. The Court in *Bharatha Matha v. R. Vijaya Renganathan* reiterated the position that

²⁰ *Bharatha Matha v. R. Vijaya Renganathan*, (2010) 11 SCC 483.

²¹ The Hindu Marriage Act, 1955, Section 16(3).

²² *Revanasiddappa v. Mallikarjun*, (2011) 11 SCC 1.

²³ The Hindu Succession Act, 1956, Section 3(1)(j).

children born out of a void marriage have no claim in ancestral property and that they can only claim in the self-acquired properties of the parents.²⁴ In *Jinia Keotin v. Kumar Sitaram Manjhi*, the Supreme Court clarified that children born of void or voidable marriages cannot claim inheritance from relatives of the father beyond the self-acquired property.²⁵

Custody & Guardianship

With respect to custody and guardianship, the Guardians and Wards Act, 1890 applies across all the communities and governs the custody of illegitimate children. In Hindu Law, as per section 6(b) of Minority and Guardianship Act, 1956 a mother has preferential right of guardianship over father. The mother is considered the natural guardian of an illegitimate child.²⁶ The father had no right to take the custody of the illegitimate son during his minority. In case of a married girl, her husband is the natural guardian.

Children below age five are generally considered to be in the care of their mothers. Section 6(a) of Hindu Minority and Guardianship Act, 1956 deemed the age limit to be five years old²⁷ and under Section 19(b) of Guardians and Wards Act, 1890 the limit was eighteen years old.²⁸ The Supreme Court in *Githa Hariharan v. Reserve Bank of India* interpreted the term “after” in Section 6(a) to mean not just after the father's death, but also when the father is absent, unfit, or not interested in the child's welfare, thereby allowing the mother to be appointed as guardian during the father's lifetime in appropriate cases.²⁹

The Guardianship and Wards Act, 1890 was modified to ensure that mother and father had equitable custody access to their children in the event of a power of attorney. In the case of *Roxann Sharma v. Arun Sharma*, it was made quite clear that legal stipulations do not apply to a child once they reach the age of five.³⁰ In other words, child custody would be dependent on the child's needs. If the kid is over the age of nine, the decision is theirs. However, custody would not be offered to the mother if it is proved that she has abused or neglected the boy.

Moreover, if a child is brought up by an individual who is part of an ethnic group, community,

²⁴ *Bharatha Matha v. R. Vijaya Renganathan*, (2010) 11 SCC 483 (India).

²⁵ *Jinia Keotin v. Kumar Sitaram Manjhi*, (2003) 1 SCC 730.

²⁶ The Minority and Guardianship Act, 1956. Section 6(b).

²⁷ The Minority and Guardianship Act, 1956. Section 6(a).

²⁸ The Guardians and Wards Act, 1890, Section 19(b).

²⁹ *Githa Hariharan v. Reserve Bank of India*, (1999) 2 SCC 228.

³⁰ *Roxann Sharma v. Arun Sharma*, (2015) 8 SCC 318 (India).

clan, or family that a specific mother or father is or was associated with, the Hindu Minority and Guardianship Act, 1956 applies to that individual. However, if the guardian ceases to identify as a Hindu or leaves the world completely and permanently by becoming a monk or monastic, they are truly not required to be obliged under the same Act.³¹

Muslim Law

The Muslim Personal Law (Shariat) Application Act of 1937 applies in case of non-testamentary succession. Furthermore, according to Mahomedan inheritance law, there is no difference made between ancestral and self-acquired property. According to the Muslim Law, an illegitimate offspring owes no nasab (lineage) to either of the parents. Under Muslim law there are no explicit laws or procedures for determining a child's legitimacy, there are different approaches amongst the different schools under Muslim law.

