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Inheritance and Succession Rights of Illegitimate Child under Hindu Laws in India

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"*There are no illegitimate children, only illegitimate parents*"

- Leon R. Yankwich

The purpose of this research paper is to analyze the inheritance and succession rights of an illegitimate child under Hindu law in India. On the basis of the research findings, research states that though there are provisions in Hindu Marriage Act, 1955 and Hindu Succession Act, 2005 mentioning the rights of an illegitimate child on the property and there are various different judgments on the rights of succession and inheritance of an illegitimate child, there is still not a clear idea as to does the illegitimate child has inheritance or succession rights over the ancestral property and self-acquired property. It is the responsibility of the judiciary to lay out the guidelines of succession and inheritance rights of an illegitimate child and it is the duty of the legislature to incorporate the required changes through amendments in the laws. The paper focusing on the inheritance and succession rights of an illegitimate right under Hindu law mentions that it is the need of the hour that the Hindu laws are amended so as to incorporate the judicial pronouncement and to bring the illegitimate child in par with the legitimate child in terms of succession and inheritance rights under Hindu law.

Keywords: *illegitimate child, hindu law, succession rights, inheritance rights.*

INTRODUCTION

The term illegitimate is derived from the Latin maxim meaning "*not in accordance with the law*". A child acquires this status through the legitimacy of the wedlock of its parents. An illegitimate child has no legal relationship with his or her parents. According to the oxford dictionary, an illegitimate child is "*born of parents not lawfully married*". Whether the status of the relationship of parents is legal or not and the marital relationship of parents are the two factors that determine the illegitimacy of a child. A child does not have to do with him or her being illegitimate but yet, but it is the child who has to borne the consequences. Illegitimacy is considered as a sin and thus the personal laws discriminate between the children on the basis of their legitimacy and do not consider them equal and thus deprive them of equal rights of inheritance and succession. Before the codification of Hindu laws, illegitimate children were not given any inheritance or succession rights, but after the confiscation of the Hindu laws and subsequent amendment, illegitimate children were given some rights but yet only such illegitimate children were considered who was born out of the void or voidable marriages. Children born out of a relationship without marriage are given no rights. Moreover, illegitimate children are deemed to be related to mothers only and have limited or no rights as to inheritance or succession of property on his or her father's property. The courts through their various decisions have tried to expand the scope of an illegitimate child as recognized in Hindu law by giving them equal rights as a legitimate child. However, the child born out of a relationship not being a marriage is not considered either by courts or the legislature. Whatsoever the courts have given the opinion that the children are innocent and should be given equal rights as that of legitimate children.

RESEARCH QUESTION

1. Which children are covered under the definition of illegitimacy under Hindu laws?
2. Do illegitimate children have succession rights under Hindu laws?
3. What rights are given to illegitimate children under Hindu laws and interpretation by the judiciary?

OBJECTIVES

- To understand the definition of an illegitimate child as given under Hindu laws
- To analyze the succession/inheritance or inheritance rights of an illegitimate child under Hindu law
- To study the Hindu law and various cases pronounced by the courts in India covering Inheritance or succession rights of the illegitimate children

RESEARCH METHODOLOGY

The research paper employs a doctrinal research method in order to determine whether an illegitimate child has a right to succeed or inherit the property of their parents or ancestors. The research paper examines illegitimate children's rights toward succession or inheritance rights and the changes that have occurred over time while keeping the social stigma in mind. The research paper is entirely based on secondary data gathered from secondary sources. Secondary data were gathered for this study from a variety of sources, including books, journals, magazines, seminar and conference papers, thesis reports, website reports, published books, articles, published interviews, and newspapers, among others.

SIGNIFICANCE

Due to the involvement of personal laws based on religious communities and the beliefs that they uphold, the legitimacy of a child is given great importance in India. A child born out of wedlock is deemed illegitimate because a child's legitimacy is determined by the type of relationship the parents have. However, the law must evolve to meet the needs of the changing dynamics of society, and it is the responsibility of the judiciary to do so. Although a child born out of wedlock is considered illegitimate, the child is innocent in the situation; however, the child must bear the brunt of society's judgment. Although illegitimate children are prevalent in India, they receive little attention. Although there are a significant number of illegitimate children in India, the issue is not widely publicized. Through this research paper, the researcher hopes to gain a better understanding of the rights granted to children on their parent's property, as well as the involvement of courts and personal laws. Because of the inconsistency between

the personal laws of different communities, there is an increasing need for a unified code that would be applied regardless of the application of the parents' personal laws.

