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## Rights of Children of Void and Voidable Marriages: A Comparison between Hindu and Muslim Personal Laws

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*What are the provisions or rights for a child born in a marriage that is void or voidable? There are many myths pertaining to the legitimacy of children born in India from a void and a void marriage. If a child is born out of lawful wedlock, he or she is said to be legitimate. There are three types of marriages prevalent in India, i.e., valid, voidable, and void marriages. The words "void" and "voidable" raise a big question about the validity of a marriage. As the name implies, valid marriages are lawful. However, the status of kids in a void declared marriage would be the big ambivalence that gets illustrated in such situations. In this research work, the researcher has focused on drawing out the comparison between the rights of children born of void and voidable marriages under Hindu and Muslim personal laws by studying it under two major parts. The first part deals with the concept of void/voidable marriages, the notion of legitimization, and the rights of children born of such marriages under the Hindu personal laws, while the second part deals with the same under the Muslim personal laws. The researcher then concludes the project by drawing out the comparison between the two and providing some suggestions for it.*

**Keywords:** *void marriage, voidable marriage, legitimization, rights of child, personal laws*

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### OBJECTIVES OF THE STUDY

The study has been undertaken with the following objectives:

- To examine the concept of legitimization under Hindu and Muslim personal laws.
- To discuss and compare the legal framework regarding the rights of children of void or voidable marriages under Hindu and Muslim personal laws.

## RESEARCH QUESTIONS

The following questions would be researched to complete this article:

1. What are the rights of children of void/voidable marriage under Hindu personal law?
2. What are the rights of children of void/voidable marriage under Muslim personal laws?
3. To what extent, are the rights of children born of void/voidable marriage under both personal laws different?

## HINDU PERSONAL LAWS

### VOID AND VOIDABLE MARRIAGES

#### *Void marriages*

A marriage that is not valid from the very beginning is called a void marriage. In such unions, the status of their marriage cannot be altered by either the parties or their living. The marriage is deemed void if any of the three conditions (living partner, prohibited order<sup>1</sup>, Sapinda<sup>2</sup>) is met.<sup>3</sup> Only the abovementioned three grounds can make the marriage void and the completion of all required ceremonies cannot make such marriages valid. No declaration is mandatory, but for the purpose of precaution or record, the same may be requested. A marriage that is void ab initio does not affect the party's status. No party has the duty to request a declaration of nullity.

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<sup>1</sup> Hindu Marriage Act 1955, s 3(g)

<sup>2</sup> Hindu Marriage Act 1955, s 3(f)

<sup>3</sup> Hindu Marriage Act 1955, s 11

### *Voidable marriages*

Voidable marriages can be avoided at the discretion of individuals that are party to such marriages. Such marriages are legal and binding until and unless the court decrees that marriage is void. Four grounds for voidable marriage are set out<sup>4</sup> –

1. Respondent's impotency
2. The inability of the respondent to consent or suffer from mental illness.
3. Consent obtained by fraud
4. Pre-marriage pregnancy concealment by the respondent.

### **LEGITIMISATION OF CHILDREN**

Children can be categorized into two categories: legitimate and illegitimate. The criteria for assessing a child's legitimacy vary from culture to culture. "A child is, or is believed to be, legitimate if it is born in legal wedlock anywhere in the world."<sup>5</sup> Illegitimacy is a condition that not only imposes a stigma but deprives a person of his/her entire estate of succession rights.<sup>6</sup>

### **PRIOR 1976 AMENDMENT**

Before the 1976 amendment, a child born from a void or voidable marriage was deemed legitimate pursuant to Section 16 only if the union between the parents of the child was given a degree of nullity.<sup>7</sup> In addition, such a child would be deemed to be a legitimate child in a way that would end the union between the child's parents rather than rescind it. If the child's parents could not receive a decree of nullity for their union, the kid would be declared illegitimate and would thus be exempted from the separate rights of inheritance.<sup>8</sup> Such a clause in the Hindu

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<sup>4</sup> Hindu Marriage Act 1955, s 12

<sup>5</sup> Pinky Anand, 'Family law in India: overview' (*Thomas Reuters Practical Law*, 01 July 2019) <[https://uk.practicallaw.thomsonreuters.com/6-5815985?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/6-5815985?transitionType=Default&contextData=(sc.Default)&firstPage=true)> accessed 01 August 2022

