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# **RIGHT OF ILLEGITIMATE CHILDREN ON PARENTAL PROPERTY**

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Utkarsh kumar, Maharishi Markandeshwar (Deemed to be University)

## **ABSTRACT**

The term "illegitimate" refers to something that is against the law. Illegitimate children, in this context, are those born outside of a legal marriage. In many respects, not just society but also the law has discriminated against them. There has always been a social stigma attached to a child who was not born to legal parents.

“There are no illegitimate children – only illegitimate parents.” – Leon R. Yankwich

The validity of a child under Hindu law is governed by the legality of the marriage as defined by the Hindu Marriage Act. The Hindu Marriage Act<sup>1</sup> covers anyone who is a Sikh, Jain, or Buddhist by faith. As a result, the illegitimacy criterion employed in the previous three religions will be identical to that utilised in Hindu law.<sup>2</sup>

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<sup>1</sup> Section 2(1)(b) of the Hindu Marriage Act, 1955

<sup>2</sup> Section 2

## Introduction

The right to inherit of legal offspring and illegitimate children is not the same under practically all personal laws. In all of the world's religions, illegitimacy carries a heavy societal shame. The Oxford Dictionary defines illegitimacy as "(of a kid) born of parents who are not legally married to each other."

"To each other." Premarital and extramarital sexual relationships are both considered sins in the Catholic Church almost every civilization. As a result, the kid born as a result of such an abusive relationship is likewise kept in a condition of sin. It's true regarded as illegitimate.

According to a rigorous interpretation of Hindu teachings, a kid must have been conceived after marriage to be deemed legal. However, according to a Privy Council decision, only birth during marriage is a required requirement of legitimacy under Hindu law, which is a binding rule.<sup>3</sup> A kid must be born in lawful wedlock in order to be treated as legitimate under ordinary law. If the marriage is void due to a violation of the statutory prescriptions, any child born of the marriage would have the effect of bastardising the children born to the parties to the marriage, either on its own or after it is declared or annulled, as the case may be.<sup>4</sup>

Illegitimate children's inheritance rights are governed by Section 16 (3) of the Hindu Marriage Act, 1955, which stipulates that "such children are exclusively entitled to the property of their parents and no other related." This means that an illegitimate child would only be entitled to his father's self-acquired property rather than his ancestral property.

## Valid Marriage under Hindu Marriage Act, 1955

Marriage is void<sup>5</sup> under the Hindu Marriage Act under the following circumstances:

- If you're in a bigamous relationship.<sup>6</sup>
- If the married couple are sapindas of each other.<sup>7</sup>
- If the married couple has a degree of relationship that is illegal.<sup>8</sup>

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<sup>3</sup> <http://14.139.60.114:8080/jspui/bitstream/123456789/684/16/Legitimacy.pdf>

<sup>4</sup> *Jinia Keotin & Ors vs Kumar Sitaram Manjhi & Ors* 2003 (3) ALT4 (SC)

<sup>5</sup> Section 11

<sup>6</sup> Section 5 (i), Hindu Marriage Act, 1955

<sup>7</sup> Section 5 (v), Hindu Marriage Act, 1955.

<sup>8</sup> Section 5 (iv), Hindu Marriage Act, 1955

The classification of such marriages as void has the effect of implying that the marriage never existed. If all of the prerequisites in Sections 5 and 7 are met, a marriage is genuine, and the children born of that marriage are deemed legitimate. Marriage will be voidable<sup>9</sup> at the option of one partner in the following situations:

- When the other party was insane at the time of the marriage;
- when the other party was impotent at the time of the marriage;
- when the wife was pregnant at the time of the marriage by someone other than the husband (without the latter's knowledge); and
- (If) the other party's consent (or the guardian's consent in the case of a minor bride) was obtained by force or fraud.

In the instances described above, the party has the option of obtaining an annulment declaration from the courts (in void marriages, decree of annulment is granted). Until the court issues a ruling, the children will be regarded genuine. However, if the parties are seeking a divorce under Section 12, the issue of illegitimacy does not arise because divorce can only be granted in circumstances of legitimate marriages.

