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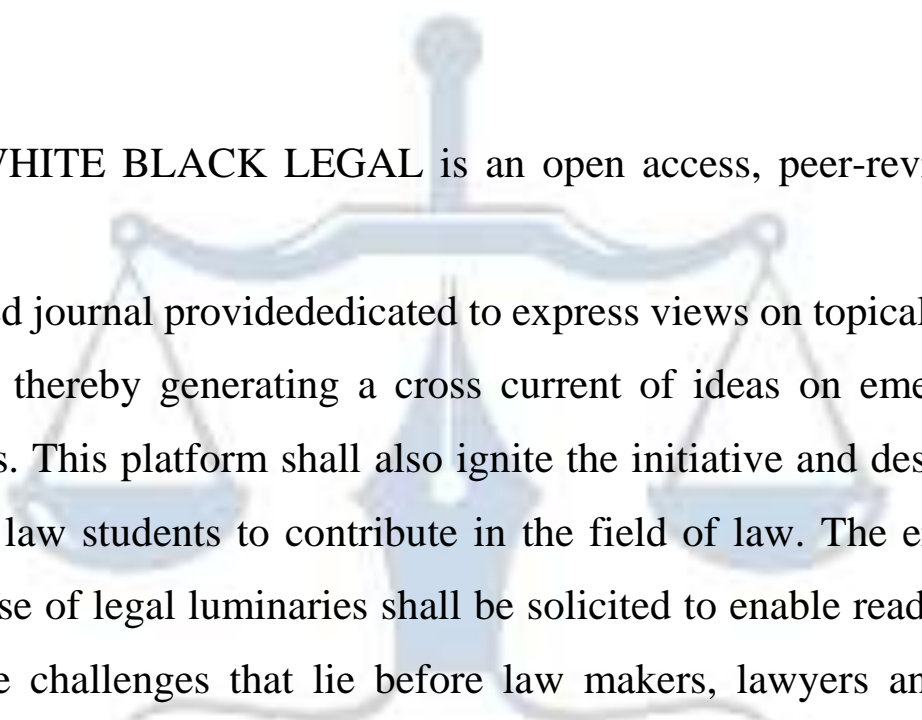


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With this thought, we hereby present to you

JUDICIAL AND SOCIAL ALTERATIONS IN STATUS OF SELF- ACQUIRED AND ANCESTRAL PROPERTY: CONCERNING RIGHTS OF ILLEGITIMATE CHILD IN INDIA

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ABSTRACT

The status of illegitimate children in India has been that of social monsters throughout post-Vedic history and their property rights have been evolved in the same way. After the codified argument over property rights under Hindu Succession Act 1956 and Indian Succession Act 1925, the status of illegitimate child being kin to his father and the child being able to acquire ancestral property with similar rights and liabilities of that of a legitimate child still stands under social and moral radar. What has till now been governed subjectively and moralistically with a lot of criticizing opinions must now find its place into the society with its evolving times and hence the paper sought to answer the questions of its legitimacy and its need into the state.

Keywords: Illegitimate Child, Hindu Succession Act 1956, Ancestral Property, Self- Acquired property, Section 16 (3) Hindu Succession Act 1956

RESEARCH QUESTIONS

1. Why is there a recognized kinship between the illegitimate child and the mother but not the same child and his biological father.
2. What are the rights of the illegitimate child towards Ancestral property and what are the provisions to back it?
3. Why is there a need for social reforms and how will firm legislation help its cause?

METHODOLOGY

The research paper is an analytical and socially critical one. The paper has been formulated with the help of doctrinal research. Various research papers and legislations of India have been

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referred. To back the judicial growth of the situation, the judicial precedents of India and other developed and underdeveloped countries have been taken into reference to show the stance of India and the historical development of it.

ABBREVIATIONS USED:

1. ISA: Indian Succession Act 1925
2. HAS: Hindu Succession Act 1956
3. Child (I): Illegitimate Child
4. Child (L): Legitimate Child
5. HUF: Hindu Undivided Family

INTRODUCTION:

India is a state of liberal and accommodating judicial approach towards difficult topics and often been seen as a progressive state due to its ever evolving and widening scope of various sorts of legislations. Yet we come to a standstill on a lot of topics of religious and moral turpitude where the involvement of judiciary can only be limited due to the involvement of subjective religious hurdles and boundaries.

India is a state that runs its rule based on “good governance” and entails itself on the position of a “welfare state”.² To fulfill this criterion in many ways, one of them being to accommodate every cultural aspect of the social system into a more defined, barred and legalized one. Here the legislations that recognize inheritance rights are in question.