LIMITATION

Despite all sincere efforts to collect relevant information and data for this research, there are some inherent limitations. The researcher was unable to collect primary data due to financial and time constraints. Because the research had to be completed in a month, an elaborate study could not be conducted due to a lack of time. Many research papers have pointed out that the law regarding an illegitimate child's property rights is dependent on the type of relationship between the parents as well as the personal laws involved. There is no consistency or adequate guidelines on the rights of children born out of wedlock and also the rights of a child born out of a relationship not being in wedlock. Although the child is innocent in this situation, the impact of society and religious perception has an impact on the child's rights. To gain a broad understanding of the term, the researcher relied on landmark cases in the field. However, the opinions expressed in court judgments differ, which has created a problem. In many cases, the courts have stated that these children's rights are inherited by virtue and birth and that they must be granted these rights rather than begging for them.

LITERATURE REVIEW

Prachi Dutta: In the article "Illegitimate Children and the Law: A Primer on the Rights of Children Born Out of Wedlock in India" mentioned that in the case of an invalid marriage, the legitimacy of the child is determined by the individual law of the child or of the parents. The article said that the amendment was made to ensure that the parents protect the innocent child from societal prejudices and guarantee the right to inherit property as if the child were legitimate. However, the rights protected only concern children born from an invalid or void marriage, which is one of the issues that need attention. In the article, the author talks about different types of marriage and uses the words nullified and void. The distinction between the two is important in empowering the child and determining when the child will be deemed legal or illegitimate. The absence of a uniform law has given rise to differing opinions in different

cases as innocent children bear the brunt. The rights of illegitimate children are limited and society's prejudices have led to discrimination among them.[1]

Kunjal Arora (2015): In the article titled "Illegitimacy under Hindu Law" talks about illegitimate children and rights under Hindu law. The article mentioned that equal rights are an important right that should be given to children born from the unrecognized marriage. Although marriage has no legal validity, the child born of such marriage is innocent and should enjoy other rights as legal children. The author also mentions that the absence of uniform law is due to the change that Indian society is going through. While some believe in orthodox methods obscured by religion, others believe in a more liberal and rational approach that does not consider illegality taboo. While not blaming the child but the parent for the outcome, it is important to note that the child suffers consequences that are neither fair nor just. Therefore, it is important for society to modify and adopt a very liberal approach in order to get the best interests of children out of wedlock.[2]

Nimisha Srivastava (2016): In the article titled "What Are the Rights of Illegitimate Children under Hindu Law" establishes what marriages are deemed to be unlawful and voidable in accordance with Hindu law. This is because defining the rights of an illegitimate child to the parent's property depends on the legality of the marriage. Children born out of the void or voidable marriages are now considered legitimate under the new amendment, which was construed differently. These children do not have a claim to the parent's property, but they do have a right there that is comparable to a legitimate one. Due to the fact that the child was born out of wedlock, the child from such a marriage has no claim to any inherited property and is not eligible to join the joint Hindu family. Due to the innocence of the kid born from such a scenario, the courts have recognized these rights. What was legitimate in the past might not be legitimate

[1] Prachi Dutta, 'Illegitimate Children and the Law: A Primer on the Rights of Children Born Out of Wedlock in India' (Legit *Eye,* 6 August 2022) <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 24 September 2022

[2] Kunjal Arora, 'Illegitimacy under Hindu Law' (*Lawctopus,* 13 November 2015) <https://www.lawctopus.com/academike/illegitimacy-hindu-law/> accessed 24 September 2022

today. Since Section 16(3) of the Hindu Marriage Act is unrestricted, courts have ruled that an illegitimate child would be entitled to their parents' ancestral and self-acquired property.[3]

Legal Dictionary (2016): In the article titled "Illegitimate Child" outlined the background behind the idea of illegitimacy. The author claimed that while the topic was taboo in the past, it is now accepted as long as the parent's biological relationship with the child can be established. The rights to a property are not safe in the absence of a biological relationship and should be accompanied by some form of security, such as a will. The article focuses primarily on children's rights to equality regarding their father's property. The author claims that since the right to the mother's property is easier to get than the father's, an illegitimate kid has the same right to inherit as a child born outside of wedlock. The aim of the Constitution is to provide equal rights and depriving the illegitimate child of the parent's property would be unconstitutional.

IJIRT (May 2021) Volume 7 Issue 12: In this article titled " a study on the property rights of illegitimate children in India" the author stated that due to the dynamic role of the judiciary, the central government needs to pass unified legislation regarding the property rights of the illegitimate children irrespective of their religion.