Originally, the Hindu Marriage Act stated that a child born out of a marriage that was ruled void or annulled by the court had the same legal standing as a kid born out of a divorce judgement. However, the courts have construed Section 16 of the Hindu Marriage Act differently, holding that the section only applied if a court had issued a nullity ruling; in the absence of such a decree, the children of void marriages remained illegitimate.<sup>10</sup>

After the Marriage Laws (Amendment) Act of 1976, which revised Section 16, this gap was filled. All invalid and voidable marriages' offspring are now considered legal. Children born out of invalid or voidable marriages, on the other hand, are not entitled to inherit the property of their relatives.

If the child's mother's prior marriage is not legally dissolved, the child will not be regarded illegitimate if born from a second marriage. The right of either party to ask the court to declare a marriage null and void under a decree that was formerly required under Section 12 of the Act of 1955 has been abolished.

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<sup>9</sup> Section 12, Hindu Marriage Act, 1955

<sup>10</sup> <http://14.139.60.114:8080/jspui/bitstream/123456789/684/16/Legitimacy.pdf>

## **Illegitimacy under Hindu Law**

In Hindu law, the legality of a child is determined by the legality of the marriage under the Hindu Marriage Act. A person who is Sikh, Jain, or Buddhist by religion is covered by the Hindu Marriage Act. As a result, the illegitimacy the criteria used in the preceding three religions will be the same as those used in Hindu law. According to Hindu traditions, a kid must be conceived after marriage to be considered a son or daughter legitimate. However, according to a Privy Council decision, only birth during marriage is a required requirement of legitimacy under Hindu law, which is a binding rule. A kid must be born in lawful wedlock in order to be treated as legitimate under ordinary law. If the marriage is declared void due to a violation of the statutory prescriptions, any child born of the marriage would have the effect of bastardising the children born to the parties to the marriage, either on its own or as a result of the declaration or annulment, as the case may be.

Until recently, Indian law did not recognise the rights of illegitimate offspring to their parents' property. The law now recognises an illegitimate child's entitlement to the property of its parents, according to a modification to Section 16 of the Hindu Marriage Act. Children born out of wedlock in live-in relationships also have a claim to their parents' property.

## **Hindu Law**

The Marriage Laws (Amendment) Act, 1976, which revised Section 16 of the Hindu Marriage Act, 1955, has drastically changed the rights of illegitimate offspring under Hindu law. Only a few rights connected to Sudras were recognised prior to this modification. Section 20 of the Hindu Adoptions and Maintenance Act, 1956 specifies that a Hindu is obligated to support his or her illegitimate offspring.

According to Hindu law, a marriage is considered lawful if it meets all of the requirements set forth in Sections 7 and 5 of the Hindu Marriage Act, 1955<sup>18</sup>. The children born from such a recognised marriage are deemed legitimate on their own. If the conditions set forth in Section 5 of the Act are not met, the marriage may be declared void or voidable under Sections 11 and 12 of the Act.<sup>11</sup>

As a result, in Hindu Law, children who fall into the category of illegitimate children can be

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<sup>11</sup>[http://zafarjudicialacademy.com/wpcontent/uploads/2019/04/The\\_Rights\\_of\\_Illegitimate\\_Children\\_\\_Under\\_Hindu\\_Law.pdf](http://zafarjudicialacademy.com/wpcontent/uploads/2019/04/The_Rights_of_Illegitimate_Children__Under_Hindu_Law.pdf)

summarised as follows:

1. Children born from a void marriage;
2. Children born from an annulled/voidable marriage;
3. Children born from an illicit connection;
4. Children born through concubinage; and 5. Children born from a marriage that is not recognised due to a lack of necessary rituals.

Children's social position is established by their parents' actions. The innocent child, who has no control or influence over his or her parents' actions, must bear the consequences.

### **Rights of an Illegitimate Child in the Past**

The Hindu law relating to illegitimate children can be discussed under the following four heads:

- Maintenance
- Inheritance
- Joint Family Property and Partition
- Guardianship<sup>12</sup>

### **Maintenance**

Prior to the codification of Hindu personal laws, all areas of Hindu personal life were governed by the old Mitakshara and Dayabhaga laws. The old law recognised the maintenance rights of a Hindu's illegitimate offspring from his father's coparcenary property and his own property. The father was obligated to support his illegitimate son during his minority regardless of whether he had any property or not. Illegitimate girls, on the other hand, were not entitled to financial support unless they filed a claim under the Code of Criminal Procedure while their father was alive.

