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## ILLEGITIMACY AND RIGHTS IN HINDU LAW

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### ABSTRACT

*The status of an illegitimate child was not as unusual in Hindu law as it was in Common law, but this was altered in codified Hindu law, most likely as a result of English dominance during India's colonial era. Specifically, the paper examines how Hindu law treats illegitimate children and examines the historical connection between marital status and validity, as well as the constitutional and societal foundations of the law. This relationship has been maintained for millennia across nations for moral and legal reasons; yet, experts in the subject have even justified it as a means of maintaining civilization by preserving its essential component—a traditional household. The court system, administration, and legislation in India are all part of the same apparatus that is obsessed with upholding the ideal household, albeit with notable exceptions. They have shown disdain for any alternative, despite the possibility that the rights of illegitimate children are incidental effects. As a result, this difference now contravenes Indian law. Crucially, the social rationale for preserving this distinction has already become out of date with the adoption of new reproductive technologies (such as assisted reproduction) or family structures (same-sex couples). Consequently, our research suggests that the differences in legislation should be eliminated to benefit the three parties involved in the illegitimacy association: the child, the unmarried parents, and the unmarried parent.*

**Keywords:** Hindu, marital, Indian, illegitimacy.

### 1. INTRODUCTION

The status of children—whether legal or not—indeed has a big influence on every society on the planet. Adopted children are uniquely categorized as legitimate or illegitimate in all contemporary and historical societies<sup>1920</sup>.

Social prejudice has always been associated with a kid born to unmarried parents. The treatment of illegitimate children differs from that of biological children. Communities have always condemned illegitimate children in a variety of ways. Not only do communities harbor prejudices against them, but laws also do. Illegitimate children do not have the same legal rights under the statute as biological children. The majority of personal laws in place today make a distinction between the rights of legal and illegitimate children to inherit. Many of the major religions that have been practiced for

centuries have had strong social stigmas against illegitimacy. The definition of illegitimacy is "everything that is unconstitutional."

Children born outside of a legally acknowledged marriage would be considered illegitimate. There are numerous ways in which the legislature and the community have been biased.

On the other hand, laws are changing in tandem with the emergence of a group of people inside the social structure who are radical and reasonable in their own right and who do not perceive illegitimacy as a mark against them<sup>1921</sup>.

An illegitimate child is defined by their parents' marital status and is consequently considered "nullius filius," meaning that they have no legal

<sup>1920</sup> Karanam LBP Kruthika *Illegitimacy and their rights under Hindu law* accessed 22 April 2024.

<sup>1921</sup> Available at: <https://www.lawtopus.com/academike/illegitimacy-hindu-law/#:~:text=A%20child%20born%20with%20lawful,unlock%20is%20an%20illigitimate%20child> accessed 23 April 2024.

connection to either parent. Two factors decide if a kid is illegitimate:

- The validity or invalidity of the parent-child relationship.
- The parent's marital relationship.

Children born into a link that is stigmatized by society and the constitution (if confirmed) are placed in the general population. One method these children are kept is by the idea that children born out of marriage are legally recognized. Legal systems in India and England both recognize this presumption. Either way, the legislation recognizes this concept. Since India is a multifaith, civilized democracy, the interpretation of a constitutional premise varies throughout religious doctrine regulations. Notwithstanding these particular regulatory needs, there are rules about property ownership, custody, and other matters<sup>1922</sup>.

According to Hindu law, whether a marriage is lawful under Section 16 of the Hindu Marriage Act<sup>1</sup> determines the validity of the child<sup>1923</sup>. The Sikhs, Jains, and Buddhists are covered by the Hindu Marriage Act. As a result, the criteria for illegitimacy applied in the religions will be similar to those applied in Hindu law. If one were to define Hindu literature precisely, one would conclude that for a child to be considered lawful, they must be born after a legal relationship. In addition, a Privy Council decision determined that being born into a married couple was a mandatory prerequisite for legitimacy following Hindu law. Generally speaking, for a child to be regarded as legitimate, they must be born into a lawful marriage. Every child born of these types of unions faces the result of being gravely misread as the children born of something like the parents to a particular union unless the union is announced or dissolved due to a violation of the legislative mandates<sup>1924</sup>.