<sup>6</sup> *Ibid*

<sup>7</sup> Dr. Anil Kumar Singh, 'Legitimacy of Children Under Hindu Law: A Critique' (2018) 7(4) PIJR <[https://www.worldwidejournals.com/paripex/recent\\_issues\\_pdf/2018/April/April\\_2018\\_1522931025\\_74.pdf](https://www.worldwidejournals.com/paripex/recent_issues_pdf/2018/April/April_2018_1522931025_74.pdf)> accessed 01 August 2022

<sup>8</sup> *Ibid*

Marriage Act of 1955 was troublesome because children could not be 'bastardised' whether or not a declaration of nullity was enacted and hence the need to amend the provision was necessary for the court system to fill the gaps in the statute.

### **AFTER 1976 AMENDMENT**

The legislation, by the amendment of the present section, sought to eliminate the irregularities of Section 16 of the Statute. With respect to the children of void and voidable marriages, the amended Section 16 enacts a comprehensive law. Next, it declares how such a child's status is one that is legitimate. Secondly, it recognizes the parental property rights of such children. Thus, this amendment erases the impairment of these children as far as their parents' property is concerned. The aspects of Section 16 (after amendment) have been addressed in depth in the case of *Laxmi Bai Nagappa v Limba Bai*,<sup>9</sup> by the Bombay High Court.

In this case, Ambabai, the first wife of the deceased Nagappa, argued that the marriage of Nagappa and Laxmi Bai was void as Laxmi Bai was the second wife, and the children born of such wedlock would be considered illegitimate and therefore not inherit the property of Nagappa. The court decided that, after having read the provisions of this section together after amendment, it concludes that children of such wedlock will be legitimate, irrespective of the fact that the marriage of Laxmi Bai is void, and they'd have rights to either the properties left by their father or mother.

The Court addressed the provisions of the Section individually in the above case. The Court noted that the history of Section 16 of the Act indicates that it was imposed to grant legitimate status to such children. Section 16, which is split into three sections, has now been substituted.<sup>10</sup> According to subsection (1)<sup>11</sup>, the offspring from a void marriage as per Section 11 would be considered legitimate whether or not the decree of the court declaring such has been passed. Sub-section (2)<sup>12</sup> says that a child begotten or conceived of voidable marriage until declared void

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<sup>9</sup> *Laxmi Bai Nagappa v Limba Bai* (1983) AIR Bom 222

<sup>10</sup> Hindu Marriage Act 1955, s 16

<sup>11</sup> Hindu Marriage Act 1955, s 16(1)

<sup>12</sup> Hindu Marriage Act 1955, s 16(2)

under sec 12 would be legitimate and after the declaration of nullity would be legitimized under this section. If one of the parties of voidable marriage dies before the declaration of the marriage as void, the marriage would remain valid and the children of such a marriage would always be legitimate even without the aid of Sec 16.<sup>13</sup> Section 16(1)<sup>14</sup> confers immunity on children of marriages which are null and void pursuant to Section 11, and not on those unions which were null and void pursuant to the existing laws before 1955.<sup>15</sup>

Subsection (3)<sup>16</sup> notes that a child is only entitled to own or gain rights to any property belonging to his or her parents and not to any property belonging to anyone else. As long as the property of another person is concerned, it is evident from sub-section (3)<sup>17</sup> that the authority granted by sub-section (3) or (2) will mean that such a child is worthy of owning or gaining certain rights that he did not acquire because he was not the legitimate child of his or her parents. In fact, thus, it implies that such a child would have the status of a legitimate child with regard to the property of the parents, but not with regard to the property of other individuals.