The distribution of property in India is in various sorts but when it comes to inheritance the division becomes an umbrella one between:

- i) Ancestral Property
- ii) Self- Acquired Property

Ancestral Property is a form of property distinction for the Hindus from their ancestral father’s line up to 4 generations in the past. The property shall be undivided, as and when it is

² Sabharwal, J.Y.K. (no date) *Role of judiciary in good governance, High Court of Punjab and Haryana*. Available at: https://highcourthd.gov.in/sub_pages/left_menu/publish/articles/articles_pdf/goodgovernance.pdf (Accessed: 04 November 2024).

partitioned, the property shall be converted to self- acquired one for the individuals and hence loses its status of ancestral. The right of this coparcenary and ancestral property is a birth recognized right rather than that of one that is recognized after the death of the father of the previous holder of the property. An individual may throw his self- acquired property into the pool of the ancestral property. If the property is consensually there and the profits and liabilities are shared by all in the family, then it is automatically considered as ancestral property, and the individual rights of the previous owner are dismissed and cannot be claimed.³

Self- Acquired Property is often moved forward by the succession rule, which is highly recognized by the Dayabhaga School of Hindu Law. The order and distribution system of the self- acquired property or the HUF's property which is not ancestral is governed into subtypes under HAS: Class I heirs, Class II heirs, agnates and cognates. The legislation also recognizes the rights of an unborn child in section 20 of the Act.

This succession rule can be done via a will (testamentary succession) by the owner of the properties or perhaps if the death is intestate, the above mentioned 4 subtypes are taken into consideration. The rule may be the general condition, but there are some necessary exceptions to it under section 24 and 25.⁴

This paper focuses on the rights of the coparcenary's from the side of the male and female who have died intestate or even in testamentary succession. The author aims to explore the nuances of what it is like being a legal personality as an illegitimate child and what all rights and restrictions one must face.

Despite the conservative moral linings of the state, the judiciary has often passed remarkable judgments to accommodate the changing and shifting social dynamics into the literal legislation's ambit. "**Illegitimate**" means "something that is contrary to the law." Illegitimate children are those who are born outside of a valid marriage. They have faced discrimination from both society and the law in a variety of ways. However, as a group of people in society emerges who are sensible and liberal in their perspective and do not regard illegitimacy as

³ Name (2016) Concept of Ancestral Property, *Indian National Bar Association*. Available at: <https://www.indianbarassociation.org/concepts-of-ancestral-property/> (Accessed: 04 November 2024).

⁴ DYVA KRUPA, Dr.K.D. (2024) *Suits*, *S3waas.gov.in*. Available at: <https://cdnbbsr.s3waas.gov.in/s3ec01a0ba2648acd23dc7a5829968ce53/uploads/2024/03/2024032251.pdf> (Accessed: 04 November 2024).

something to be ashamed of, the rules are being altered in response.⁵

In medieval Wales, a "bastard" was merely a child who hadn't been acknowledged or accepted by his father. All children, it didn't matter if borne out of a wedlock or not, were recognized by their father and had the same legal privileges, including their right to perhaps a stake in the father's fortune. Following England's invasion of Wales, English law became applicable in Wales. Contrary to civil law, a bastard could not be an heir to any real property under English law, and his later marriage to his mother could not legalize him. There was one exception: his father later married his biological mother, and an older illegitimate son inherited his father's lands upon his death.⁶ Perhaps to facilitate this old line of thoughts, our legislation still doesn't count the illegitimate child as a responsibility of the father, but simply is to be recognized kin of the mother. When a kid is born out of a void or voidable marriage, there is hardly any presumption of legitimacy, hence the child's validity as a legitimate one is determined by the child's or both the parents' personal laws. The Hindu Succession Act, 1956 ("HSA") only recognizes legitimate kinship for children born out of a proper wedlock, while the illegitimate children are supposed to be related to their biological mothers only and can inherit their mothers' property following the laws of succession stated under Section 14 of the HSA. Illegitimate children's inheritance rights are codified in Section 16(3) of the Hindu Marriage Act of 1955, which provide that children born from void and voidable marriages are simply entitled to property that belongs to their parents and not to anyone else's in the parent's family if they are not their parents' legitimate children. This provision has been historically interpreted in such a way that illegitimate children have a right to inheritance over their parents' self-acquired property rather than their parents' ancestral, co-parcenary, or HUF property.⁷

This paper further explores the above-mentioned social legal stance of the illegitimate children's right of inheritance and how it has evolved into something much more accommodating in today's time with the help of judiciary.

⁵ Arora, K. (2015) 'Illegitimacy under Hindu Law', *Lawctopus.com*, 13 November. Available at: <https://www.lawctopus.com/academike/illegitimacy-hindu-law/> (Accessed: 04 November 2024).

⁶ Ibid.