<sup>1922</sup> All You need to know about the Hindu Marriage Act, 1955 <https://www.taxmann.com/post/blog/hindu-marriage-act-1955> accessed 17 April 2024.

<sup>1923</sup> Hindu Marriage Act, 1955, §16, No. 25, Acts of Parliament, 1955 (India).

<sup>1924</sup> *Supra* note 1 at 1.

## 2. HISTORY

ILLEGITIMACY: The word "illegitimacy" was first used in the middle of the 1600s and is derived from the Latin "illegitimus," which means "not in compliance with the law." Illegitimacy can be defined literally as everything that deviates from accepted and controlled standards and criteria.

In 1924, the "Geneva Declaration" asserted that children must be protected from any kind of degradation and that particular care must be taken to safeguard their physical and mental development. The Universal Declaration of Human Rights, 1948<sup>1925</sup>, established in article 25(2) that nearly every person, married or not, is entitled to the same level of humanitarian aid. Furthermore, the General Assembly's overwhelming adoption of the treaty on these children's rights in 1989 marked another significant historical development that helped it come into force in 1990<sup>1926</sup>.

The primary focus of this protocol was not to limit progress to only political or civic constitutional protections, but also to incorporate socio-economic, philosophical, ethical, and charitable privileges and obligations that are mandated by the household to fundamental upbringing and cautious commitment towards them. Successful cooperation was essential to granting youngsters each of these freedoms<sup>1927</sup>.

## 3. FACTORS INFLUENCING ILLEGITIMACY?

- The marriage between the husband and wife was deemed null and illegal due to their failure to comply with the law.
- The child's parents did not get married before or during the child's birth, but they did ultimately lead to a legally recognized marriage.
- The father's existence is uncertain, or the mother became a victim of a violent crime or a sex professional, leading to the birth of such children.

<sup>1925</sup> ar. 25(2), Universal Declaration of Human Rights, 1948.

<sup>1926</sup> Children and Legal Protection ~ Paras Divan, Peeyushi Divan.

<sup>1927</sup> *Supra* note 1 at 1.

- The child is the product of a partnership that was not married.

The four categories listed above indicate when a child's birth is considered illegitimate. Many personal laws may govern marriage, especially in nations like India where customs and religious beliefs influence personal law interpretations<sup>1928</sup>.

#### 4. ILLEGITIMACY IN HINDU LAW

In terms of Hindu law, any marriage that satisfies all of the requirements listed in Sections 7<sup>1929</sup> and 5 of the Hindu Marriage Act of 1955<sup>1930</sup> is considered to be constitutional. Individuals born into a legally recognized marriage are considered legitimate in and of themselves. Section 11 of the Hindu Marriage Act<sup>1931</sup> and Section 12 of the Hindu Marriage Act<sup>1932</sup> may consider the ensuing nuptial tie illegal or unenforceable if the requirements outlined in the aforementioned Act are not met.

Section 11 of the aforementioned Act classifies an invalid marital union. This says that a marriage is illegal and void if it fails any of the conditions listed in Section 520 clauses I (iv) or (v)<sup>1933</sup>. Offspring from such a union are considered to be illegitimate.

These requirements for unenforceable marital relations are outlined in Section 12 of the Act<sup>1934</sup>. The children born in a legally recognized marriage are blatantly unconstitutional if the marriage is dissolved for any of the reasons specified. Putting all of the above aside, a marriage shall be deemed void if the ceremonial ceremonies required by Section 7 of the Hindu Marriage Act<sup>1935</sup> are not performed during the marriage. Offspring resulting from these unions will also be labeled as illegitimate. Hindu law basically bases its validity concept on matrimony. The activities of a parent determine

a child's place in society. When children are born but do not enter into a marriage partnership, they are considered illegitimate; however, unless the parents committed an irresponsible act and married in an unconstitutional marriage, the resulting innocent child is considered illegitimate. The good child has to pay the price because they have nothing to control or say about what their parents do<sup>1936</sup>.

Four categories, such as "Maintenance, Inheritance, Joint Family Property and Division of Assets, Guardianship," make up Hindu law about illegitimate children.