Following codification, a Hindu is obligated to maintain his or her illegitimate offspring for the rest of his or her life, unless he or she reaches the age of majority or ceases to be a Hindu, as defined by the Hindu Marriage Act and Hindu Adoptions and Maintenance Act, 1956.

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<sup>12</sup>[http://zafarjudicialacademy.com/wpcontent/uploads/2019/04/The\\_Rights\\_of\\_Illegitimate\\_Children\\_\\_Under\\_Hindu\\_Law.pdf](http://zafarjudicialacademy.com/wpcontent/uploads/2019/04/The_Rights_of_Illegitimate_Children__Under_Hindu_Law.pdf)

Furthermore, the Hindu Adoptions and Maintenance Act states that if a Hindu's illegitimate child dies, the son is entitled to maintenance until he reaches the age of majority, and the daughter is entitled to maintenance until she reaches the age of majority, from the deceased's assets.<sup>13</sup>

## **Inheritance**

A child born out of wedlock has no claim to his father's inheritance. Illegitimate offspring are deemed to be linked by illegitimate kinship to their mother and one another under the Hindu Succession Act, and their legitimate descendants are deemed to be related by legitimate kinship to them and one another under the Hindu Succession Act, and thus can inherit from one another.<sup>14</sup> An illegitimate child can inherit the property of an illegitimate child's mother or illegitimate brother or sister (uterine blood). A mother might also inherit the property of her illegitimate kid. The father has no claim to the property of the illegitimate child.

### **Inheritance law post amendment to Section 16 of the Hindu Marriage Act**

Section 16 of the Hindu Marriage Act of 1955 was revised by the Amendment Act of 1976 (Act 68 of 1976). Regardless of whether a marriage is declared null and void under Section 11, any child born before or after the commencement of the Amendment Act is considered genuine. This section's subsection 3 also gives illegitimate children a right to their parents' property. The section has preserved the connotation general and broad by using the word "property." The modification to Section 16 was introduced with the clear intention of removing the stigma of illegitimacy from children born in void or voidable marriages.

### **Joint family property and partition**

Unlike a legitimate son, an illegitimate son does not gain any stake in his father's ancestral property, nor does he establish a coparcenary with him, therefore the illegitimate son's rights are limited to maintenance throughout his father's lifetime. However, the father may grant him a share of his property during his lifetime, which may be equal to that of the legal sons.

Prior to the Hindu Succession Act, an illegitimate son inherited his father's estate as a coparcener with his father's legal son, and was entitled to partition against the legitimate son

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<sup>13</sup> <https://blog.iplayers.in/rights-illegitimate-children-hindu-law/>

<sup>14</sup> Section 3(1)(j), Hindu Succession Act 1956

upon his father's death. However, because he is not connected to his father by lawful kinship, he is unable to replace him under the Act.

Though the 1976 amendment in Section 16 now enacts a legal fiction deeming illegitimate children legitimate for all practical purposes, including succession to their family properties<sup>15</sup>, the court's jurisprudence has been: A child born of a void or voidable marriage can only claim a share in the parents' self-acquired property, not ancestral property.<sup>16</sup>

Children born outside of a live-in relationship are not entitled to inherit the ancestral property.<sup>17</sup> "If a man and woman live under the same roof and cohabit for a number of years, there will be a presumption under Section 114 of the Evidence Act that they live as husband and wife, and the children born to them will not be illegitimate," the Supreme Court said in *S PS Balasubramanyam vs Sruttayan*<sup>18</sup>. For a kid born from a live-in relationship to not be recognised as illegitimate, the parents must have lived under the same roof and co-habited for a significant period of time before society recognises them as husband and wife. As the court stated in *Madan Mohan Singh vs. Rajni Kant* in 2010, it cannot be a "walk in and walk out" relationship.<sup>19</sup>

In *Revanasiddappa v. Mallikarjun*<sup>20</sup>, the Supreme Court decided that "a child born in an illegitimate relationship/Void marriage is innocent and is entitled to all rights to property that his parents are entitled to, whether ancestral or self-acquired property." Hearing an appeal by *Revanasiddappa*, a bench of Justices G.S. Singhvi and A.K. Ganguly diverged from previous decisions in reading Section 16 (3) of the HMA, which states that "such children are exclusively entitled to the property of their parents and not of any other relation."