## **RIGHTS OF LEGITIMATIZED CHILD**

### ***(1) Maintenance***

When it comes to void and voidable marriages, the parents are responsible for taking care of their children in the same way that parents who are legally married are responsible for their children. In Section 20 of the Hindu Adoption & Maintenance Act, 1956,<sup>18</sup> the obligation to maintain children of void, voidable or illegitimate children has officially been brought under codified legislation. This section therefore equally confers a statutory right of maintenance on behalf of legitimate and illegitimate children. Therefore, the status of illegitimate children is

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<sup>13</sup> Hindu Marriage Act 1955, s 16

<sup>14</sup> Hindu Marriage Act 1955, s 16(1)

<sup>15</sup> *Ibid*

<sup>16</sup> Hindu Marriage Act 1955, s 16(3)

<sup>17</sup> *Ibid*

<sup>18</sup> Hindu Adoption & Maintenance Act 1956, s 20

equal to that of legitimate children referred to in this section for maintenance purposes.<sup>19</sup> Furthermore, a right of maintenance is conferred on an illegitimate daughter under this section, even though she was not permitted to have it in the old law.<sup>20</sup>

A Hindu woman is also mandated to maintain both legitimate and illegitimate children.<sup>21</sup> As regards the children of void and voidable marriages, the study indicates that Section 16<sup>22</sup> of the Act has bestowed the status of legitimacy.<sup>23</sup> As the offspring of a legitimate married couple, they are therefore entitled to the right to maintenance in the same manner. Even so, no distinction between the children of valid marriages and the children of void and voidable marriages has been established by section 20<sup>24</sup>. There seems to be little dispute at this stage. In order to claim maintenance, it is not mandatory for the child to remain with the parent if there is a valid justification for residing separately. The child would be entitled to parent maintenance even if the child lives with the mother, who lives independently, while the father has married again and lives independently with his second partner.<sup>25</sup>

### Case Laws

*Bakulabai v Gangaram*<sup>26</sup>- In this case, the appellant was the 3<sup>rd</sup> wife of the respondent. She filed a special leave petition in order to receive maintenance from her husband. The husband challenged this by saying the marriage was void and hence she was not entitled to get maintenance. Furthermore, the child born of their marriage is illegitimate, and thus he owes no obligation to support him. The issue here was whether the appellant and her child were entitled to maintenance. The Supreme Court decided that since a person born from a void union between

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<sup>19</sup> Devika, 'Maintenance - Children and Parents' (SCC Online Blog, 10 January 2019) <<https://www.sconline.com/blog/post/2019/01/10/maintenance-children-and-parents/>> accessed 01 August 2022

<sup>20</sup> *Ibid*

<sup>21</sup> *Padmja Sharma v Ratan Lal Sharma* (2000) 4 SCC 266

<sup>22</sup> Hindu Marriage Act 1955, s 16

<sup>23</sup> *Ibid*

<sup>24</sup> Hindu Adoption & Maintenance Act 1956, s 20

<sup>25</sup> *Ibid*

<sup>26</sup> *Bakulabai v Gangaram* (1988) 1 SCC 537

a woman and a man who has already been married before, he should be considered a legitimate child and therefore entitled to maintenance under Section 125 CrPC.<sup>27</sup>

*A.B.S. Krishna Kumari v A. Varalakshmi*<sup>28</sup>-The illegitimate son lodged a maintenance lawsuit against his putative father, who settled the property in lieu of his natural sons and conducted a small gift deed as well. The apex Court ruled that under Section 20, a male or female Hindu is obliged to maintain his legitimate or illegitimate offspring until they become major.

*Viswambharan v Dhanya*<sup>29</sup>- In this case, the court said that a Hindu parent is responsible for maintaining his legitimate/ illegitimate male or female offspring under Section 20 of the Act. This duty to maintain may usually last until the child becomes a major. For the male child, once the age of maturity is met, his ability to demand maintenance will cease. However, if a female child cannot support herself from her own earnings after reaching the age of majority, such a privilege will continue until she marries.

## ***(2) Restricted Inheritance Rights (Joint family property and partition)***

After the declaration of voidable marriages to be void or for void marriages, the parties to such marriage cannot inherit the properties of each other. Legitimate children will succeed in their parents' property under the Hindu Succession Act 1956 (HSA). The issue for consideration is whether a child is eligible to succeed his father under the rules of the HSA by virtue of a void marriage or an annulled void marriage. The children of such marriages are entitled to inherit from their parents as the children of legitimate marriages inherit after claiming their legitimacy under section 16 of the Hindu Marriage Act of 1955<sup>30</sup>. Children of invalid and annulled voidable marriages are entitled as valid children to succeed in their father's property when they are connected to their father as construed in compliance with Section 3(1)(j)<sup>31</sup> and Section 16<sup>32</sup>.

