

DE JURE NEXUS LAW JOURNAL

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1st Year, BBA LL.B.**PROPERTY RIGHTS OF AN ILLEGITIMATE CHILD****ABSTRACT**

A family is considered to be the most basic unit in a traditional society where a man and a woman marry each other and rear their children. A legitimate child is the one born out of a legalized wedlock between a man and a woman. If a woman give birth to a child before marrying someone, the child is known as an illegitimate child. Earlier, an illegitimate child was looked down and considered to be of disgrace who lacked various rights including right to property of the parents. There are no particular laws under the Indian Constitution which has defined illegitimate child, therefore, parental laws play an important role in deciding the rights of these children. Hindu laws, which govern over Hindu, Sikh, Jain and Buddhist, have recognized the rights of illegitimate same as of the legitimate child under it. However, Muslim and Christians, still have not determined the term 'illegitimate' due to which the children are deprived of the rights. Many dynamic changes have occurred which has helped in changing the Hindu laws and has provided these illegitimate children, a place in the society by giving them off their rights. Many more changes are need to be brought and sensitize people which could help these children in other religion in receiving their rights over parental property. It is the need of the hour to bring a unified code to change the current scenario of the illegitimate children and give them their proper status in the society as well as over the property of the parents.

KEYWORDS

Illegitimate child, property rights, Hindu Laws, Muslim Laws, parental property

INTRODUCTION

The term 'illegitimacy' comes from the Latin phrase which means "not in accordance with the law". A child's legitimacy is decided by the relationship of the parents. If the child is born out of a wedlock, he/she is considered to be an illegitimate, on the other hand, if the child is born in a wedlock, he is considered to be legitimate. An illegitimate child is said to be having no

relationship with their parents thus, depriving of their rights. The personal laws of the parents only deal with the illegitimate children too as they have not been recognized separately by the law. Illegitimate children were subjected various societal judgements too. They were not given the respect and the position they deserved like any other child in the society just because of the relationship of their parents.

However, with the changing needs and conditions of the societies, the status of these children have also changed. Now they are been given equal rights and respect as that to a legitimate child. While the marital and legal status of the parents are taken into account, most studies have shown that these children are innocent in all cases, no matter what their parent's status or personal laws are. Henceforth, many attempts have been done to bring these illegitimate children on the same level as legitimate ones.¹

TYPES OF PROPERTIES

- **Ancestral Property**-It can be passed down through four generations of male lineage. Unlike other types of inheritance, which are passed down after the owner's death, the right to a share in an ancestral property is given at birth.
- **Self-acquired Property**-This is the property that a person owns, purchases, or acquires from his own personal resources, as well as any property he receives from testamentary succession, such as through a 'Will,' or any property he acquires as part of a Coparcenary/ Ancestral property partition.

Property succession can be divided into two types: intestate succession, in which the owner dies without leaving a will and the property is passed down to the wife and other relatives; and testamentary succession, in which the owner dies without leaving a will and the property is passed down to the wife and other relatives. Testamentary Succession, on the other hand, is based on a legally executed testament. The right of inheritance is another name for testamentary succession.²

RIGHTS UNDER HINDU LAW

Hindu laws are usually applied on Sikhs, Jains and Buddhists as well. Legitimacy of a child depends upon the validity of the marriage of the parents. A legitimate child is the one born out a legal wedlock. Section 5 of the Hindu Marriage Act strictly prohibits polygamy and polyandry. It says that at the time of the marriage the spouse of the person should not be living. Section 7 describes the ceremonies that would be taken into consideration while legalizing a marriage. If these two criteria are passed by the couple, they are said to be lawfully married. A child born out of this marriage is known to be legitimate child of the parents. Section 16 of the Hindu Marriage Act has been amended which now says that a

¹ IJIRT, (Last visited on MAR 9, 2022, 1:25 AM)

https://www.ijirt.org/master/publishedpaper/IJIRT151307_PAPER.pdf

²BAIL ME OUT, (Last Visited on MAR 8, 2022, 11:56 PM) <https://bailmeout.in/property-rights-illegitimate-child-hindu-law-muslim/>

child conceived before or after the marriage is declared void, would be taken care of by his/her parents and would not be regarded as disgrace.³

Maintenance

Earlier, two major Hindu schools, which were considered to be the laws for Hindus, recognized the rights of the maintenance of the illegitimate child on his father's self-acquired and coparcenary property. Maintaining the illegitimate son was considered to be the duty of the father till the son gained the age of majority (18 years), irrespective of whether he had the property or not. Whereas, maintenance of the daughter was a lifetime-duty of the father.

After the codification of the personal laws and after the Hindu Marriage Act, 1955 and Hindu Adoptions and Guardianship, 1956 was passed, a Hindu was decided to take care of his/her illegitimate child during his/her life span. In addition to this, the illegitimate child of the deceased parents was entitled to maintenance till the son reached the age of majority and in case of daughter, till the time she was married off, by the heirs the deceased's estate.

