

# A Study on the Property Rights of Illegitimate Children in India

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**Abstract** - “There are no illegitimate children, only illegitimate parents.”-Leon R. Yankwich

The purpose of this research paper is to analyze the property rights of illegitimate children over their parents' property. The researcher aims at understanding the rights given to illegitimate children regarding the inheritance of their parents' property. On the basis of the findings, the researcher stated that there is no particular law that deals with the definition of illegitimate children and hence personal laws of the parents play a vital role in determining these rights. Although, illegitimate children were not recognized, with a dynamic society and the changing social status, illegitimate children are given rights equal to that of the legitimate children under the Hindu Law. However, the Muslim and Christian law do not recognize the term “illegitimate” and hence they are deprived of these rights. The law may stay the same, but it is the responsibility of the judiciary to change the laws accordingly to meet the needs of the society. The paper focusing on property rights of illegitimate children mentions that maintenance of illegitimate children is mandatory under Section 125 of CrPC which overrules the personal laws. It is therefore the need of the hour to enact a unified code regarding property right of illegitimate children over their parents' property. While the child in the current scenario is innocent, the burnt has to be borne by the child himself which needs to be changed.

**Index Terms** - Illegitimate Child, Hindu Marriage Act, Personal Laws, Property Rights.

## 1. INTRODUCTION

The word “illegitimacy” is derived from a Latin maxim which means “not in accordance with the law.” A child born out of wedlock is considered as illegitimate child as the relationship of the parents determines the legitimacy of the children. Therefore, an illegitimate child is considered to be nullis filius which basically means having no legal relationship with his or her parents. Due to the lack of a legal

relationship, an illegitimate child is considered to not have any legitimacy depriving him or her the right to property of the parents. Since illegitimate children are not recognized the law regarding the same is dealt with by the personal laws of the parents. The personal laws of the parents are taken into consideration while determining the right to property. For a considerable amount of time, illegitimate children were associated with a societal judgment. However, with the changing dynamic of the society a more liberal and rational approach was considered with matters regarding illegitimate children. While the marital as well as legal status of parent's relationship is taken into consideration, most studies highlighted that the child is innocent in all cases irrespective of relationship of parents or the personal laws involved. Therefore, there have been efforts made to bring illegitimate children in power with the legitimate children with regards to property rights.

## 2. RESEARCH QUESTION

Do Illegitimate Children have a right on their Parents Property?

What are the Property Rights of an Illegitimate Child?

## 3. OBJECTIVES

- To understand the meaning of an Illegitimate Child.
- To analyze the property rights of Illegitimate Children.
- To study the various personal laws governing the right to inherit property of parents by an Illegitimate Child.

## 4. RESEARCH METHODOLOGY

The research paper follows a doctrinal method of research where the researcher aims at understanding whether an illegitimate child has a right over the property of the parents. The research paper analysis the approach towards the right on property by illegitimate children and the development taken place over the years keeping in mind the social stigma associated. The research paper relies solely on secondary data collected through secondary sources. For the purpose of research, secondary Data was collected through various sources such as books, journals, magazines, seminars and conference papers, thesis reports, website reports, published books, articles, published interviews and newspapers, etc. The purpose of the study is to understand the rational and liberal approach of courts regarding the rights of illegitimate children over property and the involvement of personal laws which act as a limitation.

#### 5. SIGNIFICANCE OF THE STUDY

The legitimacy of a child is given great importance to in India due to the involvement of personal laws depending on religious communities and the beliefs that they uphold. A child born out of wedlock is determined illegitimate as the legitimacy of a child is established with the kind of relationship the parents have. However, the law must suit the society with the changes that emerge and it the responsibility of the judiciary to meet the need of the changing dynamics of society. Although, a child born out of wedlock is termed illegitimate the child is innocent in the situation however, the brunt of the society has to be borne by the child. The cases of illegitimate children in India are not highlighted greatly although there are a considerable number of the cases. The researcher aims at understanding through this research paper the rights the children are given on the property of their parents as well as the involvement of courts along with personal laws. Due to the lack of consistency between the personal laws of different communities there has been an increasing need of a unified code which would be applied irrespective of the application of the personal laws of the parents.

