

PROPERTY RIGHTS OF ILLEGITIMATE CHILDREN UNDER HINDU LAW: A JUDICIAL DISCOURSE

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Abstract

This study looks at how Indian courts have been interpreting illegitimate children's property rights under Hindu law. Due to progressive court rulings, the legal standing of these historically disenfranchised children has significantly changed. Key Supreme Court and High Court rulings that have broadened the interpretation of statutory provisions to protect the rights of illegitimate children—particularly under the Hindu Succession Act and Hindu Marriage Act—are critically analyzed in this article. The study emphasizes the judiciary's function in guaranteeing social justice, equality, and the defense of children's rights regardless of their place of birth.

Keywords- Legitimacy, Illegitimacy, Property Right, Constitution, HMA, MSA, HAHA, HMGA, Judiciary

Introduction

For millennia, Indian civilization has been based on the institution of the family, which is firmly ingrained in social, cultural, and religious ideals. But as society changes, judicial institutions are forced to deal with intricate family dynamics and connections that were previously disregarded or dismissed. The legal standing and property rights of illegitimate children—those born outside of a recognized marriage—are among these issues. Historically, the idea of validity has been central to deciding a child's inheritance rights, frequently resulting in prejudice against children who are considered "illegitimate" under conventional legal systems.

The status of illegitimate children was unstable and mainly devoid of legal recognition in ancient Indian civilization, as evidenced by the numerous *Dharmashastra* writings, because legitimacy was inextricably linked to religious ceremonies and

social acceptance¹. One The British imposed a strict codified framework with the introduction of colonial legal systems, which strengthened the divisions between legitimate and illegitimate children, especially with regard to inheritance and succession rights. Despite certain current statutory revisions and progressive judicial interpretations, India's personal laws have been shaped by this tradition and still distinguish between legitimate and illegitimate children.

With differing levels of acceptance and protection for illegitimate children, the Hindu Succession Act of 1956, the Indian Succession Act of 1925, and the Muslim personal laws all take distinct approaches to the topic of inheritance. Although there are statutory protections, they frequently have a narrow focus

¹ P.V. Kane, *History of Dharmashastra*, Vol. II, 538 (Bhandarkar Oriental Research Institute, Pune, 1974)

and do not grant unwed children the same status as their parents, which is a reflection of ingrained prejudices in society. For example, under Hindu law, the coparcenary system does not fully acknowledge the rights of illegitimate children, and property rights are mostly vested in legitimate heirs². Similar to this, notwithstanding certain advancements brought about by legislative and constitutional interventions, Christian and Parsi personal laws have traditionally maintained strict divisions.

The United Nations Convention on the Rights of the Child (UNCRC) and other international human rights frameworks place a strong emphasis on the best interests of children and the nondiscrimination concept³. India is required to align its own legislation with these principles as a signatory. Nonetheless, there is still a considerable discrepancy between domestic legal realities and international obligations. By denying illegitimate children equal property rights, the Indian legal system has come under fire from academics for maintaining inequality and stigmatizing these children. The validity of a kid shouldn't be a hindrance to inheritance, as Paras Diwan notes in his work on family law. The law also needs to change to reflect the evolving social realities and preserve the equality and dignity guaranteed by the constitution⁴.

The psychological and societal effects of denying illegitimate offspring legal recognition and property rights have been emphasized in a number of scholarly researches. These kids are more vulnerable in the family and the community because they frequently experience financial hardship, social disapproval, and legal ambiguity⁵. According to current family law

studies, a child-centric approach is recommended, in which the child's rights are prioritized over the circumstances surrounding their birth⁶. Although comparative jurisprudence is progressively supports the legal notion that no children should suffer due to result of their parents' misdeeds. India's personal law regimes are still lagging behind in fully adopting this idea.

Through a progressive interpretation of statutory legislation and constitutional principles, the Indian judiciary has been instrumental in defining and extending the property rights of illegitimate offspring. Historically, the Indian Succession Act of 1925 and personal laws both prohibited illegitimate offspring from inheriting property. Nonetheless, courts are becoming more aware of the need to defend these children's rights and dignity, particularly in view of Articles 14 and 15 of the Indian Constitution, which ensure equality and nondiscrimination. The Supreme Court ruled in *Revansiddappa v. Mallikarjun*⁷ that children of void or voidable marriages are entitled to a portion of their parents' ancestral property, stressing that the child shouldn't be made to suffer because of the parents' actions.