Inheritance/ Succession

In classical Muslim law, legitimacy is a major factor that is considered in establishing the legal position of a child, especially in inheritance. The child born out of wedlock is considered as walad al-zina (child of adultery or fornication) and is illegitimate. Islamic jurisprudence strongly believes in the fact that lineage (nasab) can only be established by a lawful marriage. As a result, an illegitimate child does not acquire legal recognition from the biological father and has no legal ties to him or his family for the purposes of inheritance. This stance is represented in the maxim which was based on a famous Hadith- “The child is of the bed, and to the adulterer belongs the stone” – meaning that a child belongs only to a legal husband of a mother and not an adulterer or fornicator.³²

The child born out of wedlock does not have the right to inheritance of its father according to the Islamic laws. The mother and her illegitimate offspring are entitled to the same inheritance benefits under Hanafi school of Sunni law. All that ill-conceived children inherit comes from their moms, and from everyone else to whom they are related through their mother.³³ The same approach is largely followed under Shia law, such as by the Ithna Ashari school, where

³¹ Prachi Dutta, ‘Illegitimate’ Children and the Law: A Primer on the Rights of Children Born Out of Wedlock in India, 06 August 2022, by: LegitEye.

<https://legiteye.com/illegitimate-children-and-the-law-a-primer-on-the-rights-of-children-born-out-of-wedlock-in-india-by-prachi-dutta/>

³² Sahih al-Bukhari, Vol. 8, Book 82, Hadith 817.

³³ Asaf A. A. Fyzee, Outlines of Muhammadan Law 346–47 (5th Ed. 2008).

illegitimate children are denied any inheritance rights from their biological father or his heirs.³⁴ Both sects of Islamic personal law are strongly pegged to the principle of exclusion in the paternal line.

This traditional Muslim law position has been uniformly supported by the judicial precedents in India. In *Mohammed Allahdad Khan v. Mohammad Ismail*,³⁵ the Allahabad High Court held that an illegitimate child under Muslim law is not entitled to inherit from the father. Likewise, in the case of *Md. Haneef v. Sitara Bano*,³⁶ the court reinstated that illegitimate children do not have any rights of inheritance from their biological fathers and that they could only inherit from their mothers. In *Pavitri v. Katheesumma*,³⁷ Justice Vaidialingam observed that according to Mohammedan law, the father of an illegitimate child has no weight and hence confirmed the absolute severance of the child and the father under the law as far as inheritance is concerned.

Maintenance

Under Muslim law there is no obligation on either of the parents regarding the maintenance of illegitimate child, but in Hanafi law, such child can claim maintenance till the age of 7 years. Under Section 125(1) (b) and (c) of the Criminal Procedure Code (CrPC), an illegitimate child can claim maintenance from his or her father. This provision covers both sons and daughters and lasts until the child is of majority or is able to support himself or herself. Where daughters are concerned the responsibility can last up to marriage.

Courts have consistently upheld this interpretation. In *Abdul Razzak v. Najmunnisa Begum*, the Andhra Pradesh High Court held that a father is liable to maintain an illegitimate child according to Section 125 of CrPC.³⁸ Similarly, in *Bakshi v. Bakshi*, the Delhi High Court held that the right to maintenance described in CrPC does not depend on personal laws and is aimed at preventing poverty and homelessness.³⁹ In *Sukha v. Nini*,⁴⁰ the apex court held that Mohammedan law has no provision for maintenance of illegitimate child.

In the traditional Muslim personal law, the concept of maintenance is known as nafaqah. This

³⁴ Tahir Mahmood, *Muslim Law in India and Abroad* 220–22 (2nd Ed. 2016).

³⁵ *Mohammed Allahdad Khan v. Mohammad Ismail*, (1888) ILR 10 All 289 (India).

³⁶ *Md. Haneef v. Sitara Bano*, AIR 2003 All 344 (India).

³⁷ *Pavitri v. Katheesumma*, AIR 1964 Mad 105 (India).

³⁸ *Abdul Razzak v. Najmunnisa Begum*, 1981 Cri. L.J. 1225 (A.P.).

³⁹ *Bakshi v. Bakshi*, AIR 1986 Del. 90.