#### 6. LIMITATIONS OF THE STUDY

Despite of all sincere efforts put forwards for this research in order to collect the relevant information

and data there are some inherent limitations. Due to money and time constraints, the researcher was unable to collect primary data. Due to unavailability of time, an elaborate study could not be conducted since the research had to be completed in the span of a month. As highlighted by many research papers, the law related to the property right of an illegitimate child is dependent on the kind of relationship of the parents as well as the personal laws involved. Due to the lack a unified code, there is no consistency or adequate guidelines on the basis of the rights of children born out of wedlock can be determined. Although the child is innocent in this situation, the brunt of society and the religious perception involved has an impact on the rights of the child. The researcher has relied on landmark cases in the field to get a broad understating of the term. However, the judgments provided by courts have a contrasting opinion which has posed to be a problem. The Courts in many cases have stated that the rights of these children are inherited by virtue and birth, and they must be granted these rights instead of having them beg for the same.

#### 7. REVIEW OF LITERATURE

- Jay Parikh: In the article titled “Right to Property and Maintenance of Muslim and Christian Illegitimate Children” stated that although the issue of illegitimate child is not alarming in India, it has been growing on a faster rate. Although the plight of children born out of wedlock, there has been many cases where the Kerala as well as the Bombay High Courts have stated that the father only has a moral obligation and duty, and a suit would not be entertained on the grounds of equality. Due to the difference in opinion among the different personal laws as well as the silence of judiciary in the matter, there have been quite a few firm stances taken by the court which need to be analyzed on an urgent basis. Although there is a difference in opinion among personal laws, the personal laws in itself have an approach which differentiates on the basis of types of marriage and under the Muslim law depending on Sunnis, or Shias, or Hanafis.
- Prachi Dutta: In the article “Illegitimate Children and the Law: A Primer on the Rights of Children Born Out of Wedlock in India” mentioned that in case of a void marriage the legitimacy of the child

is decided from the personal laws of the child or that of the parents. The article stated that the amendment brought in ensured that the follies of the parents protect the innocent child from the prejudice of society and ensure right to inherit property as though the child is legitimate. However, the rights that are protected are only for children born out of void or voidable marriage which is one of the concerns. In the article, the author talks about the different types of marriages and uses the words nullified and void. The distinction between the two is important to confer rights on the child and determine in which case the child will be considered legitimate or illegitimate. The lack of a unified law has resulted in different opinion in different cases due to which the innocent children have been subject to bearing the brunt. The rights of illegitimate children are limited, and the prejudice of society has led to discrimination among them.

- Kunjal Arora (2015): In the article titled “Illegitimacy under Hindu Law” talks about illegitimate children and the rights under Hindu law. The article mentions that the right to equality is an important right which should be given to children born out of a marriage which is not recognized. Although, the marriage is not valid, the child born out of such marriage is innocent and should be entitled to other right like the legitimate children. The author also mentioned that the lack of a unified law is due to the change the Indian society is going through. While some believe in the orthodox methods which is overshadowed by religion, the other believe in a more liberal and rational approach which does not consider illegitimacy as a taboo. Although, they do not blame the child but the parents for the outcome, it is important to note that the child has to bear the consequence which is neither right nor fair. Hence, it is important for society to amend and accept a much liberal approach in order to have the best interest of children born out of wedlock.
- Legal Dictionary (2016): In the article titled “Illegitimate Child” in the article explained the history that follows the concept of illegitimacy. The author stated that although considered a taboo in the past, the current society has a rational approach as long as the child is biologically proven to belong to the parent. In the event of no

biological connection, the rights to a property are not secured and should be accompanied by some security like that of a will. The article mainly emphasis on the right of equality among children on the property of the father. The author states that the right over the mother’s property is attained easily as compared to the fathers and hence, it is the right of the illegitimate child to inherit property as the child born out of wedlock is innocent. The aim of the Constitution is to provide equal rights and depriving the illegitimate child of the parents’ property would be unconstitutional.