#### 5. RIGHTS OF AN ILLEGITIMATE CHILD PREVIOUSLY

##### 1. "Maintenance"

An illegitimate son of a Hindu was entitled to maintenance from his father's joint family assets and property before the Hindu Adoptions and Support Act of 1956. Regardless of whether he held property or not, the father had a duty to provide for his illegitimate child during his formative years. If Shudras' illegitimate sons failed to inherit or receive a share of the divide, they continued to be eligible for support. However, under Hindu law, this privilege could not be sought if the mother was not a Hindu. In this case, the Code of Criminal Procedure may allow the illegitimate son to sue the alleged father. In Hindu law, illegitimate daughters had no remedy before this. They continued to be eligible for support under the Code of Criminal Procedure, however, this was only valid for the duration of the alleged father's life and ended when he passed away.

##### 2. "Joint Family Property and Division of Assets"

An illegitimate son, in contrast to a legally acknowledged kid, does not have any interest in their father's family assets and does not form a clade with them, meaning that his rights are limited to subsistence throughout his father's life expectancy. Nonetheless, during the course

<sup>1928</sup> Available at <https://www.juscopus.com/rights-of-an-illegitimate-child-under-hindu-and-muslim-personal-law/>, accessed 22 April 2024.

<sup>1929</sup> Hindu Marriage Act, 1955, §7, No. 25, Acts of Parliament, 1955 (India).

<sup>1930</sup> Hindu Marriage Act, 1955, §7, No. 25, Acts of Parliament, 1955 (India).

<sup>1931</sup> Hindu Marriage Act, 1955, §7, No. 25, Acts of Parliament, 1955 (India).

<sup>1932</sup> Hindu Marriage Act, 1955, §7, No. 25, Acts of Parliament, 1955 (India).

<sup>1933</sup> Hindu Marriage Act, 1955, §520 clauses I (iv) or (v), No. 25, Acts of Parliament, 1955 (India).

<sup>1934</sup> HMA, *supra* note 12, at 12.

<sup>1935</sup> HMA, *supra* note 9, at 12.

<sup>1936</sup> *Supra* note 1 at 1.

of his life, the father may give them a share of their wealth, which may be equal to the assets of the sons who have been duly acknowledged.

The court's judicial review had been: Children born of null or unenforceable marriage could indeed contend proportion in self-earned assets of parents, just not joint and family asset. This was despite the 1976 reform in Section 16 currently deciding to implement a legal doctrine that deems illegitimate children will become legitimate across every empirical reason, along with descendants in their family assets. A child born within a live-in relationship is not eligible to inherit the family's possessions.

### 3. "Inheritance"

A child born out of wedlock is not entitled to inherit from his father. However, the Hindu Succession Act states that legitimate heirs are thought to be somehow related by legal lineage to every individual and may thus inherit among themselves, while illegitimate offspring are thought to be connected by illegitimate families to one's mother and one another. The property of their mother or their illegitimate siblings is entitled to an illegitimate child. The assets of an illegitimate kid could also be obtained by a mother. The father doesn't appear to be entitled to the possessions of his illegitimate child<sup>1937</sup>.

### 4. "Guardianship"

The mother of an illicit child generally appeared to have the right to the child's custodial care during the times of nurturing, and the father would not have any claim to the guardianship of the illegitimate son during the child's minority<sup>1938</sup>.

## 5. RIGHTS AND RESPONSIBILITIES OF A CHILD RECOGNIZED OUTSIDE LEGAL MARRIAGE

### 1. "Maintenance":

A Hindu is required by the "Hindu Adoptions and Maintenance Act of 1956" to provide for their illegitimate children for the remainder of their lives. Both the mother and the father are currently responsible for providing for the needs of their illegitimate children. Any illegitimate

child, regardless of gender, has the right to assistance from both their mother and father. As a result, the privilege to be maintained is limited to the minority age's timeframe. Once an undocumented kid reaches the legal age of majority, they are not entitled to receive financial support from their parents. Any particular child who had previously refused to identify as a follower of another religion would likewise not be eligible for maintenance if they had converted to that religion and an unregistered female descendent of a deceased Hindu until she continues to live and is unmarried must be maintained, primarily by the decedent's heirs or those who are considering acquiring the deceased person's belongings. However, if a child has ceased to be a Hindu and has changed to another religion, they will not be eligible for aid under the previously mentioned Act. According to the "Code of Criminal Procedure," an unmarried kid who has since lost their Hindu reputation may seek help from their ancestry<sup>1939</sup>.