⁴⁰ *Sukha v. Nini*, 1965 AIR SC 314.

responsibility is mainly with the father in case of legitimate children. The father of the illegitimate child, however, has no legal obligation to support the child. According to Hanafi school, the mother is under an obligation to maintain and raise the child, provided that she has the sufficient means.⁴¹ The view of Shia school is largely similar, where the father is not bound to maintain an illegitimate child, although a moral responsibility is sometimes acknowledged.⁴²

Custody & Guardianship

In Muslim society, the offspring of unlawful unions or illicit relationships are regarded as “bastards”.⁴³ The natural or assumed parent of the child bears no responsibility or obligation under Mohammadan law. Legitimate children are those produced by an illegal or legal marriages; nevertheless, void and illegitimate children have no privileges to inheritance or guardianship or registration under Islamic rule.⁴⁴

The custodianship is based on the welfare of the child. In Muslim law, preference is provided to the mother with dependent children, if the mother is not alive or not capable, then custody of a boy under 7 years and a girl who is already in her teens is provided to other females in the immediate family members. The father does not have legal rights of guardianship, whether with regard to custody (hizanat), person (wilayat), or property over an illegitimate child.

In terms of property or legal representation, the father similarly cannot act as a guardian. The court may in case of necessity appoint a guardian to property issues especially under Guardians and Wards Act, 1890. The court does this when personal law lacks sufficient remedy. However, even statutory law recognises the principles of personal law except where the welfare of the child is inconsistent with the same.

An illegitimate child under Muslim law treated as child of nobody, neither the father nor the mother, but in case of guardianship mother holds custodial rights.⁴⁵ It has been held through judicial adjudication that the mother is natural guardian and it can extend up to a limit that she can even file a writ of habeas corpus if someone is withholding the child from the custody of

⁴¹ Mulla, Principles of Mahomedan Law, Section 340 (LexisNexis Butterworths, 22nd ed. 2016).

⁴² A.A.A. FYZEE, Outlines of Muhammadan Law 306–08 (Oxford Univ. Press, 5th Ed. 2008).

⁴³ Mulla, Principles of Mohammedan Law, Section 263 (21st Ed. 2023).

⁴⁴ Law commission of India, Reforms in Guardianship and Custody Laws in India, Report no. 257 (May 2015).

<http://lawcommissionofindia.nic.in/reports/Report%20No.257%20Custody%20Laws.pdf>

⁴⁵ Paras Diwan, Muslim Law in Modern India 106 (10th Ed. 2022).

his/her mother.⁴⁶ Thus, an illegitimate child has limited right to have natural guardian under Muslim law.

Christian Law

Under Christian Law, an illegitimate child does not enjoy any status because no codified laws exist in India that can give privileges to the illegitimate children born to Christian parents. Children born out of invalid and void partnerships have been given a legal standing similar status in Hindu and Muslim law. However, for the purposes of legitimacy, only those children born to parents who were wed when one of them died and the subsequent marriage was held to be non-binding, are considered and thus have the right to inherit property. Also, the children born in a common-law marriage (whose parents subsequently divorced) are described as 'illegitimate' under Section 19 of the Indian Divorce Act, 1869.⁴⁷

Inheritance/ Succession

The legal principles governing property rights according to Christian law are quite explicit. In the case of *Jane Anthony v. V.M Siyath*,⁴⁸ the court determined that, under the law of succession, the term "children" refers exclusively to legitimate children and excludes illegitimate ones. As a result, illegitimate child does not have any claims to the property of their parents. The Indian succession Act, 1925 protects the property privileges of Christians. Section 37 of the Act particularly blocks ill-conceived kids from acquiring property of the dad. Also, children with unsound minds have no right to succession to the property of their parents altogether. The Indian Succession Act 1925 gives legal children inheritance rights as stated in Section 33 and 37, but it does not mention the inheritance rights of the illegitimate ones.⁴⁹

This exception has led the judicial systems to step in and clarify the rights of illegitimate children, especially in regard to their succession rights on their mother. Fatherly inheritance is not similarly accepted by Christian law unless the child was adopted, recognised in a will, or in any other formal document. In the case of testamentary succession, the father can pass property to an illegitimate child in the will, otherwise an illegitimate child cannot claim to share in the property of the father. In *Mary Sonia Zachariah v. Union of India*, the Kerala High Court

⁴⁶ *Gohar Begum v. Suggi alias Nazma Begum* 1960 AIR SC 93.

⁴⁷ The Indian Divorce Act, 1869, Section 19.

