

SUCCESSION RIGHTS OF ILLEGITIMATE AND ADOPTED CHILDREN

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ABSTRACT

This study looks at the rights of children born outside of marriage (commonly called "illegitimate" children) in India's several personal law systems, with a focus on guardianship, inheritance, maintenance, and status. In India, a number of personal laws that apply to

different religious groups—including the Hindu Marriage Act of 1955, the Hindu Succession Act of 1956, the Indian Succession Act of 1925 (for Christians), and Islamic personal law— have developed differently with regard to children born outside of marriage. In the past, these children were denied full inheritance and succession rights and experienced social and legal prejudice. Their rights have been gradually increased by recent jurisprudence,

nevertheless. For example, Section 16(3) of the Hindu Marriage Act recognizes children born of void or voidable marriages as legal and they are entitled to both (in some cases) ancestral property and the self-acquired property of their biological parents. However, legal experts point out that they still have limited standing in joint family (coparcenary) property.

Legitimate and illegitimate children may inherit equally under the Indian Succession Act. However, in the fields of guardianship, maintenance, and religious law, loopholes still exist. This study makes the case that, in spite of progressive case law, the fragmentation of personal laws still prevents a unified protective framework. It suggests legislative reform (possibly a uniform civil code) to guarantee equal rights for all children, regardless of their parents' marital status.

Keywords—Succession Rights, Illegitimate Children, Adopted Children, Inheritance Law, Personal Laws in India.

INTRODUCTION

The word "succession" has been derived from the Latin word "*succedere*" which means 'to follow' or 'to succeed'. It can be defined as the process or the act of transmitting property and legal rights, after the death of an individual, to another. It is very important in family and inheritance law. Succession laws not only reflect legal principles but also embody the moral, social, and cultural values of a society. In India, where personal laws are deeply interconnected with religion and tradition, the rules governing succession have a complex understanding and play a crucial

role. Among the most debated aspects of succession is the succession rights of illegitimate and adopted children.

Illegitimate children are those born outside of a legal marriage. For a long time, legitimacy—that is, being born within a lawful marriage—was seen as a necessary condition for a child to inherit property. Under traditional Hindu and Muslim laws, a child born outside marriage was often denied any share in the property of their parents. Such practices were rooted in old social and religious ideas that connected morality and inheritance with marriage.

Adopted children are those who are raised by parents who are not their biological parents. Under the **Hindu Adoption and Maintenance Act¹, 1956**, once a child is legally adopted, they are treated the same as a natural-born child for all purposes, including inheritance. But this clarity does not exist under all personal laws. For example, in Muslim, Christian, and Parsi communities, adoption is either not recognized in the same legal sense or is governed by religious customs rather than uniform laws. This makes the question of succession rights for adopted children a complicated one, often varying based on the religion and law applicable to the family.

However, as the world is advancing into a new era of justice, equality and human dignity, it is leading to the evolution of various taboos and stereotypes of the society. In India, especially, the Indian Constitution guaranteed equality to all, the legal system began to challenge the prevailing unequal notions. Over the years, courts and lawmakers have also tried to reduce the gap between legitimate and illegitimate children in terms of their legal rights. Through landmark judgments and legislative reforms—such as the **Hindu Succession (Amendment) Act², 2005**, and the **Juvenile Justice³ (Care and Protection of Children) Act, 2015**—the system has moved toward giving every child, whether born within marriage, outside it, or adopted, a fair legal status. Yet, there are still gaps and inconsistencies that need attention.

These inconsistencies appear not only between different personal laws but also within the interpretation of the same law across cases. For instance, while Hindu law has been progressive in recognizing the inheritance rights of both illegitimate and adopted children, other personal laws have not evolved at the same pace. This lack of uniformity often results in unequal treatment of children depending on their religion, region, or the legal system that governs their family. It raises fundamental questions about equality before the law, as

guaranteed under **Article 14⁴ of the Indian Constitution**, and the right to live with dignity under **Article 21⁵**.

Globally too, many countries have reformed their inheritance laws to ensure that all children, irrespective of birth status or adoption, enjoy equal rights. India, while moving in the same direction, still faces challenges due to the coexistence of multiple personal laws. This diversity, though meant to protect cultural and religious identity, sometimes stands in the way of achieving uniform justice. The idea of a **Uniform Civil Code⁶ (UCC)** has been discussed repeatedly as a possible solution to these variations, but it remains a sensitive and debated topic.