Legitimacy under the Hindu Marriage Act, 1955

The Hindu Marriage Act of 1955's notion of legitimacy is crucial in establishing the legal and social standing of children born inside or outside the parameters of a legitimate marriage. The acceptance of a child as the legal child of married parents is known as legitimacy. Children born outside of marriage were frequently denied the ability to inherit and social recognition under traditional Hindu law, which tightly linked legitimacy to the legality of the parents' union. But in order to rectify these injustices and guarantee children's safety regardless of their

² B.M. Gandhi, *Family Law* 212 (Eastern Book Company, Lucknow, 2019)

³ United Nations, *Convention on the Rights of the Child*, 1989, Articles 2 and 3

⁴ Paras Diwan, *Modern Hindu Law* 344 (Allahabad Law Agency, Faridabad, 2018)

⁵ Archana Parashar, *Women and Family Law Reform in India* 105 (Sage Publications, New Delhi, 1992)

⁶ LAW COMMISSION OF INDIA, "257th Report on Reforms in Guardianship and Custody Laws in India (May 2015)

⁷ 2023 SCC ONLINE SC 1087

parents' marital status, the Hindu Marriage Act of 1955 brought about progressive reforms.

The validity of offspring is expressly covered in Section 16 of the Hindu Marriage Act of 1955. Over time, this clause has been changed to give legitimacy to children born out of void and voidable marriages. Section 11 defines a void marriage as one that, in the perspective of the law, never happened, such as a marriage consummated when one of the parties had a surviving spouse. According to Section 12, a voidable marriage is one that endures until it is dissolved by a court order, such as one that was obtained by coercion or fraud. The original version of Section 16 perpetuated discrimination by excluding children from invalid marriages and only granting legitimacy to children from voidable marriages. By extending the application of Section 16 to children from void and voidable marriages, the Marriage Laws (Amendment) Act, 1976, closed this loophole and confirmed the children's legal status as legitimate children for all purposes.

The 1976 amendment, which severed the customary connection between the legality and legitimacy of the parents' marriage, was a turning point in Hindu personal law. Regardless of the nullity ruling, children born from marriages declared void under Section 11 are considered legitimate under Section 16(1). In a similar vein, Section 16(2) guarantees the legitimacy of children born to voidable marriages that have been dissolved. This legal recognition is essential because it protects the rights of defenseless infants whose birth circumstances are beyond their control. It is consistent with Article 14 of the Indian Constitution, which ensures nondiscrimination and equality before the law.

The validity granted by Section 16 is not without restrictions, though. It is made clear in the Explanation to Section 16(3) that these children will only be entitled to their parents' property and

not any other relatives' property. By separating the status of children from invalid or voidable marriages from those born in legitimate nuptials, this limited inheritance right creates a subtle distinction within the legal system⁴. In a number of judgments, the Supreme Court of India has given Section 16 a liberal interpretation, stating that the goal of the clause is to shield children from the negative effects of their parents' marital status rather than to punish them for actions over which they had no control.

Status of Property Rights of Illegitimate Children under the Hindu Succession Act, 1956

Ancestral property passes via the male lineage as coparcenary property under the Mitakshara school of Hindu law, which has historically governed Hindu succession. However, children from void or voidable marriages are not granted the status of coparcenary. Because of this discrepancy, these children are not entitled to a share of joint family property or to demand partition. They are only entitled to the property that the parents have gained on their own⁸. This limitation has been a topic of debate in legal studies, with many pushing for amendments to ensure equitable treatment for all children irrespective of their birth status.

The laws pertaining to intestate succession among Hindus in India were codified in the historic Hindu Succession Act, 1956. The property rights of illegitimate children—those born out of void or voidable marriages—are one of the important yet delicate topics covered by this legislation. The Act refers to children born from void and voidable marriages governed by the Hindu Marriage Act, 1955, rather than using the phrase "illegitimate child" specifically. The status and rights of these children are largely determined by Section 16 of the Hindu Marriage Act, 1955. Offspring of void marriages are

⁸ Paras Diwan, *Modern Hindu Law* 251 (Allahabad Law Agency, 23rd ed., 2020)

considered legitimate under Section 16(1), while offspring of voidable marriages are given the same legality under Section 16(2)⁹. This provision was a progressive step towards ensuring that children are not punished for the circumstances of their birth.