⁴⁸ *Jane Anthony v. V.M. Siyath*, 2003 SCC Online Ker 104: (2003) 2 KLT 576 (India).

⁴⁹ The Indian Succession Act, 1925, Section 33 & 37.

stressed on treating illegitimate children in a dignified manner and not denying them essential legal aspects mainly inheritance by the mother.⁵⁰

Maintenance

In Indian Christian personal law, maintenance of illegitimate children is not expressly codified. The Indian Divorce Act, 1869, which is the primary legislation regulating matrimonial issues among the Indian Christians, does not provide any distinct provisions on the maintenance of illegitimate children. Thus, Christian law has not adopted expressly the right of illegitimate children to obtain maintenance against their biological parents in the context of personal law. Although, the Indian legal system offers a secular solution by using Section 125 of the Criminal Procedure Code, 1973. According to this provision, an illegitimate child can seek maintenance against the biological father, in case he has the means and ignores his duty of maintenance or refuses to maintain the child.

According to the Indian judiciary, maintenance under Section 125 CrPC to children of out-of-wedlock birth has always been accepted. To give an example, in *Pinto v. Mascarenhas*,⁵¹ the Karnataka High Court emphasised the restricted nature of Christian personal law in matters of inheritance and legitimacy, implicitly justifying the need to use secular law, i.e. Section 125 CrPC in securing such fundamental entitlements as maintenance. A minor child whether legitimate or illegitimate has no right to claim separate maintenance as per the decision of the court in *Chacko v. Daniel*.⁵² Thus even though, Christian law does not give an express provision of maintenance to illegitimate children, the general system of the Indian law will not deny them support and subsistence by their parents by use of general statutory provisions.

Custody & Guardianship

In Christian law, illegitimate children are granted minimal rights, and as a result, an illegitimate child lacks a legally designated natural guardian. In the case of *ABC v. State (NCT of Delhi)*,⁵³ the Supreme Court dealt with the question of whether an unwed mother, particularly a Christian one, is bound to notify the alleged father about the birth of the child. The Supreme Court acknowledged that unwed Christian mothers do not receive guardianship rights in the same

⁵⁰ *Mary Sonia Zachariah v. Union of India*, AIR 1995 Ker. 252 (India).

⁵¹ *Pinto v. Mascarenhas*, AIR 1982 Kant. 217 (India).

⁵² *Chacko Daniel v. Daniel Joshua*, 1952 KLT 595.

⁵³ *ABC v. State (NCT of Delhi)* (2015) 10 SCC 1.

way as unwed Hindu mothers. It may therefore be held that, the natural guardian of an illegitimate child whereby mother is Christian or brought up in the Christian faith does not have the obligation of informing the purported father of the birth of the child to obtain a guardianship order in any court.

Similar to Hindu and Muslim law, the child's guardianship rests solely with the mother and her family, and the alleged father has no involvement in this matter. This is given in Section 8 of the Indian Succession Act, 1956. A few court rulings indicate that if the two guardians lived together for a considerable amount of time or if the man regards the woman as his better half, the children are regarded as legitimate, like *Rameshwari Devi v. Territory of Bihar*⁵⁴ and *Vidhyadhari & ors v. Sukhrana Bai*⁵⁵ and a few different cases.

Parsi Law

In India the Parsi personal laws are covered under the Parsi Marriage and Divorce Act, 1936 (PMDA). In this act, the case of legitimacy has not been directly defined or controlled. But it is understood implicitly that only children who have been born out of a valid Parsi marriage by the rules and regulations laid down in the Act are legitimate.⁵⁶ Children born in consequence of a void or voidable marriage, as well as children born in consequence of a relationship not considered legal in accordance with facts of this act, are rather considered illegitimate. The Parsi law does not have provisions that enable recognition by the father to provide the legitimacy to an illegitimate child unlike the Hindu or Christian personal laws.⁵⁷ Therefore, whether the marriage under which a child is born is valid, is critical in determining the legal status of the child.