In this context, studying the succession rights of illegitimate and adopted children becomes highly significant. It helps us understand how far the Indian legal system has come in promoting equality and where it still needs to evolve. It also highlights the balance the law must maintain between respecting religious traditions and ensuring constitutional fairness.

This research report therefore aims to explore how Indian law treats the succession rights of illegitimate and adopted children. It looks at how these rights have changed over time, how different personal laws and court decisions shape them, and where the current system still falls short. The goal is to understand whether the law today truly protects every child's right to inheritance, regardless of birth or background, in the spirit of equality promised by the Constitution and international human rights principles.

STATEMENT OF PROBLEM

Even though the Indian Constitution ensures equality before the law and protection from discrimination, children born outside of marriage and adopted children continue to experience unequal treatment when it comes to inheritance and succession rights. India's personal law system—divided across religious lines—has produced overlapping, and

sometimes contradictory, interpretations of who qualifies as a “legal heir.”

While Hindu law has evolved through amendments and court decisions to acknowledge the inheritance rights of children born from void or voidable marriages, the extent of those rights remains uncertain, particularly concerning coparcenary or ancestral property. On the other hand, Muslim, Christian, and Parsi laws still do not provide comprehensive or uniform recognition to illegitimate children, often leaving them dependent on judicial interpretation or the goodwill of family members.

Adopted children face a similar problem of legal inconsistency. Under the **Hindu Adoption and Maintenance Act, 1956**, an adopted child enjoys the same inheritance rights as a biological child. However, other religious groups that are governed by separate personal laws often lack similar provisions, leading to unequal protection and ambiguity regarding adopted children’s rights to succession.

This fragmented system results in confusion, prolonged litigation, and social injustice. It also undermines the constitutional ideals of equality and dignity. The absence of a unified approach toward succession rights not only affects the children directly involved but also reflects the deeper issue of India’s personal laws being unable to keep pace with modern social realities and constitutional principles.

OBJECTIVES OF THE STUDY

The present study seeks to explore and analyze the inconsistencies and developments surrounding the succession rights of illegitimate and adopted children within India’s diverse legal framework. The specific objectives are:

1. To examine the evolution of legal provisions governing the inheritance and succession rights of illegitimate and adopted children under different personal laws in

India.

2. To analyze major judicial interpretations and case laws that have shaped the recognition of these rights, especially under Hindu, Muslim, Christian, and Parsi legal systems.

3. To identify the gaps, ambiguities, and contradictions in the current succession laws that continue to disadvantage children born outside of marriage and adopted children.

4. **To evaluate** the extent to which personal and statutory laws—such as the *Hindu Marriage Act, 1955*; *Hindu Succession Act, 1956*; *Hindu Adoption and Maintenance Act, 1956*; *Indian Succession Act, 1925*; *Muslim personal law*; and *Juvenile Justice (Care and Protection of Children) Act, 2015*—align with the constitutional principles of equality, justice, and non-discrimination under **Articles 14, 15⁷, and 21** of the Indian Constitution.

5. To suggest possible legal and policy reforms, including the potential role of a Uniform Civil Code, to ensure a consistent and equitable framework for all children, regardless of their birth or adoption status.

SCOPE AND LIMITATIONS OF THE STUDY

This study focuses on examining the **succession rights of illegitimate and adopted children** within the Indian legal framework. The research primarily covers **statutory laws, personal laws, and relevant judicial decisions** that define and shape these rights. It explores the position of such children under Hindu, Muslim, Christian, and Parsi personal laws, along with secular enactments such as the **Juvenile Justice (Care and Protection of Children) Act, 2015**, which provides a uniform mechanism for adoption irrespective of religion.

The scope of this study extends to understanding the **historical development, constitutional validity, and judicial interpretation** of these laws in light of equality and justice. It also aims to highlight the differences in legal protection and the

continuing challenges faced by illegitimate and adopted children in asserting their inheritance rights.