- Nimisha Srivastava (2016): In the article titled “What Are the Rights of Illegitimate Children under Hindu Law” determines what is considered as void and voidable marriage under the Hindu Law. This is because the validity of the marriage is useful in determining the rights of an illegitimate child on the parents’ property. With the new amendment, which was interpreted differently, children born out of void or voidable marriage are deemed to be legitimate. These children do not have a right on the ancestral property however, they have a right similar to the legitimate ones on the parents’ property. Due to the birth of the child out of wedlock, the child born out of such marriage does not have any right on the ancestral property nor can the child be a coparcener in the Joint Hindu family. What was legitimate in the past may not be legitimate today and due to the innocence of the child born out of such situation, the courts have acknowledged these rights. Since there are no restrictions on Section 16(3) of Hindu Marriage Act, courts have stated that the illegitimate child would have a right on the ancestral as well as self-acquired property of their parents.
- Mr. Syed Afridi & Mr. Arul Kannappan (2018): In the research paper titled “A Critical Analysis of Property Rights of Illegitimate Children” stated that compared to the USA, the Indian society has a very closed approach regarding children born out of wedlock, emphasizing that the laws in India do not guarantee illegitimate children their rightful share in the property of their parents. While laws regarding marriages of different religions and other aspects are governed by the personal laws of the community, the children fall prey to the difference in opinion among religious

communities with the lack of a unified laws regarding the issue. The research paper also highlights the difference in opinion among the different personal laws while stating that the child in every case is innocent however, the child is subject to the difference in opinion. Along the children born out of wedlock do get their rights in Hindu law, the society does not treat them the way they treat the legitimate children.

- Khushi Rastogi (2020): In the article titled “Property Rights of an Illegitimate Child: Hindu law and Muslim Law” distinguished the property into ancestral and self-acquired in order to get a better understanding. While talking about the distinction between ancestral and self-acquired, the author stated that the illegitimate child does not qualify as a coparcener and cannot ask for partition in the property. However, the children born out of wedlock have equal right to the property of the father as that of the legitimate children over the property which is self-acquired. The article although mentions that with the change in time the courts have held that the illegitimate status enables the child to have a right of the ancestral as well as the self-acquired property. The article states that although the Hanafis and the other types of Muslim laws have a difference in opinion regarding right of illegitimate children, the courts have led that although not to defeat the purpose of personal laws, it is important to treat protect the rights of children born out of wedlock instead to paying attention to social consequences.
- Law Community (2020): In the article titled “Property Rights of Illegitimate Children” stated that due to the dynamic role of the judiciary, there are certain laws that need to be changed from time to time to suit the need of society. However, interfering with the personal laws is a cumbersome process and the unified code regarding the same is a long way. The courts have held that children born, whether legitimate or illegitimate are entitled to maintenance and hence it is logically for them to inherit their parents’ property.

## 8. FINDINGS

8.1 Illegitimacy and Property Rights of Illegitimate Children under Hindu Law:

Under the Hindu Law, legitimacy of child on the basis of the marriage of parents. According to the Hindu Marriage Act, 1955 Sections 5 & 7 lay down the conditions for a valid marriage and children born out of a valid marriage are considered to be legitimate. However, if conditions specified under the Act are not fulfilled the marriage is termed to be void or voidable depending on the grounds and children born out of such marriage are considered to be illegitimate. The social status of the child is determined on the basis of the relationship and act of parents.

However, the amendment in Section 16 of the Hindu Marriage Act took cognizance of the issue which resulted in children born out of void and voidable marriage to be legitimate and the Supreme Court in the case of *Jinia Koetin v. Kumar Sitaram Manjhi*, held that a child born out a legally invalid marriage termed as illegitimate is to be given right to inherit his father’s parents which a legitimate child could. In the case of *SPS Balasubramanyam v. Sruttayan*, the court held that a child that is born out of a cohabited relationship for a long time will be legitime. Section 16(3) was interpreted in a way to shape up the society regarding the taboo that is followed by the word illegitimate. In the case of *Revansiddappa and Others v. Mallikarjuna and Others*, the Supreme Court, while interpreting Section 16(3) of the Hindu Marriage Act, held that a child resulting from a void marriage is innocent and entitled to right over the property of the parents. With the hanging norms of society, what was illegitimate before may not be illegitimate now as the concept of legitimacy comes from social consensus. The Court noted that the Act is intended to bring about social reforms, and that the primary motivation of Section 16 is to provide economic security to honest children. The Supreme Court, differing from the judgment of *Revansiddappa*, held that an illegitimate child is entitled to the property of their parents, both ancestral as well as self-acquired under the Hindu Marriage Act. The Bench said, “The relationship between the parents may not be sanctioned by law but the birth of a child in such relationship has to be viewed independently of the relationship of the parents. A child born in such relationship is innocent and is entitled to all the rights, which are given to other children born in valid marriage. This is the crux of Section 16 (3).”