### 2. "Joint Family Property and Division of Assets":

Before the Hindu Succession Act, an unregistered son shared co-ownership of their patriarchal property with the son of their father who was recognized by the constitution, and he had the right to file a lawsuit on behalf of the legal son. As a result, under the Act, he was unable to succeed his father because he is not descended from him legally<sup>1940</sup>.

### 3. "Inheritance":

An illegitimate child of the Shudra caste was not eligible to receive their father's inheritance when the Hindu Succession Act was passed in 1956. In the past, if an illegitimate son from the Shudra caste was a dasiputra, he may inherit from his father. He was now required to abide by the Act; therefore he could no longer do this.

<sup>1937</sup> *Supra* note 1 at 1.  
<sup>1938</sup> *Id.*

<sup>1939</sup> Available at <https://www.legalserviceindia.com/legal/article-5511-a-study-of-illegitimacy-as-a-concept.html> accessed 20 April 2024.

<sup>1940</sup> *Supra* note 1 at 1.

#### 4. "Guardianship":

It is believed that the mother is the child's primary carer. Currently, both parents of an illegitimate child appear to be of any religion other than Muslim, Christian, or Jewish, or either parent practices the aforementioned filtered religion. Additionally, if an infant is raised by someone who belongs to an ethnic community, society, clan, or household to which a particular mother or father belong now or in the past, the Hindu Minority and Guardianship Act, 1956, extends forward to that person. Specifically, section 6 of the Act states that the mother is the biologically competent caregiver of a lawfully unmarried boy or girl. Her father follows her, and if the mother is married, the spouse would be the primary caregiver.

However, if a caregiver ceases to identify as a Hindu or leaves the world completely and permanently by becoming a monk or monastic, they are truly not required to be obliged to act under the same Act<sup>1941</sup>.

### 6. LEGAL PROVISIONS

#### 1. Hindu Marriage Act, 1955

Hindu brides and grooms who are bound by the sacred sacrament of matrimony in virtually any ceremony have rights and obligations that are enacted and safeguarded by the Hindu Marriage Act of 1955. There is no legal definition of what constitutes a wedding because there are many different methods for a man and a woman to participate in this holy and religious rite. The proposal for this regulation was prompted by several instances in which a marriage attempt to defraud left both men and women feeling scared or ashamed. Every Hindu, Jain, Sikh, or Buddhist who isn't a Muslim, Christian, Parsi, or Jew and who isn't already bound by another law must abide by this decree<sup>1942</sup>.

#### 2. Section 20 Hindu Adoptions and Maintenance Act of 1956<sup>1943</sup>

Whether their child is born into the family or not, a Hindu parent is obligated to provide for them. While they are minors, children have a right to food through their parents. Nonetheless, an unmarried daughter is responsible for providing support until she gets married after reaching the age of majority.

#### 3. Section 3(1) (j) of the Hindu Succession 1956 Act<sup>1944</sup>.

"Related" implies belonging by legal kinship: However, since legal kinship is presumed to be closely linked with both them and their mothers, and since illegitimate children are assumed to be related to each other as well as their mothers, any statement expressing a connection or implying a relative is interpreted accordingly.

#### 4. Section 3 (c) (i) and (ii) Hindu Minority and Guardianship Act of 1956<sup>1945</sup>.

This act can be applied to:

- 1) any legal or illegitimate child whose parents are Jains, Sikhs, Buddhists, Hindus, or Buddhists;
- 2) any legal or illegitimate child born to a parent who is a Buddhist, Hindu, Jains, or Sikh and raised as a member of the clan, town, community, or household that parent hails from or was born into.

#### 5. Sections 7 and 8 of the Indian Succession Act of 1925<sup>1946</sup>.

The country in which the mother of an illegitimate kid lived at the time of his conception is considered to be his jurisdiction of provenance<sup>1947</sup>.

### 7. CASE LAWS

#### 1. Shanta Ram v. Smt. Dargubai<sup>1948</sup>

The Bombay High Court decided in the aforementioned case that children of invalid

<sup>1941</sup> 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 10 April 2024.

<sup>1942</sup> Available at <https://www.thelawgurukul.com/post/illegitimate-children-and-their-maintenance-rights-in-india> accessed on 19 April 2024.

<sup>1943</sup> sec. 20, Hindu Adoption and Maintenance Act, 1956.