However, the study is limited in several ways. First, it **does not engage in a detailed empirical or field-based analysis**; the findings are primarily drawn from **doctrinal research**, including legislation, judicial precedents, and secondary academic sources. Second, since personal laws in India are **religion-specific and constantly evolving**, the interpretations presented may vary with future judicial developments or legislative amendments. Third, while the focus remains on **succession and inheritance**, related aspects such as guardianship and maintenance are discussed only to the extent that they influence succession rights.

Despite these limitations, the study seeks to present a **comprehensive and balanced overview** of the legal status of illegitimate and adopted children in India, offering insights into the reforms needed for achieving uniformity, fairness, and constitutional harmony in matters of inheritance.

RESEARCH METHODOLOGY

The research is **doctrinal**, it is limited to theoretical and textual analysis. It does not include field surveys or interviews, which could have provided empirical insights into how these laws are applied in real-life contexts. Nevertheless, this method allows for a thorough understanding of the **legal and constitutional dimensions** of the issue, supported by authoritative sources and judicial reasoning.

THE EVOLUTION OF LEGAL PROVISIONS

The legal understanding of who qualifies as a “child” or “heir” has undergone significant change in India. Historically, legitimacy and biological descent determined one’s right to inherit property. A child born outside a lawful marriage was viewed as *filiius nullius*—the child of no one—and was denied legal recognition. Similarly, adoption was initially

treated as a sacred religious act under Hindu law, rather than a secular legal process. Over the decades, social reform movements, constitutional ideals, and judicial interpretations have gradually reshaped these outdated notions, expanding the legal protection available to illegitimate and adopted children.

1. Evolution under Hindu Law

Under ancient Hindu law, legitimacy was strictly tied to marriage. An illegitimate child had no claim to ancestral or self-acquired property and was excluded from the coparcenary. The **Hindu Marriage Act⁸, 1955**, marked the beginning of reform by introducing **Section 16**, which legitimized children born from void or voidable marriages. Initially, courts interpreted this section narrowly, granting such children rights only in the self-acquired property of their parents. However, later judgments, such as ***Revanasiddappa v. Mallikarjun⁹ (2011)***, adopted a more liberal approach, affirming that a child’s right to property should not be curtailed merely because their parents’ marriage was invalid.

The **Hindu Succession Act, 1956**, further refined inheritance laws but continued to distinguish between legitimate and illegitimate children in relation to ancestral property. Over time, judicial interpretation has expanded the rights of illegitimate children in self-acquired property but maintained the limitation regarding coparcenary rights.

In contrast, adopted children enjoy complete equality under the **Hindu Adoption and Maintenance Act, 1956 (HAMA)**. **Section 12** explicitly provides that once a child is legally adopted, they are deemed the natural child of the adoptive parents for all purposes, including inheritance. This statutory clarity places adopted children on the same footing as biological ones within Hindu law, demonstrating a major step toward equality and social justice.

2. Evolution under Muslim Law

Muslim personal law, which remains largely uncodified, continues to draw its principles from the **Qur'an, Hadith**, and classical jurists. Under Islamic law, a legitimate child (*walad-ul-nikah*) is entitled to inherit from both parents, whereas an illegitimate child (*walad-ul-zina*) has no right of inheritance from the father. The child may, however, inherit from the mother and her relatives. This position has remained largely unchanged, as Islamic law does not recognize the concept of legitimacy arising from void or voidable marriages.

Similarly, the idea of legal adoption as understood in Hindu law does not exist in Islam. Instead, Islam recognizes **kafala** (guardianship), which allows a family to care for a child without conferring the legal status or inheritance rights of a natural child. As a result, adopted children under Muslim law do not automatically inherit from their guardians unless a specific gift (*hiba*) or bequest (*wasiyyat*) is made in their favour.

3. Evolution under Christian and Parsi Laws

For Christians and Parsis, succession is governed by the **Indian Succession Act, 1925**, which applies uniformly to both legitimate and illegitimate children, provided paternity or maternity can be established. The Act does not explicitly distinguish between legitimate and illegitimate children, marking a more inclusive stance compared to traditional personal laws.

Adoption among Christians and Parsis is not recognized under any personal statute; however, individuals may adopt under the secular **Juvenile Justice (Care and Protection of Children) Act, 2015**. Once such an adoption is completed, the child attains the same status as a natural-born child and enjoys full inheritance rights from the adoptive parents.