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<sup>27</sup> Criminal Procedure Code 1973, s 125

<sup>28</sup> *ABS Krishna Kumari v A Varalakshmi* (1965) AIR AP 365

<sup>29</sup> *Viswambharan v Dhanya* (2005) AIR Ker 91

<sup>30</sup> Hindu Marriage Act 1955, s 16

<sup>31</sup> Hindu Succession Act 1955, s 3(1)(j)

<sup>32</sup> Hindu Marriage Act 1950, s 16

While the status of validity has been given to the children of invalid and voidable marriages, their property rights are limited. Section 16 sub-section (3)<sup>33</sup> states that children deemed legitimate under sub-section (1) and (2) may only obtain or gain rights in the possession of their parents. A son of a voidable marriage is a legitimate son without the aid of section 16 and will inherit as such. However, the son of a void marriage and the son of an annulled void marriage shall inherit only the property of the father and no other relationship.<sup>34</sup> The status of a daughter is the same as that of a son in a void and voidable marriage. All children inherit an equal amount.

Historically, this provision has been perceived in such a way as to imply that illegitimate children have the right to inherit their parents' self-acquired property and not their parents' ancestral or coparcenary property. At present, however, the section has been construed to include the ancestral property of the parents of the illegitimate child and is not only limited to the self-acquired property of their parents.<sup>35</sup>

### Case Laws

*Rameshwari Devi v State of Bihar & Ors*<sup>36</sup> - According to Section 16 of the Hindu marriage act, children of the marriage between a man and his second wife, are the legitimate sons of that person, and thus along with that of the first wife and of the children born from the first wedding, he will be qualified to his property in equal proportion. The second wife isn't even entitled to anything because the marriage is void.

*Smt. Sarojamma and Ors. v Smt. Neelamma and Ors.*<sup>37</sup>- In this case, the court held that pursuant to Sec 16(3), every legitimized child, like a natural legitimate child, has a right to inherit from his parents. Then the court went further, noting that such a child could be considered as a coparcener for the assets owned by the father belonging to the joint family. The only drawback,

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<sup>33</sup> Hindu Marriage Act 1950, s 16(3)

<sup>34</sup> V Raveendra Reddy, 'Rights of Legitimized Children Under Hindu Law' (1992) 34(3) JILI 466-71  
<[HTTP://WWW.JSTOR.ORG/STABLE/43951456](http://www.jstor.org/stable/43951456)> accessed 01 August 2022

<sup>35</sup> *Ibid*

<sup>36</sup> *Rameshwari Devi v State of Bihar & Ors* (2000) INSC 25

<sup>37</sup> *Smt Sarojamma & Ors v Smt Neelamma & Ors* (2005) ILR Kar 3293

however, is that the child of a void marriage is not eligible to seek partition during the father's lifetime and can seek partition only after the father's death.

*Revanasiddappa v Mallikarjun*<sup>38</sup>-The Apex Court ruled that illegitimate children are entitled not only to their parents' self-acquired land but also to their ancestral property.

## **SUMMING UP**

Section 16 of the Hindu Marriage Act (HMA) 1955 grants the children of void and annulled voidable marriages the status of legitimacy. Children of void marriages were legitimate prior to the 1976 amendment only if a decree of nullity was issued in relation to such marriage pursuant to section 11 of the Act. The children shouldn't just be legalized if no decree was received. In addition, an ordinary civil court, other than the marriage court, might give a decision in a collateral dispute relating to succession to the property that the marriage was a void one but without passing a nullity decree. Children were still unable to become legitimate in such cases. However, after amendment, whether or not a decree of nullity has been passed for such marriages, the children of void marriages are considered to be legitimate. With regard to the children of voidable marriages, sub-section (2) states that they are valid even though a decree of nullity is passed as if the marriage was dissolved rather than annulled by a decree of divorce. Section 16 thus confers the status of validity on the children of invalid and voidable marriages annulled. It reduces the long-standing social stigma faced by children who are illegitimate. Such legitimized children have the same rights as their counterpart legitimate children. The only restriction is that of the inheritance right in the case of ancestral property. As of now, they can claim that as well, but only after the death of their parents.