8.2 Illegitimacy and Property Rights of Illegitimate Children under Muslim Law:

Under the Muslim Law, there is no provision that talks about illegitimacy and illegitimate children and hence an illegitimate child has no right over the property of parents. Although different schools under the Muslim law have different beliefs. Under the Hanafi School, an illegitimate child does not have any right over the property of the father nor any relative however, the child does have a right over the property of the mother as well as the property of the relatives that the mother of the child is connected to. Although the Muslim law does not allow the father to maintain his illegitimate children, Section 125 of Criminal Procedure Code in India makes it binding for the father to maintain his illegitimate children. In the case of Sukha v. Ninni, the Supreme Court held that although the Islamic Law does not provide any provision for the maintenance of illegitimate child by the father, statutory provisions under Section 125 of CrPC makes it legally binding for the father to maintain such offspring. Under the Shia School, the illegitimate child has no right over property of either of the parents. Under this school, the very existence of an illegitimate leads to the total exclusion from the family property.

### 8.3 Illegitimacy and Property Rights of Illegitimate Children under Christian Law:

An illegitimate child has no status or legitimacy under Christian law, as there are no codified religious or legal laws in India that grant rights to illegitimate children born to Christian parents. Property rights under the Christian Law is dealt with under the Indian Succession Act. Under this act, children born under a valid marriage are recognized and does not include illegitimate children under the definition of the word Children. The law relating to right over property under the Christian law is so clear that in the case of Jane Anthony v. V.M Siyath, the court held that under law of succession children means legitimate children and does not include illegitimate children which does not entitle them of right over any property of the parents.

## 9. SUGGESTIONS

It is pertinent to note that the Indian Judiciary has to address many issues that are dynamic as it tries to meet the need of all the people in society. The right to inheritance of property by illegitimate children has been subject to many social issues due to which they are deprived of their rights. While talking about

illegitimate children it is important to note that irrespective of the relationship between parents, the child in all the cases is innocent. However, the child is subject to questions raised by society as well as the social shame. Since, laws related to property right of illegitimate child is determined on the basis of the personal laws, there is a discrimination due to which the child has to suffer. Although personal laws are taken into consideration the Supreme Court in many cases has looked at the relationship of the parents, the acknowledgment of child by the father and tried to keep a unified approach with the best interest of the child. It is there imperative for the judiciary to come up with a unified code that would overrule the personal laws. There is a need for the Central Government to pass a legislation regarding rights over property of illegitimate children irrespective of their religious beliefs. Like the maintenance of illegitimate children, the personal laws of the parents are not taken into consideration due to Section 125 of CrPC. Hence, a similar legislation applicable to everyone would solve many problems.

## 11. CONCLUSION

In conclusion it can be stated that though illegitimate children have right over their parents' property, the personal always play a very important role in deciding whether they have a right over the property. Ill-conceived children, independent of today's diverse society, face social stigma, which has an effect on their public image. In countries like ours, society continues to victimize such children. Due to the lack of a unified code answering questions regarding the issue, there will be certain discrimination on the basis of the religious beliefs and personal laws of the parents. Even though there is no legislation in the current scenarios, the Supreme Court has tried to protect the right of illegitimate children born out of wedlock as they are innocent. Due to the change in society, the laws need to be revised from time to time to meet the needs of the people. What was legitimate years ago may not be legitimate today and hence the Supreme Court has taken efforts to suit the dynamic nature of society. The liberal and rational thinking of people has led to illegitimate children getting a rightful share in their parents' property like that of the legitimate children.

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