4. Emergence of Secular and Constitutional Perspectives

The evolution of Indian succession laws cannot be understood without considering the influence of the **Constitution of India**, particularly **Articles 14, 15, and 21**, which guarantee equality, non-discrimination, and dignity. These constitutional provisions have guided courts in interpreting personal laws in a manner that promotes justice and inclusiveness.

In addition, secular legislation like the **Juvenile Justice Act, 2015** has redefined adoption in India as a **secular and uniform process**, applicable to all religions. This Act ensures that every adopted child—regardless of faith—acquires the same legal status as a biological child. Consequently, it represents one of the most progressive developments toward achieving equality in succession rights.

LANDMARK JUDICIAL INTERPRETATIONS AND CASE LAWS

Judicial interpretation has played a vital role in transforming India's approach toward the rights of illegitimate and adopted children. While legislation has provided a foundation, it is the judiciary that has filled the gaps, harmonized conflicting provisions, and advanced the constitutional promise of equality. Through landmark judgments, Indian courts have gradually expanded the scope of inheritance rights, recognizing that no child should be penalized for circumstances of birth or adoption.

1. Judicial Interpretation under Hindu Law

(a) Legitimacy and Inheritance

One of the earliest and most influential developments occurred under **Section 16 of the Hindu Marriage Act, 1955**, which legitimizes children born from void or voidable marriages. However, the scope of their inheritance rights remained a matter of judicial debate for decades.

- ***Tulsa & Others v. Durghatiya & Others***¹⁰

The Supreme Court held that a child born from a void or voidable marriage is legitimate in the eyes of the law and entitled to inherit the self-acquired property of the parents. However, the Court clarified that such a child would not have rights in ancestral or coparcenary property. This decision reinforced the legitimacy of children born outside valid marriages but maintained traditional limitations under Hindu joint family law.

- ***Revanasiddappa & Another v. Mallikarjun & Others***¹¹ (2011) 11 SCC 1

In this landmark case, the Supreme Court adopted a progressive interpretation, stating that the child of a void or voidable marriage is entitled not only to the self-acquired property of the parents but also, in some cases, to ancestral property if equity and justice demand it. The Court observed that the law must evolve with changing social values and that a child's right to property should not be affected by the marital status of the parents.

- ***Jinia Keotin v. Kumar Sitaram Manjhi***²

The Court reaffirmed that while Section 16 confers legitimacy on children of void or voidable marriages, it does not give them coparcenary rights in the joint Hindu family property. The Court's reasoning reflected a cautious approach, balancing progressive intent with traditional Hindu property norms.

These cases collectively demonstrate the judiciary's evolving interpretation – from rigid exclusion toward a more inclusive view that emphasizes fairness and social justice.

(b) Adoption and Succession

Judicial decisions have also clarified the rights of adopted children, particularly under the

Hindu Adoption and Maintenance Act, 1956.

- ***Basavarajappa v. Gurubasamma***³

The Supreme Court held that an adopted child

has the same legal status as a biological child for all purposes, including inheritance. The Court emphasized that Section 12 of HAMA eliminates any distinction between natural and adopted children.

- ***R. Lakshmi Narayan v. Santhi***⁴

The Court reiterated that a valid adoption completely severs the ties of the child with the biological family and establishes full rights, including inheritance, in the adoptive family.

Through these rulings, the judiciary has reinforced that adoption under Hindu law is not merely a religious act but a complete legal transformation that places the adopted child on an equal footing with natural-born children.

2. Judicial Approach under Muslim Law

Under **Muslim personal law**, legitimacy and inheritance are closely tied to the validity of marriage. Judicial intervention in this area has been more restrained, as the law remains uncodified and rooted in religious interpretation.

- ***Mohammed Allahabad Khan v. Mohammad Ismail***⁵

The Court recognized that an illegitimate child (walad-ul-zina) is not entitled to inherit from the father but may inherit from the mother and maternal relatives. This remains the foundational precedent under Islamic law in India.

- ***Habibur Rahman v. Altaf Ali***⁶

The court reaffirmed that adoption, in the sense recognized under Hindu law, does not exist in Islam. A child under *kafala* (guardianship) has no automatic right to inherit unless a bequest is made under *wasiyyat* or a gift (*hiba*) is granted during the guardian's lifetime.

