

# Right To Property and Maintenance of Illegitimate Child Under Hindu Law

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**Abstract:** The concept of property is evolving from the days of adopting the law relating to property of Hindu people. The laws relating to property undergoes many changes from time to time as to accommodate the changing need of the society. The major changes in the law of property held after the adoption of our Constitution. The Article 14 of the Constitution of India guarantees equality among men and women as a fundamental right. Following by Article 15 which allows special provisions can be made for women and child. Article 19 1(f) which said that right to property was a fundamental right, which later on amended and now property is a legal right under article 300A of the Constitution of India. Article 39(f) which is directive principle also concern about the safeguard of the child. The court observed that right to property is not only a constitutional right but also a human right<sup>1</sup>, and no person can be deprived of his property save and except by and in accordance with law. Due to Constitutional guarantees the legislature has brought Hindu Succession Act in 1956<sup>2</sup> and Hindu Marriage Act in 1955<sup>3</sup> along with three other Acts. Hindu Succession Act has amended and codified the law relating to intestate succession<sup>4</sup>. This Act has laid down a uniform and comprehensive system of inheritance of property. Moreover this Act gave rights to women to property which were unknown till then. The provision of this Act in relation to property is clear for legitimate child, but is silent for illegitimate child. The paper will focus on the right of illegitimate progeny to maintenance from their parents as well as right of inheritance to their parents self acquired as well as ancestral property in a Hindu family.

**Keywords:** Illegitimate Child, Void and Voidable Marriage, Maintenance, Right to Property

## 1. INTRODUCTION

Illegitimate children are those children which are born outside of lawful wedlock. The legitimacy of child is determined on account of marriage which is either valid, void or voidable. Children of valid marriage is considered legitimate whereas children of void or voidable marriage is considered as illegitimate. The act of two parties determined the status of child in the society. If the parties entered in a legal wedding, the children of such wedlock is considered legitimate, if they don't, and commit cohabitation, resulting conceive of child, then such child is stigmatised as illegitimate, who suffers a lot despite of being innocent and without any fault of their own.

The inheritance right of an illegitimate child was always deprived by the society. The instance of such society is rare to find, who gives unabated inheritance right to the illegitimate child at par with the legitimate child. Considering such situation the legislators tried their hands to bring the enactments which gives the legitimate status to the innocent children of the invalid marriage too, in the society. In this respect Hindu Marriage Act, 1955 which was amended in 1976<sup>5</sup> provides legitimate status to the children born outside of legal wedlock. Section 16 of the Hindu marriage Act, 1955, which has been amended in 1976 removes the disqualification of illegitimate child to be at par with the legitimate child in regard to their status. The changes brought by 1976 amended Act as -

### **Section 16: Legitimacy of Children of Void and Voidable Marriages-**

(1) Notwithstanding that a marriage is null and void under section 11, and child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976 and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise that on a petition under this Act.

(2) Where a decree of nullity is granted in respect of a voidable marriage under section 12, any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties to the marriage if at the date of the decree it had been dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity.

(3) Nothing contained in sub section (1) or sub section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree or nullity under section 12, any rights in or to the property of any person, other than the parents, in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents.

The amended section and its subsection have given legitimate status to the illegitimate child and by recognising their status in the family, remove the disability to inherit the property. Section 16(1) of the Amended Act has totally superseded the common law practice that the progeny of a marriage which is null and void is illegitimate, because it gives the status of such a child being on as legitimate. Section 16(2) says that the child of voidable marriage under section 12, whose marriage is dissolved instead of being annulled, will be deemed as legitimate. Again, section 16(3) says that the children born of void and voidable marriages, who have acquired the status of legitimate child by virtue of the provisions of sub-section (1) and (2) of section 16 of the Act, cannot claim to succeed to persons other than the parents. They have no right to succeed to the collaterals of the parents or ascendants of the parent either.

In *Jinia Keotin vs Kumar Sitaram Manjhi*<sup>6</sup>, the Supreme Court has praised the amendment of Marriage Law in 1976 and viewed that Hindu Marriage Act underwent important changes by its Amendment of 1976 which came into effect from 27.5.1976. In this case it was held that merely because a child born out of void or voidable marriage, to be treated as legitimate instead of illegitimate, however the application of this is confined in relation to inheritance by such children is concerned only to the properties of parents.