<sup>1944</sup> sec. 3(1)(j), Hindu succession act, 1956.

<sup>1945</sup> Section 3 (c) (i) and (ii) Hindu Minority and Guardianship Act of 1956.

<sup>1946</sup> sec. 7 and sec. 8, Indian Succession Act, 1925.

<sup>1947</sup> What Are The Rights of Illegitimate Children Under Hindu Law <https://blog.ipleaders.in/rights-illegitimate-children-hindu-law/>, Accessed 16 April 2024.

<sup>1948</sup> Shantaram Tukaran Patil and Anr. v. Dargubai Tukaram Patil and Ors., AIR 1987 Bom 182.

marriages would only be regarded as legitimate, regardless of the nullification decision, and that they would not be entitled to the same inheritance rights as children of legal marriages unions.

## 2. **SPS Balasubramanyam vs Sruttayan**<sup>1949</sup>

"If a man and a woman live together under the same roof and live for many years, there will be a general presumption under Section 114 of the Evidence Act, that they live as a married couple and children born to each other will not be illegal. The court said in the statement in question.

## Madan Mohan Singh vs. Rajni Kant

If a kid born out of a live-in relationship is deemed to be legal, the pair must participate in, live under, and engage in fornication for a considerable amount of time before the public recognizes them as married. It cannot be a "walk in and walk out" relationship in this instance, as the court declared in its 2010 ruling.

## 3. **Raja Jogendra Bhupati Hurri Chundun Mahapatra v. Nityanund Mansingh & Anr**<sup>1951</sup>

According to the circumstances, Raja was only a Sudra who passed away leaving behind three dowagers: a legitimate son, a son who was not acknowledged by the law, and a legitimately credible daughter. When the legal son unexpectedly died, the question was whether the unacknowledged son could inherit his father's belongings. The Privy Council declared that it was possible for the son who was not acknowledged by the law to become deceased through aging.

## 4. **Revanasiddappa v. Mallikarjun**<sup>1952</sup>

In the aforementioned case, the Supreme Court of India outlined the following fundamental principles that are ingrained in the Preamble of our Constitution: inherent decency and the notion of justice that is based on position and

opportunity.

The child's birth in such a union must be seen independently from the couple's marriage, even though the relationship between the two parents may not be lawful. This is something that the courts should be required to acknowledge.

## 8. CONCLUSION

Given that Indian culture is a mystical civilization, it is going through a time of transformation that is characterized by two distinct types of people with two different sets of beliefs. The other of these groups follows the traditional Hindu customs, which frown upon having children who are not officially recognized and make being a Hindu considerably more shoddy. Another social group consists of people who, from a cognitive standpoint, appear to be reasonable and tolerant and who do not view illegitimacy as a shame. It is more common to criticize careless parents than illegitimate children for being born. Laws within a social framework are also modified based on time and location. When it comes to an illegitimate child, one must be significantly more lenient, and laws should be changed to the fullest extent possible to ensure the ultimate well-being of those creatures.

Hindu personal laws have attempted to eliminate the discriminatory right to inherit illegitimate children to some extent through Section 16 of the HMA and the SCs; however, the primary limitation is that this provision addresses the rights and validity of children born into invalid or unenforceable marriages only. When a child is born to nonmarital parents, they are regarded as illegitimate, meaning they can only inherit their parents' assets and have no inheritance rights in their father's independent or inherited wealth.

In conclusion, even though there are regulations in place to guarantee that these kids receive care, it is indisputable that they are fairly represented. Given the stigma and discrimination in society associated with these deserving children, this is becoming an

<sup>1949</sup> S.P.S. Balasubramanyam v. Sruttayan, 1994 AIR 133.

<sup>1950</sup> Madan Mohan Singh & Ors v. Rajni Kant & Anr, Civil Appeal No. 6466 of 2004.

<sup>1951</sup> Raja Jogendra Bhupati Hurri Chundun Mahapatra v. Nityanund Mansingh, 17 I.A. 128.

<sup>1952</sup> Revanasiddappa & Anr v. Mallikarjun & Ors, CIVIL APPEAL NO. OF 2011 (Arising out of Special Leave Petition (C) No.12639/09).



increasingly difficult mission to complete. It's a significant issue for the nation that needs to be addressed from all angles, taking into account social and constitutional factors.

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