Inheritance

Illegitimate children do not have the right to succeed their father. However, under the Hindu Succession Act of 1956, illegitimate offspring are believed to be linked to their mother and one another through illegitimate kinship. As a result, an illegitimate offspring can inherit not only the mother's property, but also the property of his illegitimate siblings. Unlike the mother, a father cannot inherit the property of his illegitimate child.

In a Joint Hindu Family, an illegitimate son, unlike a legitimate son, is not allowed to be a coparcenary or to force a division on the family. Furthermore, an illegitimate son has no claim to his father's ancestral property. However, the father may grant him a share of his property during his lifetime, which may be equal to that of his legal sons.

The illegitimate offspring are now considered to be legitimate due to the amendment in Section 16 of the Hindu Marriage Act. In *Revanasiddappa v. Mallikarjun*, the Supreme Court decided that "*Child born in illegitimate relationship/Void marriage is innocent and is entitled to all rights to property to which his parents are entitled whether ancestral or self-acquired property.*" They also said that "*with changing social norms of legitimacy in every society, including ours, what was illegitimate in the past may be legitimate today. The concept of legitimacy stems from social consensus, in the shaping of which various social groups play a vital role.*"⁴

RIGHTS UNDER MUSLIM LAW

According to the Muslim Law, an illegitimate offspring is a filius nullius (a son of nobody, illegitimate) and owes no nasab (lineage) to either of the parents. In Muslim law, however,

³ ACADEMIC PUBLICATIONS, (Last Visited on MAR 9, 2022, 1:46 AM)

<https://www.acadpubl.eu/hub/2018-120-5/3/253.pdf>

⁴ *Revanasiddappa v. Mallikarjun*, (2011) 86 A.L.R 450 (India)

there are no explicit laws or procedures for determining a child's legality. An illegitimate child has no right to inherit property from his father under Muslim law.

Hanafi Law

Even though the child cannot inherit from his father or family, the illegitimate child enjoys privileges similar to his mother, according to Hanafi School rules. He has the right to inherit not just his mother's property, but also the property of other relatives to whom he is related through the mother.

In the case law Pavitri v. Katheesumma Vaidiaalingam, the court decided- *“The illegitimate child has in law no father, and he or she can have nothing to do with his or her mother’s relations by subsequent marriage, as a result of which new relationships arise. For purposes of inheritance there must be some relationship between the person, on whose death the succession has opened and the person who claims title to succeed”*. *“We, therefore, hold that a son born of a woman after her marriage cannot be considered as ‘her relation’, whose property her illegitimate child is entitled to inherit.”*⁵

Shia Law

Shia law distinguishes between a child of fornication (the outcome of sexual intercourse with someone who is not married to you) and a child of imprecation, that is, a father refusing to give his paternity (usually provoked to do so). Fornication's child is not allowed to inherit anything from both parents. An offspring of imprecation, on the other hand, is permitted to inherit from his or her mother and relatives (kin).

The Hanafi law does not make any such differentiation between the two types of children as mentioned above. Both the children are considered to be illegitimate and can inherit from their mother.

Maintenance under Muslim Law

Under the Muslim Law, there is no obligation on either of the parents regarding the maintenance of the illegitimate child. However, in the case Sukha vs. Ninni, the court decided that, *“An agreement to maintain an illegitimate child, for which the Mohammedan Law as such makes no provision, does not have the effect of defeating the provisions of any law. As a matter of fact, maintenance of illegitimate children has been statutorily recognized under Section 125 of the Criminal Procedure Code of 1973 in our country and it is in consonance with this wholesome policy that the off-springs born under such circumstances are to be provided for and should not be left to the misfortunes of vagrancy and its attendant social consequences.”*

CONCLUSION

All in all, it can be concluded that the personal laws of the parents play a very important role while deciding upon the subject of the rights of the children, though the illegitimate children have a right over their parent’s property. These children have a tarnished image and position in the society due to the societal stigma they face. They are still subjected to being victims, even in societies like ours. As there is no codified law which could save the

⁵ Pavitri v. Katheesumma Vaidiaalingam, A.I.R. 2016 S.C.119 (India)

interests and rights of the ill-conceived children, these children would still face the discrimination against them due to the religious belief of the society and personal laws of the parents. It is needed that the Supreme Court take certain serious actions to save these innocent children which are nowhere at fault because of the relationship of their parents. Central government should also pass legislations which give the ill-conceived children their right over the property of the parents, keeping aside the societal norms and religious beliefs. As there are various changes happening from time to time in the society, the revision of laws is really needed. What may be considered as legitimate earlier might not be considered the same in today's time. As people are getting educated and liberated, there have been dynamic changes in the societies which has helped in providing these children their rights.



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