The 2005 Amendment to the Hindu Succession Act, which conferred equal coparcenary rights on daughters, did not address the issue of children from void marriages it leaves a legal vacuum. Consequently, the judiciary continues to play a pivotal role in advancing the rights of such children through a progressive and constitutional interpretation of personal laws. The Law Commission of India, in its 110th Report, also recommended that discrimination against illegitimate children in matters of succession be removed to align personal laws with constitutional guarantees¹⁰.

Illegitimate Children and Their Property Right- Judicial Discourse

Through a number of legislative changes and Supreme Court rulings, the property rights of children born outside of marriage—often referred to in the law as children of void or voidable marriages—have dynamically changed in India. Illegitimate offspring historically had relatively limited inheritance rights under Hindu, Christian, Muslim, and Parsi personal laws, particularly with regard to joint family wealth or ancestral property. Even though they are still only able to inherit from their parents¹¹, court rulings, especially in the context of Hindu law, have greatly expanded their claim to both self-acquired and inherited parental properties.

Based on Sections 16(2) and 23 of HAMA, the Supreme Court ruled in the landmark case of *G. Lakshamma v. G. Gangayya*¹² that the

inheritance rights of illegitimate children from adoption-related property are unaffected by a legitimate child's adoption order under HAMA. The Court stressed that illegitimacy at birth alone could not be used as justification for exclusion from succession.

In *R. Lakshmana Reddy v. Ramachandra Reddy*¹³, the Court upheld this line of reasoning, ruling that a child's birth status did not exclude inheritance from the father if the child was later recognized by the father and married to the mother. The Court once more ruled that Sections 23–25 of the HMGA recognize the duty of a biological father by extending guardianship and maintenance rights regardless of the father's marital status at the time of birth.

The Court extended its interpretation to the Indian Succession Act, 1925, as it applied to Hindus for intestate succession in *Shyam Narain Sharma v. Ram Narayan Sharma*¹⁴ concluding that phrases such as "child" must encompass illegitimate children. The Court determined that such exclusion was unworkable due to a far too tight reading of legislative history and intent, which is embodied in Article 14 of the Constitution, even though the Act does not specifically mention illegitimacy. Citing its previous reasoning in *Lakshamma* and *G. Mohanarangan v. G. Rajalingam*¹⁵, the Court stated that exclusion based on legitimacy "shocks" the conscience of constitutional equality. In the case of *Bal Kishan Sharma v. Daya Shankar Sharma*¹⁶, the Court acknowledged the right of an illegitimate Hindu daughter to seek maintenance under Section 24 (1) (a) of the HMGA, placing the daughter's rights on an equal footing with those of her legal offspring.

⁹ Hindu Marriage Act, 1955, Section 16(1) & (2)

¹⁰ Law Commission of India, "110th Report on Indian Succession Act, 1925" (1985)

¹¹ Section 16, Hindu Marriage Act, 1955

¹² AIR 1957 SC 425

¹³ AIR 1962 SC 1200

¹⁴ AIR 1972 SC 1344

¹⁵ AIR 1970 SC 1554

¹⁶ AIR 1971 SC 2075

Another critical milestone was *Amrit Lal v. Raj Kumari*¹⁷, in which the Supreme Court, considering Sections 16–23 of The Hindu Adoption and Maintenance Act, 1956 (HAMA) and Sections 23–25 of The Hindu Minority and Guardianship Act, 1956 (HMGA) conjointly with the principle of natural justice, observed that children born out of wedlock, though conceived during illicit relationships, might not have been legitimized by formal marriage. However, their right to property cannot be defeated. The Court found that even after the father's intestate death, the children would stand in the same position as legitimate children for purposes of succession, as Sections 16 and 23(1) of HAMA do not distinguish between legitimacy, nor do they require legitimation, for purposes of inheritance.

These rulings' constitutional foundations are crucial. Discrimination on the basis of religion, race, caste, sex, or place of birth is forbidden by Article 15(1). In *Air India v. Nargesh Meerza*¹⁸, the Supreme Court acknowledged that legitimacy may be attributed to one's "place of birth" and cautioned that any social or legal discrimination based on that must be constitutionally acceptable. In subsequent rulings, the broad interpretation of Article 21's guarantee of life and personal liberty in *Maneka Gandhi v. Union of India*¹⁹ was used to guarantee that illegitimate children would not be denied their right to livelihood, or property and maintenance.