## **MUSLIM PERSONAL LAWS**

### ***BATIL AND FASID MARRIAGES***

#### ***Batil Marriages***

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<sup>38</sup> *Revanasiddappa v Mallikarjun* (2011) 11 SCC 1

Such a marriage, being invalid, does not produce any rights or responsibilities, and children who are born into such a union are considered to be illegitimate. "If marriage is forbidden for reasons of (a) consanguinity, (b) affinity, or (c) fostering, a marriage would be invalid."<sup>39</sup> Marriage to another man's wife or remarriage to a divorced wife is also invalid if the legal limit has already been reached. There are no rights and obligations between the parties because such a marriage is void. If consummation has not happened, a wife has no right to dower; otherwise, she is entitled to the customary dower. In addition, the other party is not eligible to inherit from the dead if one of the parties dies.

### *Faced Marriages*

Owing to the omission of any formality or the presence of any impediment that can be removed, such a marriage is irregular. The marriage is not in itself unlawful because the irregularity is capable of being reversed. In the following conditions, marriage is faced,<sup>40</sup> i.e., "a marriage that is: (i) without witnesses; (ii) with a fifth wife with a person with four wives; (iii) with a woman undergoing Iddat; (iv) forbidden because of a disparity in religion; (v) with a woman so linked to a wife that if one of them had been a male, they could not have married legally."

In the circumstances referred to above, the restriction against such marriages is conditional, subjective, or unintended and may therefore be corrected<sup>41</sup>: (i) by eventual recognition in front of witnesses; (ii) by the divorce of one of the four wives; (iii) by the end of the Iddat period; (iv) by the wife converting to Islam, Christianity, or Jewish faith, or by the husband adopting Islam;

The implications of a failed marriage that is not validated are as follows:

- It has no legal impact prior to consummation.
- After consummation, the offspring of a failed marriage are legitimate.

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<sup>39</sup> Abhishek Kumar Pandey, 'Concept of Marriage in Muslim Law' (*Legal Service India*) <<http://www.legalserviceindia.com/article/1162-Concept-of-Marriage-in-Muslim-Law.html>.> accessed 01 August 2022

<sup>40</sup> *Ibid*

<sup>41</sup> *Chand Patel v Bismillah Begum* (2008) Criminal Appeal No 488/2008

## LEGITIMACY AND LEGITIMIZATION

Among Mohammedans, there is great hatred of bastardising children and Mohammedan law is full of plotlines to discourage children from being bastardised. The legislation has acknowledged the legitimacy of kids, also in the case of a failed marriage, in its call for the protection of bastards wherever possible. Such unions are considered valid for the sake of legitimacy. Therefore, if a marriage is made in good conscience because the parties are married, even though the arrangement is not such, the infant may be legitimate.<sup>42</sup> In Islam, there is no concept of legitimating as such. There is no mechanism or procedure accepted by Muslim law to legitimize an unlawful child. Muslim law demands that pregnancy should take place after the marriage, real or equivalent, in order to make a child valid. There are two ways in which legitimacy is defined in certain circumstances<sup>43</sup>: (a) by birth during a *sahih*, *faced*, and not void marriage; or (b) by acknowledgement.

## PARENTAGE

Parenting is the relationship between parents and their children. Maternity is a legal mother-child relationship, and paternity is a legal father-child relationship. The word "parentage" is commonly used for the legal bond a child has with their parents. Certain privileges and responsibilities, such as reciprocal rights of succession, maintenance, and guardianship, are connected with these formal relationships.

A child's paternity can only be formed by marriage between her parents. The marriage may be irregular or valid, but it must not be null.<sup>44</sup> Legitimacy is often established as paternity is established. In the case of a child's legitimacy, the union between its parents is the key issue. Muslim law, however, states that "acknowledgement of paternity" by the father is acceptable in such cases where marriage between the parents of the child cannot be confirmed. The

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<sup>42</sup> S M Hasan, 'Muslim Law of Legitimacy and Section 112 of the Indian Evidence Act' (*JSPUI*) <<http://14.139.60.114:8080/jspui/bitstream/123456789/736/31/Muslim%20Law%20of%20Legitimacy%20and%20Section%20112%20of%20the%20Indian%20Evidence%20Act.pdf>> accessed 01 August 2022

<sup>43</sup> Akshaya Shukla, 'Evaluation of the Presumption of Legitimacy of a Child and the Muslim Law' (2017) 3(3) *International Journal of Law* 117-119

<sup>44</sup> *Ibid*

presumption refers to both legitimate and irregular marriages. The offspring of a Fasid (irregular) marriage appears to be valid under Muslim law even after its end.