The Supreme Court of India in *Parayankandiyal Eravath Kanapraavan Kalliani Ama and others vs K. Devi and others*<sup>7</sup>, opined that "A marriage would be null and void if it was solemnised in contravention of Clause (i) (iv) and (v) of section 5. Clause (i) prohibits a marriage if either party has a spouse living at the same time of marriage. Clause (iv) prohibits a marriage if the parties are not within the degrees of prohibited relationship while clause (v) prohibits a marriage between parties who are the 'Sapindas' of each other. A marriage in any of the above situations was liable to be declared null and void by a decree of nullity at the instance of either party to the marriage. Section 16 was intended to intervene at that stage to protect the legitimacy of children by providing that children begotten or conceived before the making of the decree would be treated to be legitimate and they would inherit the properties of their parents, but not of other relations.

Furthermore, the status of illegitimate daughter was harsher than the illegitimate son, under Shastric law, she was disentitled to inherit a male Hindu dying intestate. Although she was given a share in the property of her mother. However, Hindu Adoption and Maintenance Act, 1956 made a provision of maintenance to the illegitimate child irrespective of daughter or son. Section 20 of the Hindu Adoption and Maintenance Act, 1956 runs as:

### **Maintenance of Children and Aged Parents-**

(1) Subject to the provisions of this section a Hindu is bound, during his or her lifetime, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents.

(2) A legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor.

(3) The obligation of a person to maintain his or her aged or infirm parent or a daughter who is unmarried extends in so far as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her earnings or other property.

The obligation to maintain legitimate children as well as illegitimate children is personal as well as legal in nature, which arises from the very existence of the relation between offspring with their parents. It is the duty of the parents either father or mother to provide maintenance whether they possess any property or not.

Along with section 20, Section 21 of the Act defines the dependents that are entitled to claim maintenance under Section 22 of the Act, which includes illegitimate son as well as daughter. The relevant provisions are as:

### **Section 21 Dependents Defined-**

- (viii) his or her minor illegitimate son, so long as he remains a minor;
- (ix) his or her illegitimate daughter, so long as she remains unmarried.

Hindu Adoption and Maintenance Act, 1956 give emphasise in providing the maintenance to the illegitimate child irrespective of their sex with great consideration.

In addition to this, it is worthy to mention about Hindu Minority and Guardianship Act, 1956. The relevant provisions of the Act which speaks about the natural guardian of illegitimate children as,

**Section 6:** Natural guardian of a Hindu minor- the natural guardian of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are-

- (b) In case of an illegitimate boy or an illegitimate unmarried girl- the mother, and after her, the father.

Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section-

- (a) If he has ceased to be a Hindu, or
- (b) If he has completely and finally renounced the world by becoming a hermit (vanaprastha) or an ascetic (yati or sanyasi).

Under the old Hindu law the mother was the natural guardian of her illegitimate children. Section 6 of the Act seems to makes no diverge to the settled Hindu Law that the mother is the natural guardian of her illegitimate child irrespective of son or daughter, even if the father is known. It is only where the mother is dead or is not capable of being natural guardian because she ceases to be a Hindu or has renounced the world the putative father, if known, becomes the natural guardian of the illegitimate minor. The father of such child has no preferential right over the child and is the natural guardian only after the mother.

In *Rajalakshmi vs Ramachandran*<sup>8</sup>, it was held that even if the father has the care of the person and the property of the illegitimate child he would only be a de facto guardian and the mother is the natural guardian.

### **Legitimacy of Children in Other Countries**

Legitimacy is considered as a matter of status. In *Amphill Peerage*<sup>9</sup> case, Lord Simon of Glaisdale viewed as "Legitimacy is a status: it is the condition of belonging to a class in society the members of which are regarded as having been begotten in lawful matrimony by the men whom the law regards as their fathers. Motherhood, although also a legal relationship, is based on a fact, being proved demonstrably by parturition. Fatherhood by contrast, is a presumption. A woman can have sexual intercourse with a number of men any of whom may be the father of her child; though it is true that modern sereology can sometimes enable the presumption to be rebutted as regards some of these men. The status of legitimacy gives the child certain rights both against the man whom the law regards as his father and generally in society."

In New Zealand the status of illegitimacy has been abolished by the Status of Children Act, 1960. Section 3 of the Act says that, for all purposes of the law of New Zealand, the relationship between every person and his father and mother is to be determined irrespective of whether the father and mother are or have been married to each other, and all other relationships are to be determined accordingly.