These decisions underscore the limited judicial scope in Muslim law due to its religious foundations, highlighting the need for legislative reform rather than judicial

reinterpretation.

3. Judicial Interpretation under Christian and Parsi Laws

Under the **Indian Succession Act, 1925**, courts have taken a liberal and inclusive approach.

- **Mary Roy v. State of Kerala**⁷
- This landmark judgment struck down discriminatory provisions under the Travancore Christian Succession Act, holding that Christian women and their children are governed by the Indian Succession Act. The Court reinforced gender and family equality in inheritance, indirectly benefiting all children, regardless of legitimacy.
- **Philomena v. Union of India**⁸
- The Bombay High Court clarified that illegitimacy cannot be used as a ground to deny inheritance under the Indian Succession Act if the parentage is legally established.

For adopted children, the courts have relied on secular adoption laws such as the **Juvenile Justice Act**, recognizing adopted children as full legal heirs of their adoptive parents.

4. Judicial Influence of the Constitution and Secular Legislation

In modern times, the judiciary has increasingly invoked **constitutional principles** to interpret personal laws in a way that upholds equality and human dignity.

- **Revanasiddappa v. Mallikarjun** (recent clarification of 2011 case)

The Supreme Court reiterated that all children, regardless of legitimacy, have equal rights in the property of their parents under Article 14 of the Constitution. It stated that “the birth of a child cannot be stigmatized nor can it determine their rights in property.”

- **Laxmi Kant Pandey v. Union of India**⁹
- Although focused on inter-country adoption, this case laid the foundation for regulating adoption in the best interests of the child. It eventually influenced the adoption provisions of the **Juvenile Justice Act**, which grants

adopted children equal status with biological ones.

Through these rulings, the judiciary has advanced a more constitutional and humanitarian understanding of family law—one that prioritizes the child’s rights over traditional notions of legitimacy.

GAPS, AMBIGUITIES AND CONTRADICTIONS IN PREVAILING LAWS.

The succession rights of illegitimate and adopted children differ widely across India’s plural legal system. Each religion’s personal law interprets family, legitimacy, and inheritance differently, creating major inconsistencies. While constitutional ideals emphasize equality and non-discrimination, these values are not yet uniformly reflected in personal laws.

Hindu Law

Under Hindu law, there has been significant progress for both illegitimate and adopted children, but equality is still incomplete. Section 16 of the Hindu Marriage Act, 1955 gives legitimacy to children born from void or voidable marriages, allowing them inheritance rights in their parents’ self-acquired property. However, they still cannot claim a share in ancestral coparcenary property. This distinction keeps them somewhat outside the joint family system.

In contrast, an adopted child under the Hindu Adoption and Maintenance Act, 1956 enjoys complete legal status equivalent to a biological child, including full inheritance rights in both ancestral and self-acquired property. Hence, while adopted children are fully protected, illegitimate children continue to face partial exclusion.

Muslim Law

Islamic law continues to maintain a strict difference between legitimate (walad-ul-nikah) and illegitimate (walad-ul-zina) children. Only legitimate children can inherit from their father; illegitimate children can

inherit only from their mother. This creates a major inequality based on the marital status of parents.

As for adoption, Islam does not recognize the concept in a legal sense. The practice of kafala allows guardianship without inheritance rights. Thus, both illegitimate and adopted children under Muslim law remain disadvantaged in terms of succession.

Christian and Parsi Laws

For Christians and Parsis, the Indian Succession Act, 1925 applies uniformly. It does not make a distinction between legitimate and illegitimate children once paternity or maternity is proven, which is a progressive stance. Adopted children under the Juvenile Justice (Care and Protection of Children) Act, 2015 are considered equal to natural children. However, since Christian and Parsi laws do not have separate adoption statutes, the reliance on secular law shows a gap within their personal frameworks.

Hence, the inference acknowledged is that Hindu law partially recognizes them, Islamic law excludes them from paternal inheritance, and secular law treats them more equally. These contrasts show that while India has moved toward justice, true equality remains fragmented.

A uniform approach based on constitutional principles could ensure that no child's inheritance rights depend on their parents' marital status or religion.

Recommendations for establishing a more uniform and inclusive framework of succession rights

A fair legal system must guarantee that every child—regardless of legitimacy or origin—has equal rights to property and family recognition. India's current framework, divided by personal laws, often fails to meet this standard. Therefore, several reforms can help move toward an inclusive and uniform system.