⁷ Dutta, P. (2022) "Illegitimate" Children and the Law: A Primer on the Rights of Children Born Out of Wedlock in India', *Legit Eye*, 6 August. Available at: <https://legiteye.com/illegitimate-children-and-the-law-a-primer-on-the-rights-of-children-born-out-of-wedlock-in-india-by-prachi-dutta/> (Accessed: 04 November 2024).

“ILLEGITIMATE CHILD”: THE TERM DENOTION

Illegitimate children are the ones who were not born out of a legal marriage, out of an illicit relationship, out of an annulled or voidable marriage, or through concubinage. The term "illegitimate" comes from the Latin word "illegitimus," which means "something which is in contrast to the law or is not in line with law." Illegitimacy is strongly stigmatized in India across all religions and communities. A child born to parents who are not legally married to one another and who engage in extramarital and premarital sexual relationships is viewed as sinful, and a child from the offensive relationship is additionally kept in a state of sin and is also viewed as illegitimate.⁸

Prejudice exists not just in societies, but also in legislation. The legislation does not offer illegitimate offspring the same legal rights as legitimate children. Nowadays, most personal laws discriminate among the rights and privileges to inherit between legitimate and illegitimate children. Throughout history, several faiths have strongly opposed illegitimacy. Illegitimate children are defined as "nullius filius," meaning they have no legal connection to both parents, based on their parents' marriage status. Illegitimacy of an infant is determined by two elements, which are either: The legal or non-legal structure of the parental relationship.⁹

In 1924, in "Geneva Declaration" emphasized the need of ensuring children's physical and emotional development and protecting them from harm. According to article 25(2) of the Universal Declaration of Human Rights (1948)¹⁰, individuals born in or out of marriage have the right to equal humanitarian aid. In 1989, the General Assembly approved a treaty on children's rights, which went into effect in 1990. The protocol aimed to address not only civic or political constitutional protections, but also socio-economic, philosophical, ethical, and philanthropic obligations related to basic nurturing and responsible commitment. Collaborative efforts were crucial in achieving children's rights.¹¹

⁸ Chavan, Asst.Prof.P.D. (2023) 'A Study on Illegitimate Children and Their Rights in India Under Various Personal Laws', *IJCRT (International Journal for Creative Research Thought)*, 11(11), pp. e659–e664.

⁹ Kruthika, K.L. (no date) 'Illegitimacy and their rights under Hindu law'.

¹⁰ *Universal Declaration of Human Rights*, G.A. Res. 217A, U.N. GAOR, 3d Sess., U.N. Doc. A/810 (1948), art. 25(2).

¹¹ *Ibid* 8.

RECOGNITION IN MUSLIM AND CHRISTIAN COMMUNITIES

Shia law under Muslim law states that if a kid is born outside of a legitimate marriage, the child does not belong to either parent. "A bastard child belongs, legally speaking to neither of the parents and is in every sense filius nullius." The Hanafi school in Muslim law treats illegitimate children more leniently. According to the Hanafi School of Law, it is the mother's responsibility to care for an illegitimate kid until they reach the age of seven. However, Shia law does not follow this practice.¹²

Muslim law does not grant legitimacy to illegitimate children. In Muslim law, if a father claims to be the child's father but the child is illegitimate, the father's acknowledgment is irrelevant and has no implications.¹³

Christian law recognizes inheritance rights for children born from lawful marriages but does not provide protection for illegitimate children. Exclusion of inheritance leads for adopted or illegitimate children leads to social and economic disadvantages. Inheritance practices amid Christians that deny these privileges to adopted and illegitimate children of the deceased have serious consequences for them. Conventional and intestate successions are controlled by the general rules of ISA 1925. The application of personal law within the ISA 1925 primarily impacted Christians, who made up the bulk of the population. Common law rules from England were implemented. Illegitimate children's inheritance rights are significantly limited under the Act of 1925 when compared to legitimate heirs. The ISA, which controls succession for people who are not Hindu in India, notably Christians and Parsis, fails to recognize illegitimate children being legal heirs to their father's inheritance. Therefore, illegitimate offspring are typically barred from acquiring their father's acquired by themselves or ancestral assets under this statute. They do, however, have the right to inherit from their mother's assets, as the Act considers them legitimate heirs for her property. Furthermore, if the biological father explicitly identifies an illegitimate kid in his will, the child is entitled to inherit under the terms of the testamentary instrument.¹⁴

¹² Singh, D. (2020) 'Live-In Relationship- Legitimacy of Children and their Inheritance Rights', *Open Acclaims*, Vol 10(2581–5504), pp. 1–12.

¹³ Ibid.

¹⁴ Mishra, A. (no date) *Bridging the gap between the Juvenile Justice Act 2000 and Christian personal law — inheritance rights of adopted and illegitimate children in India*, *Srrn.pdf*. Available at: file:///C:/Users/GARIMA/Downloads/ssrn-2551287.pdf (Accessed: 04 November 2024).