In England, improvement has been made to give limited right of succession to the illegitimate children in the property of their parents or allowing the parents to succeed to the property of their illegitimate child by enacting Family Law Reform Act, 1969 and also the Family Law Reform Act, 1987.

### **Recent Supreme Court Judgement 2023**

On 1<sup>st</sup> September 2023, a landmark judgement<sup>10</sup> was delivered by a three- judge bench of the Hon'ble Supreme Court of India led by the Chief Justice of India holds that a child of an 'invalid Marriage' is entitled to a share in the parent's property in cases Governed by Mitakshara Law, nonetheless the children from such marriages will not be able to inherit the ancestral properties of the coparceners other than their parents. As is observed by the Court as, "Since the child conferred with legitimacy under section 16 is not a coparcener, the branch comprises the father and his children born out of the void marriage. As such, the property once partitioned from the larger coparcenery, and in the hands of the father, for his own branch, is not the fathers separate property, until the partition happens within the branch."

Section 16 of the Hindu Marriage Act, legitimises children born out of void or voidable marriage. Section 16 (3) of Hindu Marriage Act restricted the property rights of the such child only to the property of the parents and not to the larger family estate.

Consorting the provisions of the Hindu Marriage Act, 1955 and the Hindu Succession Act, 1956 the bench said, "The legitimacy which is conferred by section 16 of the Hindu Marriage Act 1955 on a child born from a void or, the case may be, voidable marriage has to be read into the provisions of the Hindu Succession Act 1956." In other words, the Court held that a child who is legitimate under section 16(1) and 16(2) of the Hindu Marriage Act would for the purposes of section 3(1)(j) of the Hindu succession Act, 1956, fall within the ambit of the explanation" related by legitimate kinship" and cannot be regarded as an "illegitimate child".

In *Perumal Gounder vs Pachayappan*<sup>11</sup>, the High Court of Madras opined that an illegitimate child is not entitled to claim partition. In this case the petition for partition was filed by the second wife on behalf of her sons against the husband, the court found that her marriage is void and only because of section 16 of the Hindu Marriage (Amendment), Act, 1976 her child is getting the status as legitimate. However her child cannot be treated as coparcener with the father and the other legitimate child of the first wife, and therefore not entitled to property in the joint family.

In *Laxmibai vs Limbabai*<sup>12</sup>, In this case it was observed that "section 16 enacts a complete code with regard to the offspring of void or voidable marriages: Firstly it declares the status of such child being one as legitimate. Secondly it recognises rights in the property of the parents. The provisions itself thus is for the benefit of the children and will have to be applied in full so as to confer status with interest in property. This provision thus removes the disability of such children as far as the property of their parents is concerned."

Through this judgement the court is maintaining a balance between protecting the rights of a child, born from an "invalid" or 'illegal' marriage, while not obscuring the age old principles of coparcenery or Joint Hindu Family under the Mitakshara Law. Thus, while an illegitimate child has been conferred with legitimacy and a right in the parents' property, both ancestral and self- acquired, such a child does not become a coparcener in the Hindu Mitakshara Joint Family and does not acquire any right by birth, as enjoyed by a coparceners.

### **Children Born out of Live- in Relationship:**

In *Bharatha Matha and Another vs R. Vijaya Renganathan and Others*<sup>13</sup> case, the Supreme Court held that, if man and woman are living under the same roof and cohabiting for a number of years, there will be a presumption under section 114 of the Evidence Act that they live as husband and wife and children born to them will not be illegitimate.

Section 16(1) of the Hindu Marriage Act does not remove the disability of illegitimate children as a whole, it is not rectified by the legislature that this section deals only with void marriages coming within the purview of Section 11 and does not deal with other types of void marriages.

In *Vidyadhari vs Sukhrana Bai*<sup>14</sup>, case it was observed by the Apex Court that as per section 16 of the Hindu Marriage Act, children born out of a live- in relationship should be given the status of 'legal heirs' and are entitled to the right to inherit the property of both the parents.

Again in *Tulsa and others vs. Durghatiya*<sup>15</sup> granted the right to property to the child born in a live-in relationship and held that such child shall not be treated as illegitimate in cases where the parents of such child have cohabited for a considerable period.

In addition the Apex court of India in *Revanasiddappa and another vs Malikarjun and other*<sup>16</sup>, opined that the right to property is a constitutional right of the illegitimate child and upheld the right to inheritance of the children who were born out of a live-in relationship.