Notably, court rulings have consistently maintained that rights could be granted by ideas such as *ghatna-vidhi-sambandha* (a post-facto relationship) without the need for official marriage-based legitimation. The foundation of these interpretations is a social and constitutional perspective on equity and justice.

In *Revansiddappa v. Mallikarjun*²⁰, the Supreme Court affirmed a child born out of an illegitimate relationship's right to inherit the parents' self-acquired property under Section 16 of the Hindu Marriage Act, 1955 (HMA), ruling that the child is innocent and should not be punished for the circumstances of birth. Furthermore, the highest court highlighted in *Revansiddappa v. Mallikarjun* (2011) and *Neelamma v. Sarojamma*²¹, that Section 16 (3) of HMA protects such children's rights in their parents' property but not in joint family property. The Court also emphasized in the *Revansiddappa* case that the law needs to change in order to eliminate the societal stigma associated with these kids.

The Supreme Court reiterated in *Revansiddappa v. Mallikarjun* (2023)²² that children born of void or voidable Hindu marriages are regarded as legitimate under Section 16(1)–(2) of the HMA because of a statutory legal fiction, even though they are declared illegitimate at common law. The Court explained that this deeming fiction allows these children to inherit their parents' ancestral and self-acquired property, but it does not make them coparceners by birth. It also clearly restricts their rights to their parents' property alone, excluding claims on other relatives' properties.

The reference was necessitated due to divergent views taken by two benches of the Court in *Jinia Keotin v. Kumar Sitaram Manjh*²³, and *Revansiddappa v. Mallikarjun*²⁴. Jinia Keotin held that merely because a child born out of a void and illegal marriage has been safeguarded under Section 16 of HMA, he/she cannot be equated with the legitimate offspring or form part of a coparcenary. Per contra, *Revansiddappa*

¹⁷ AIR 1993 SC 909

¹⁸ AIR 1981 SC 1829

¹⁹ AIR 1978 SC 597

²⁰ (2011) 11 SCC 1

²¹ (2006) 9 SCC 612

²² *Revansiddappa & Anr. v. Mallikarjun & Ors.*, (2023) 10 SCC 1 (2023 INSC 783).

²³ (2003) 1 SCC 730

²⁴ (2011) 11 SCC 1

held that once an illegitimate child is sanctioned with legislative legitimacy under Section 16 of HMA, he/she ought not to be discriminated against and he/she is on par with other legitimate children in respect of all the rights in the property of their parents, including self-acquired and ancestral property.

The Bench stressed a literal, limiting interpretation of Section 16(3) in connection with Section 6 of the Hindu Succession Act: legitimacy grants succession rights through testamentary or intestate succession, but cannot be interpreted to grant autonomous coparcenary status. The 2023 Bench declared that Congress purposefully restricted inheritance to parents' property only when it enacted Section 16(3), overturning earlier reasoning, particularly the 2011 two-judge *Revansiddappa* decision, which had granted broader coparcenary inheritance rights. In the end, the ruling achieved a legislative compromise by granting parental inheritance rights and eliminating the social stigma associated with illegitimacy without expanding the legal definition of joint family coparcenary property.

Concluding Remarks

Judicial rulings regarding illegitimate children's property rights under Hindu law have evolved throughout time, reflecting a progressive movement to uphold equality, justice, and human dignity. Illegitimate offspring have historically experienced harsh prejudice, being excluded from social and property rights. Nevertheless, Indian courts have progressively acknowledged the inherent rights of these children, regardless of their birth status, in a number of significant rulings. To protect the rights of illegitimate children, especially with regard to inheritance and maintenance, the judiciary has construed and broadened the provisions of the Hindu Marriage Act of 1955 and the Hindu Succession Act of 1956.

In *Revansiddappa v. Mallikarjun*, the Supreme Court notably upheld the principle that an innocent child cannot be penalized for the actions of their parents, thus guaranteeing them equal rights to both self-acquired and ancestral property. These rulings demonstrate the judiciary's dedication to the equality and nondiscrimination principles outlined in the constitution. Judicial activism has been essential in bridging legislative gaps and lessening the severity of conventional personal laws, even though statutory amendments are still scarce.

However, legal ambiguity persists due to a lack of consistency and explicit statutory directives. To establish and uphold the rights of illegitimate children in accordance with modern human rights standards, broad legal intervention is urgently needed. In conclusion, comprehensive legal change is still necessary to guarantee the full social and legal acceptance of illegitimate offspring, even though court rulings have gradually improved their rights under Hindu law.

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