## Guardianship

According to the Hindu Minority and Guardianship Act of 1956, a mother has a preferential claim to guardianship.<sup>21</sup> An illegitimate child's natural guardian is the mother, followed by the father, and finally, in the event of a married girl, the husband. In India, the Supreme Court

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<sup>15</sup> *Smt. Parayankandiyal Eravathkanapravan Kalliani Amma & Ors .Vs. K. Devi & Ors.* 1996 AIR 1963

<sup>16</sup> *Neelamma v. sarojamma* (2006) 9 SCC 612

<sup>17</sup> *Jinia Keotin v. Kumar Sitaram Manjhi*, 2003 (3 )ALT4 (SC ), *Bharath Mata v. R. Vijaya Renganathan* (2010) 11 SCC 483

<sup>18</sup> AIR 1992 SC 756

<sup>19</sup> (2010) 9 SCC 209

<sup>20</sup> 2011 (86 ) ALR 450

<sup>21</sup> Section 6(b), Hindu Minority and Guardianship Act, 1956.

recently ruled that an unmarried single mother might be the child's sole guardian.<sup>22</sup>

## **Maintenance**

A Hindu is obligated to maintain his or her illegitimate children during his or her lifetime under the Hindu Adoptions and Maintenance Act, 1956. Both the father and the mother are now responsible for the upkeep of illegitimate children. An illegitimate daughter, like an illegitimate boy, has the right to be supported by her father and mother.

However, the right to be maintained is limited to the term of minority. After reaching majority, an illegitimate kid has no right to be supported by his or her parents. In addition, such a child will not be eligible to any benefits.

Furthermore, under the Hindu Adoptions and Maintenance Act, an illegitimate son of a deceased Hindu, as long as he is a minor, and an illegitimate daughter of a deceased Hindu, as long as she remains unmarried, have the right to be supported by the deceased's heirs or those who take the deceased's estate.

Such a son or daughter, however, will not be entitled to maintenance under the said Act if he or she has ceased to be a Hindu by conversion to another religion.

## **Important Judgement related to illegitimacy in Indian Judiciary**

In *Kamulammal (deceased) represented by Kattari Nagaya Kamarajendra Ramasami Pandiya Naicker v. T.B.K. Visvanathaswami Naicker (deceased) & Ors.*, When a Sudra died and left behind an illegitimate son, a daughter, his wife, and certain collateral agnates, the Privy Council determined that both the illegitimate son and his wife were entitled to an equal portion of his inheritance. The illegitimate son would be entitled to half of what a legitimate issue would be entitled to. An illegitimate kid of a Sudra born to a slave or a permanently held concubine has the same rights as his father's legal children.<sup>23</sup>

According to the facts, the Raja was a Sudra who died with three widows, a legitimate son, an illegitimate son, and a legitimate daughter. The genuine son had died, and the question now was whether the illegitimate son could inherit the Raja's property. The Privy Council ruled that

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<sup>22</sup> *ABC v. State of Delhi (NCT)*, (2015) 10 SCC 1.

<sup>23</sup> *Kamulammal v. T.B.K. Visvanathaswami Naicker (deceased) & Ors.*



the illegitimate son had a right to ascend to the Raja as a result of his father's death.<sup>24</sup>

"The wordings of Section 16 of the Hindu Marriage Act, insofar as it is relevant to a marriage declared void under Section 11, leads to an anomalous and surprising scenario which could not have been foreseen by the legislator," the Madras High Court stated. A child of a void marriage should presumably have the same position and status regardless of whether the marriage is deemed void under Section 11 or not.<sup>25</sup>

## **Conclusion**

Because of the ever-changing socioeconomic scenario and the resulting vagaries in human relationships, a dominating group frequently loses its primacy over other groups. Through a process of amendment, the law takes its time to explain such societal changes. As a result, law cannot afford to remain stagnant in a changing world. As a result, we can see that numerous personal laws have changed. Several countries have passed laws that have greatly improved the legal status of illegitimate offspring.

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<sup>24</sup> N Raja Jogendra Bhupati Hurri Chundun Mahapatra v. Nityanund Mansingh & Anr

<sup>25</sup> Thrumurthi Ranayammal v. Thrumurthi Muthamal