Inheritance/ Succession

The Indian succession Act, 1925 deals with Parsi inheritance in Sections 50-56, and Schedule III contains the scheme of intestate succession in the case of Parsis.⁵⁸ Under this statutory system, only legal heirs are privileged to inheritance rights. Illegitimate children are not provided under intestate succession to succeed to the property of his/her biological father or mother. This means that Parsi personal law does not allow illegitimate children to receive any

⁵⁴ *Rameshwari Devi v. State of Bihar*, (2000) 2 SCC 431 (India).

⁵⁵ *Vidhyadhari v. Sukhrana Bai*, (2008) 2 SCC 238 (India).

⁵⁶ Parsi Marriage and Divorce Act, 1936, Section 3–9.

⁵⁷ Mulla, Dinshah Fardunji, Principles of Hindu Law 984 (LexisNexis 22nd ed. 2022).

⁵⁸ Indian Succession Act, 1925, Section 50–56 and Schedule III.

inheritance unless they have been given a specific provision in testamentary forms, e.g. a will.

Maintenance

Though there is no specific statute that provides maintenance of illegitimate children under Parsi personal law, Indian criminal law bridges this gap by enacting Section 125 of the Code of Criminal Procedure, 1973. This provision allows a child born out of wedlock to demand maintenance from their real father, as long as the said child cannot afford this maintenance and yet the father refuses or fails to provide it.

Indian courts have taken a broader view of this provision in order to promote the welfare and sustenance of children, whether they are legitimate or not. The *Capt. Ramesh Chander Kaushal v. Veena Kaushal*, the Supreme Court held welfare legislation such as Section 125 ought to be interpreted in a way that furthered the goal of safeguarding the deprived illegitimate children.⁵⁹

Custody & Guardianship

Although, the Parsi personal law does not make special provisions regarding the custody and guardianship of both legitimate and illegitimate children, the same is covered under the secular laws. Appointment of guardians and determination of the right of custody are governed under Guardians and Wards Act, 1890. In this Act, paramount consideration is given to the welfare of child.

Regarding illegitimate children, the courts have always ruled that the natural and desirable guardian is the mother.⁶⁰ This is in line with the general principles of law throughout the Indian system, which care to give preference to the mother in cases concerning illegitimate children, particularly in the minority. Accordingly, where there is no codified provision regarding personal law, the guardianship of the mother would be preferred unless the child welfare requires otherwise.

CONCLUSION

The Indian society is highly mystic and full of tradition, passing through a dynamic change. The Indian personal laws have moved to reduce the discrimination being experienced by the

⁵⁹ *Capt. Ramesh Chander Kaushal v. Veena Kaushal*, AIR 1978 SC 1807.

⁶⁰ The Guardians and Wards Act, 1890, Section 17(1).

illegitimate children. The Hindu Marriage Act, 1955 in its Section 16, with reference to the interpretations thereof in the Supreme Court, gives validity to children born in void and voidable marriages. However, this protection is partial and it does not extend to children born out of non-marital relationships. Although there are some provisions on maintenance and custody of acts such as Guardians and Wards Act, 1890 and the Domestic Violence Act, 2005, these provisions fail to address the actual question of the equal inheritance and property rights. The Muslim and Christian personal laws are particularly restrictive. According to Muslim law, only the property of the mother can be inherited and according to the Christian law, most of the inheritance is denied to the illegitimate children. This difference supports the stigmatization in society further, notably there is not a common framework. At the international level, the children rights including children born out of wedlock are guarded under the United Nations Convention on the rights of Children to which India has been a signatory to.

What is urgently needed today is the reform in the legislation. Proposal of a uniform civil code (UCC) has existed to remove the discrepancies in different personal laws. The passing of such a code would also make it possible that regardless of the marital status of the parents or religion, all children could be entitled to equal rights with regards to inheritance, maintenance and guardianship. Legislation which targets the mother and overrides the father of his parental obligations should be nullified in order to offer equality and responsibility.

To sum up, the rights of illegitimate children in Indian religious personal laws have been torn apart and divided. The continuance of lack of a comprehensive legal structure further exposes these children to discrimination and social outcasts. Although the courts have helped alleviate the situation, radical transformations can only be achieved when wholesome legislative amendments are implemented. Promulgation of a common civil code may usher a new wave of uniformity, inclusiveness, and safeguard of each child, whether legitimate or not.