JUDICIAL GROWTH OF THE STATUS OF CHILD (I)

The status of illegitimacy was switched up to be less stigmatized, and for the social groups of the state to de-associate the illegitimacy of a child with the chronically false term of “bastardization” with the help of legislative amendments that included child (I) into the law and gave them rights somewhat equal to that of a child (L).

Section 16 of the Hindu Marriage Act, 1956,¹⁵ was amended in 1976 to protect the rights of children born from void and voidable marriages. The Supreme Court ruled in **Revanasiddappa v. Mallikarjun**¹⁶ that the clause protects children from being stigmatized or bastardized. Thus, the adjustment is important.

Socially recognising the cons of the social discrimination Illegitimate children face legal barriers and have limited access to resources.

Compared to children conceived by divorced parents, they are less likely to get maintenance paid by the non-custodial parent. Their life chances and results are inferior compared to their married counterparts. The Supreme Court of Massachusetts recognized this factor in **Goodridge v. Department of Public Health.**¹⁷

The judiciary has recently always tried to get rid of conservatism and enhance their views on the normalization of the child (I). But this has not been the case forever. There have been some cases where the judges feel the need to limit their opinion to the specific legislation and have also suggested that there is no possibility to broaden that scope, whereas also agreeing that the child (I) has no fault to the situation per se. One such case of recognition has been **Jinia Keotin V. Kumar Sitaram Manjhi**¹⁸ wherein the Apex court of India held that Sec 16 of the Hindu Marriage Act was enforced to provide legality to children borne out of null or void marriages, shielding them from the stigma of illegitimacy. However, Subsection (3) expressly confines these children's inheritance rights towards their parents' property, barring any claims on kin or ancestral property. The court affirms the fact that this limitation cannot be expanded based on assumptions or interpretations that violate the law's language. Thus, the appeal to offer such

¹⁵ *Hindu Marriage Act 1956 Vol Act 68 of 1976* (1976). Parliament of India.

¹⁶ *Revanasiddappa v. Mallikarjun* Civil Appeal No 2844 of 2011 (2011).

¹⁷ *Goodridge v. Department of Public Health*, 798 N.E.2d 941 (Mass. 2003).

¹⁸ *Jinia Keotin v. Kumar Sitaram Manjhi*, (2003) 1 SCC 730 (India).

children broader inheritance rights was dismissed, in accordance with Section 16's legislative objective.

No, the statutes of the country have a certain point of distinction and unsaid silence in the case of children born out of void or voidable marriages and the children that are altogether illegitimate. The section 16 of the act itself is not very specific on the issue and hence the conclusion of all the disputes raising a question on the subject have been decided subjectively on the opinions of the judge and the circumstances of the case. Such cases where the opinion of the judges have been non-conventional on the question of children born out of void or voidable marriages is ***Thrumurthi Ranayammal v. Thrumurthi Muthamal***¹⁹ where the Madras High Court noted that the language of Sec 16 of the HMA, as it relates to a marriage declared void under Section 11, creates an unusual and shocking situation that the legislature could not have imagined. A child of a void marriage shall have the same position and status disregarding the fact whether the marriage itself has been deemed null or void under Section 11 or not.

The Bombay High Court also ruled that offspring born from invalid marriages are regarded genuine under the law, even without a nullity decree, thereby maintaining their social standing and inheritance rights. However, their rights to inherit are further restricted than those of children born from lawful marriages. They can only inherit their parents' assets, with no additional rights to ancestral or familial property. This view provides some safeguards for children of marriages that are null while not completely equal their inheritance rights to those of offspring of legitimate marriages.²⁰

CONCLUSION

To summarize, India's changing approach to succession rights for children born from null and void marriages represents a substantial shift toward inclusion, albeit with apparent limitations. Legislative changes, including Section 16 of the HMA, and innovative judicial interpretations have acknowledged these children's entitlement to inherit self-acquired assets from their parents. However, inheritance regarding ancestral property is still restricted, along with conventional conceptions of bloodline and kinship.

¹⁹ *Thrumurthi Ranayammal v. Thrumurthi Muthamal*, (1981) MLJ 287 (Mad)

²⁰ *Shanta Ram v. Smt. Dargubai*, AIR 1987 Bom 182

To improve equity even more, legislative amendments could increase rights to inherit for children of void marriages, matching their benefits with legitimate offspring. Another option is to draw clearer lines in the law, stressing a child's rights regardless of the parents' marital status, resulting in a more inclusive legal structure that lowers cultural stigma and aligns with current ideas of equality. Increased public awareness campaigns may also lessen societal bias, increasing support and acceptance for all children. Together, these approaches could provide a holistic approach that combines legislative reform and social transformation to provide justice and wellbeing for all children in India.