Under Shia rule, the issue of void marriage has no paternity or maternity. That is, a bastard is *fillius nullius* under Shia Law. An illegitimate child has only maternity and no paternity under Sunni law. When a child's paternity is created, its legitimacy is also established. Under Sunni rule, a child's maternity is defined by the woman who gives birth to the child, regardless of whether wedlock or Zina resulted in the birth. Under Shia law, however, a sole birth is not adequate to create maternity; it must also be shown that the pregnancy is the outcome of a valid union.

## **RIGHTS OF CHILDREN BORN OF SUCH WEDLOCK**

### ***Inheritance***

In Muslim law, as mentioned above, the rights of illegitimate children are not acknowledged, and, accordingly, they are not given the right to inherit the property of their parents or their parents' relationships. Under Sunni Rule, the woman who gave birth to an illegitimate child has its maternity and such child is eligible for inheritance from the mother alone.<sup>45</sup> However, under Shia law, the child has neither maternity nor paternity and thus cannot inherit from both parents.

### **Case Law**

*Pavitri v Katheesumma Vaidiaalingam*<sup>46</sup>- The baby was born to a Hindu mother and a Muslim father. The court ruled that when determining whether the child has a right to acquire the property of her putative father and whether she is allowed to receive maintenance the unlawful child is not eligible for maintenance, as Mohammedan law does not place any responsibility on the putative father to support the unlawful child. Under Hanafi rule, the illegitimate child is only allowed to be sustained by his/her mother, so the illegitimate child does not demand maintenance except under Shia law. The court ruled that, with the

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<sup>45</sup> *Bakulabai* (n 26)

<sup>46</sup> *Pavitri v Katheesumma Vaidiaalingam* AIR 1959 Ker 319

*right to inherit or succeed in the property of the parents, the illegitimate infant was entitled to inherit the property of his mother only, under the rule of Hanafi.*

## **MAINTENANCE**

There is no maintenance right given to illegitimate children under Muslim rule. Therefore, no responsibility or duty to sustain and financially support illegitimate children is imposed on either parent. Illegitimate children are granted no acknowledgement, rights, or status in terms of succession, maintenance, guardianship, etc., are regarded as “*filius nullius*” and are referred to as Zina, or covert relations.

In addition, Mohammedan law places no responsibility or duty on the child's natural/putative father. Hanafi Law, on the other hand, treats an illegitimate child as if it were the mother's real child. This means that the mother has to take care of the child and is responsible for feeding and raising an illegitimate child. While an illegitimate child is not allowed under Muslim law to seek maintenance from the father, it does not prohibit an illegitimate child from obtaining maintenance from the father under Section 125 of CrPC.

## **Case Laws**

*Nafees Ara v Asif Saadat Ali Khan*<sup>47</sup>- While Muslim Law does not allow expressly for the granting of maintenance to an illegitimate child against his father, there is no restriction either enforced by Mohammedan Law, and while the rules of the CrPC are part of the general law of the land and thus are binding on Muslims as all residents of that country, in the absence of any contrary provision of Mohammedan Law, and thus merely because the Muslim Law provides no clause for maintenance, it does not mean that the civil court has no authority to issue a decree for maintenance.

*Sukha v Ninni*<sup>48</sup>- In this case, petitioner Ninni gave birth to an illegitimate child of Sukha. When Sukha refused to give maintenance to the child so born she filed a case under sec 125 of CrPC. The court held

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<sup>47</sup> *Nafees Ara v Asif Saadat Ali Khan* (1963) AIR All 143

<sup>48</sup> *Sukha v Ninni* (2000) AIR 909

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, the 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 offspring born under such circumstances is to be provided for and should not be left to the misfortunes of vagrancy and its attendant social consequences."<sup>49</sup>

## GUARDIANSHIP

As illegitimate children are deemed to be kids belonging to no one under Muslim law, they do not even have a natural guardian, and the biological parent is not generally assumed to be the illegitimate child's natural guardian. Within the Hanafi sect, the mother of an illegitimate infant is treated as the natural guardian of the infant before the child reaches the age of 5. However, in the case of *Gohar Begam v Suggi*, the Hon'ble Supreme Court of India claimed that "under Muslim rule, the mother (appellant) is entitled to custody of an illegitimate minor daughter irrespective of who the father is, and the putative father has no legal right to custody of the minor child."