FINDINGS

Provisions Under Hindu Laws outlining the property rights of illegitimate children: Under Hindu laws, the legitimacy of the child depends on and is recognized on the basis of the legitimacy of the marriage of the parents. The Hindu Marriages Act, 1955, sects 5 and 7 talk about valid marriage, and a child born out of valid marriage is considered to be legitimate. Sections 11 and 12 talks about the void and voidable marriages and children born out of such marriages are considered to be illegitimate. Sect 16 (3) after the amendment gives the right to such an illegitimate child as mentioned above the equal rights to inherit his father's property as that given to the legitimate child. However, the act does not include the illegitimate child born out of a relationship beyond the scope of sect 11 and 12. The sect does not include the child born

[3] Nimisha Srivastava, 'What Are the Rights of Illegitimate Children Under Hindu Law' (*iPleaders*, 6 April 2015) <https://blog.ipleaders.in/rights-illegitimate-children-hindu-law/> accessed 24 September 2022

out of a relationship not being a marriage. For eg a child born out of a live-in relationship is given no recognition in the Hindu laws. The Hindu Succession Act, 2005 does not differentiate between the illegitimate and legitimate child, it does not define the word illegitimate child and there is no clarity as to who is included in the category of an illegitimate child. The children of the live-in relationship are not given the status of legitimacy or illegitimacy in any of the Hindu laws. They are not given recognition thereby creating ambiguity in deciding whether can they inherit or succeed in the ancestral and self-acquired property of their parents.

Rights of an illegitimate child to inherit the property of their parents through judgments: In Jinia Koetin v Kumar Sitaram Manjhi, the Supreme court held that a child born out of a legally invalid marriage termed as illegitimate is to be given the right to inherit his father's parents which a legitimate child could[4]. In the case of SPS Balasubramanyam v Sruttayan, the court held that a child that is born out of a cohabited relationship for a long time will be legitimate. The court noted that the child is innocent and should be entitled to inherit the properties of his or her parents. Also, the definition of illegitimacy has changed over time and sect 16 will be a step toward social reform necessary for the economic and social development of the child[5]. In the case of Revansiddappa, the Supreme court differed from its own opinion and took a step forward to say that sect 16 (3) can be broadly interpreted and the illegitimate child can inherit not only self-acquired property but also the ancestral property as a legitimate child, thereby bringing the legitimate and illegitimate child at par. The Bench said, "*The relationship between the parents may not be sanctioned by law but the birth of a child in such relationship has to be viewed independently of the relationship of the parents. A child born in such a relationship is innocent and is entitled to all the rights, which are given to other children born in a valid marriage. This is the crux of Section 16 (3)*." The Supreme court in Tulsa & Ors vs Durghatiya & Ors on 15 January, 2008 and Badri Prasad vs Dy. Director of Consolidation on 1 August 1978 reaffirmed that "*Where a man and woman are proved to have lived together as man and wife, the law will presume unless the contrary be clearly proved, that they were living together in consequence of a valid marriage, and not in a state of concubinage.*" And hence by this, we can say that the child born out of such a relationship will be considered

[4] *Jinia Keotin & Ors v Kumar Sitaram Manjhi & Ors* [1995] SC 7247
[5] *SPS Balasubramanyam v Suruttayan* [1993] AIR 133 (SC)

legitimate and can succeed/ inherit properties of his/her parents as a class 1 heir of the Hindu Succession Act, 2005.

SUGGESTION

It is pertinent to note that as and when required the idea of illegitimacy has changed, what was illegitimate before may now not be illegitimate now. The rights of the illegitimate child had to be reviewed because the importance of rights of the illegitimate child was brought to the limelight through various cases filed before the courts. The Courts have time and again stressed that the child of an illegitimate or void or voidable marriage is innocent and just because the marriage was void or voidable, the child cannot be deprived of his rights to the self-acquired or ancestral property. The child went and took a step ahead to give the illegitimate child of the void or voidable marriage equal rights in his/her parents' property as that of a legitimate child. Though the legislation too gave the illegitimate child a right to inherit his/her father's self-acquired property, there is a need for the legislation to amend the acts and make provisions on par with the situations today. The child is innocent and hence should be provided with equal rights in the property as that of a legitimate child. The provisions should include children born out of live-in relationships as well as give them legitimate status and equal rights in self-acquired and ancestral property.

CONCLUSION

In summary, it can be said that although illegitimate children have rights to their parents' property, personal laws play a very important role in deciding whether they have rights to the property or not. Independent, ignorant children in today's diverse society face social stigma, which affects their image in public. In countries like ours, society continues to fall victim to these children. Due to the lack of a uniform code that answers questions regarding this issue, there will be some discrimination based on parents' religious beliefs and individual laws. Although there is no law in the current circumstances, the Supreme Court has tried to protect the right of illegitimate children to be born out of wedlock because they are innocent. Due to changes in society, laws need to be revised from time to time to meet the needs of the people. What were

legal years ago may not be what it is today and that is why the Supreme Court has tried to adapt to the dynamic nature of society. The liberal and rational thinking of people has given illegitimate children equal rights on their parent's property as legitimate children.