1. Harmonization through Legislative Reform

The most direct approach would be to harmonize succession provisions across all personal laws. The government could consider enacting a Uniform Law on Child Rights in Succession, ensuring that illegitimate and adopted children enjoy equal inheritance rights. This law could draw inspiration from Section 16 of the Hindu Marriage Act and the secular adoption provisions under the Juvenile Justice Act.

2. Clarifying Rights in Ancestral and Coparcenary Property

The current limitation under Hindu law—where children from void or voidable marriages cannot claim ancestral property—should be reconsidered. The Supreme Court in

Revanasiddappa v. Mallikarjun (2023) already moved in that direction. Legislative confirmation of this principle would close a long-standing gap and uphold equality.

3. Reforming Muslim Law through Optional Civil Provisions

While maintaining freedom of religion, Parliament could allow Muslims the option to adopt under a secular law without violating personal beliefs. A system similar to the Special

Marriage Act could provide Muslims who wish to give equal inheritance rights to adopted or illegitimate children a civil legal mechanism.

4. Strengthening the Role of the Judiciary and Awareness

Judicial activism has been a driving force in expanding equality. Continuous judicial review, combined with awareness campaigns about adoption and inheritance rights, can reduce social prejudice. Legal aid programs should ensure that marginalized families understand and can assert these rights.

5. Toward a Uniform Civil Code

Although politically sensitive, a Uniform Civil Code (UCC) could eventually harmonize

succession laws while respecting religious diversity. Such a framework would uphold constitutional guarantees of equality and eliminate discrimination based on birth or legitimacy.

Conclusion

This research has examined the complex and often inconsistent framework governing the succession rights of illegitimate and adopted children in India. The study reveals that while legal reforms and judicial interpretations have expanded these children's recognition, the protection they receive still depends heavily on religion-specific personal laws.

Under Hindu law, legislative provisions such as Sections 16 and 12 of the Hindu Marriage Act and Hindu Adoption and Maintenance Act respectively have offered substantial progress. Yet, illegitimate children remain partially excluded from ancestral property, showing that equality is still incomplete. In Muslim law, the absence of legal adoption and the denial of paternal inheritance to illegitimate children highlight the continued influence of religious

orthodoxy. By contrast, Christian and Parsi laws, through the Indian Succession Act and the Juvenile Justice Act, reflect a more secular and inclusive approach.

The comparative analysis shows that adoption laws have evolved faster and more uniformly than succession rights for illegitimate children. Constitutional principles of equality and dignity have guided this evolution, but fragmented personal laws continue to create unequal outcomes.

Ultimately, the study underscores the need for a cohesive legal vision—one that transcends religious boundaries and ensures that every child, regardless of their parentage or birth status, enjoys equal recognition and inheritance rights. True justice will be achieved only when personal laws align with constitutional morality and social realities, reaffirming that no child should suffer legal

disadvantage for circumstances beyond their control.

ENDNOTES

1 The Hindu Adoption and Maintenance Act, 1956 governs the rules of adoption and the legal duty to maintain family members among Hindus.

2 The Hindu Succession (Amendment) Act, 2005 gives daughters equal inheritance rights in ancestral property as sons.

3 The Juvenile Justice (Care and Protection of Children) Act protects children in conflict with the law and ensures care, safety, and rehabilitation for vulnerable children.

4 Article 14 guarantees equality before the law and equal protection of the laws to everyone in India.

5 Article 21 protects the right to life and personal liberty of every person in India.

6 UCC aims to create one common set of personal laws for all citizens of India.

7 The Uniform Civil Code (UCC) aims to create one common set of personal laws for all citizens of India.

8 The Hindu Marriage Act, 1955 governs marriage, divorce, and related rights among Hindus in India.

9 AIR 2011 SC 2447.

10 (2008) 4 SCC 520

11 AIR 2011 SC 2447

12 (2003) 1 SCC 730

13 (2005) 12 SCC 290

14 (2001) 4 SCC 688

15 (1888) ILR 10 All 289

16 (AIR 1921 All 88)

17 (1986) 2 SCC 209

18 (1995) 3 Bom CR 240

19 (1984) 2 SCC 244