In *SPS Bala Subramanyam vs Sruttayan*<sup>17</sup>, the Supreme court said that, "if a man and woman are living under the same roof and cohabiting for a number of years, there will be presumption under section 114 of the Evidence Act that they live as husband and wife and the children born to them will not be illegitimate. The same view was reiterated in 'Bharath matha' case.

In *Madan Mohan Singh vs Rajni Kant*<sup>18</sup>, the court supports the interpretation of law that no child is bastardised for no fault of his or her.

### **CONCLUSION**

The legitimate son of the father, alone inherits the property under Hindu Succession Act, 1956. Whereas illegitimate son of the father has no right to get the property under the same Act. The Hindu Succession Act which undisturbed the Mitakshara Joint family system where the son gets right by birth. Though the Hindu Succession (Amendment) Act, 2005 has given to daughter the same share as is allowed to a son, daughter by birth become a coparcener and have the same rights in the coparcenery as like a son and accordingly subject to same liabilities in respect to the said coparcenery property as that of a son.

The Hindu marriage Act, 1955 which amended in 1976 to give effect to section 16 of the same with an intent to remove the anomalies, has given legitimate status to the child of void and voidable marriage to the extent of giving them status in the society. But giving property right is not within the jurisdiction of this law. The Hindu Succession (Amendment) Act, 2005 fail in harmonising with Hindu marriage Act, in this respect. The Recent Apex court Judgement in *Revanasiddappa and another vs Mallikarjun and others*, a three Judge bench led by the Chief Justice of India D. Y. Chandrachud with its landmark Judgement on 1<sup>st</sup> September 2023, it was held that a child of an 'invalid marriage is entitled to a share in the parents' property, both self acquired and ancestral, after ascertaining the rights of such parent as per the mandate prescribed under the Hindu Succession Act, 1956. However such child does not become a coparcener in the Hindu Mitakshara joint Family. So the judgement has made it clear that the child of such invalid marriage would not be stigmatise as illegitimate moreover they will be treated at par with the legitimate one so far rights over property is concerned. Nevertheless the property will be only self acquired as well as ancestral property, which is ascertained but would not be recognised as coparcener. In coming days we can hope that the Apex Court will take the necessary step to give birth right to the illegitimate child in the Mitakshara joint family as a coparcener.

To give property rights to the illegitimate child the necessary amendments have to be made in the Hindu Succession Act, 1956 to that extent which had been amended in the year 2005 to widen the scope of section 6 of the Act, with an intent to give equal right to daughter in the Mitakshara Coparcenary.

It seems that the Supreme court as well as the High Courts of India always upheld the legitimacy of the children born out of live in relationship and interpreted the statutes in concurrence with Article 39(f) of the Constitution of India which lays down the responsibility on the state to provide children with opportunities to develop in a healthy manner and safeguard their interest.

The Hindu Marriage Act, 1956 as amended in 1976, gives the legitimate status to the illegitimate child, The Hindu Adoption and maintenance Act, 1956 provides maintenance to both legitimate as well as illegitimate child, unable to maintain themselves, Hindu Minority and guardianship Act, 1956 mention about natural guardian of legitimate as well as illegitimate child, who is responsible as well as entitle to take care of the minor and its property. Moreover, the judgement passed by the judiciary time to time to give equal status to the illegitimate child with the legitimate one is praise worthy. Nevertheless, the Hindu Succession Act, 1956, though amended in 2005, need amendment, at least to that extent to include legitimate child at par with illegitimate child to provide equal property right in the joint family.

#### **Notes and References:**

1. Narayan Prasad vs State of Chattisgarh 2017 SCC Online chh 1226
2. Came into force with effect from 17<sup>th</sup> June, 1956
3. Came into force with effect from 18<sup>th</sup> May, 1955
4. Defined under section 3 (g) of Hindu Succession Act, 1956
5. Came into force with effect from 27<sup>th</sup> May, 1976
6. (2003) 1 SCC 730
7. 1996 SCC (4) 76
8. AIR 1967 Mad 113
9. (1976) 2 All ER 411(424),
10. Revanasiddappa and another vs Mallikarjun and others, 2023 SCC, Online SC 1087
11. AIR 1990 Mad 110, I (1990)
12. AIR 1983 Bom.222
13. AIR 2010 SC 2685
14. (2008) 2 SCC 238
15. AIR 2008 SC 1193
16. 2023 SCC Online SC 1087
17. 1994 AIR 133, 1994 SCC (1) 460
18. AIR 2010 SC 2933
19. Supra,note 16

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