## SUMMING UP

Batil marriages are void ab initio marriages and are considered to be no marriage in the eyes of law. Such marriages do not create any mutual obligation for such couple and the child born of such union is considered to be illegitimate. Faced marriages are irregular marriages that can be made Sahih by removing the irregularities present in the marriages. This kind of marriage is recognized by Sunnis only. For Shias such marriages are void. Children born from irregular marriages are legitimate and have all the rights of inheritance, maintenance, and guardianship under Muslim personal laws. However, a child born of Batil marriages is considered to be a child of no one in eyes of Shia Muslims and hence has no right of inheritance, maintenance, or guardianship from parents. However while for Sunnis, although the putative father carries no

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<sup>49</sup> *Ibid*

duties for such a child; his mother has a responsibility of maintaining this child and the child can inherit the property of her mother alone.

## CONCLUSION AND SUGGESTION

Under the garb of this topic, the researcher first tried to find out what is actually meant by void and voidable marriages under Hindu law and Batil and Fasid marriages under Muslim law. Then the next part tried to explain the concept of legitimacy and legitimization. While in Hindu personal law, children born of valid marriages are naturally legitimate, and children born from the void and voidable marriages are made legitimate pursuant to Sec 16 of the Hindu Marriages Act, 1955, there is no such concept of legitimization under Muslim personal laws. In Muslim laws, for Sunnis, a child born of Batil marriage is considered to be illegitimate and those born from fasid marriages are legitimate. However, because Sunni does not recognize Fasid marriages, the children born from such unions are considered illegitimate. In other words, only children born from lawful wedlock are considered to be legitimate under Muslim personal laws.

In the next and final part of this project, the researcher tried to compare the rights of children born from such marriages under the Hindu and Muslim personal laws. Under the Hindu personal laws, since children born from the void and voidable marriages are conferred the status of legitimate children, they have all the rights of their counterparts who are naturally legitimate without the aid of Sec 16 of the Hindu Marriage Act. However, there is an exception to this, which is provided under Sec 16(3) of the Hindu Marriage Act, i.e., such legitimized children could inherit the property of their parents only and of no one else. Hence, this could be seen as some sort of restricting provision.

While considering the rights of children born of Batil and fasid marriages under Muslim law, the researcher concludes that there is some disparity among different sects of Muslims themselves. For Sunnis, an illegitimate child has maternity, which means that the child's mother has to take care of him or her, even though the child's supposed father has no responsibility for him or her and the child can only inherit from her mother. He has the right of guardianship and maintenance from others until he attains the age of seven. However, Shias believe that an

illegitimate child has neither maternity nor paternity. He is considered to be the child of no one and hence cannot inherit from both of his parents. Under Muslim personal laws, he has no right to succession, maintenance, or guardianship. But as of recently, even an illegitimate child can get support from a putative father under Section 125 of the CrPC, as ruled by different courts.

## SUGGESTIONS

Both personal laws contain some form of restriction on the rights of children from void and voidable marriages. According to Hindu personal laws, although the children born from such marriages are considered to be legitimate, they have limited rights to the inheritance of ancestral property. Since the primary objective of amending Section 16 was to provide the same rights to legitimized children as the other naturally legitimate children, not giving them equal inheritance rights for ancestral property seems to be defeating this very purpose.

Similarly, for Muslim personal laws, labelling the children born from Batil marriages as illegitimate and not providing them with certain basic rights that every child should deserve violates the very fundamental right of equality for such children. Also, according to the Supreme Court's judgment that "**there are no illegitimate children, only illegitimate parents,**" **it seems that such children are not given the rights that they actually deserve.**

Considering all these factors, the researcher believes that there is a need for a uniform law in this regard so as to provide such children with the rights that they actually deserve, like a natural legitimate child.