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## Legal Rights of Children Born from Rape or Unwed Mothers

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*This study explores the multifaceted legal rights of children born to rape or to unwed mothers in India, a group often marginalised due to societal stigma and gaps in legal frameworks. It provides a comprehensive analysis of constitutional guarantees, secular statutes such as Section 144 of the Bharatiya Nagarik Suraksha Sanhita and key personal laws assessing rights to legitimacy, inheritance, maintenance, custody, and access to social welfare. The research highlights how existing laws, such as the Hindu Succession Act and the Guardians and Wards Act, as well as international treaties like the UN Convention on the Rights of the Child, strive to protect these children's dignity and best interests. However, discrepancies remain, especially under certain religious personal laws, creating obstacles in the realisation of full legal and social protection. The study emphasises the urgent need for harmonised reforms, proactive enforcement, and community sensitisation to eliminate discrimination based on birth status. Drawing on comparative international practices, it advocates for a rights-based child-centric approach to policy and law, ensuring every child, regardless of origin, is guaranteed equality, justice and a respectful life in Indian society.*

**Keywords:** *legitimacy, inheritance, maintenance, guardianship, constitutional rights.*

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### INTRODUCTION

In India, children born from rape or to unwed mothers endure severe social and legal challenges, often facing emotional trauma and identity issues due to societal rejection and discrimination. The prevailing stigma impacts not only these children but also their mothers,

who suffer immense psychological distress as a result of social ostracism.<sup>1</sup> Legal protections for such children are rooted in various statutory provisions and constitutional guarantees intended to safeguard their fundamental rights. The Bombay High Court, for example, has emphasised that children born after rape cannot be treated as property linked to a crime and specifically ordered authorities to treat such children with dignity and as independent legal persons, ensuring their right to rehabilitation and family life in accordance with Article 21 of the Constitution.<sup>2</sup>

Under criminal law, a child born from rape is one conceived through sexual violence as defined under Section 63 of the Bharatiya Nyaya Sanhita (BNS)<sup>3</sup>. Though personal laws may harshly label such children as illegitimate, statutory provisions ensure they are not denied essential rights. Section 144 of the Bharatiya Nagarik Suraksha Sanhita (BNSS)<sup>4</sup> obliges biological fathers to pay maintenance to children born from rape, supporting the child's welfare and survival. Furthermore, courts have held that these children also have inheritance rights; the Supreme Court in *Mohammed Salim v Shamsudeen*<sup>5</sup> clarified that even children from irregular or void Muslim marriages are entitled to inherit property under Muslim personal law.

Children born to unwed mothers also experience prejudice, battling questions of legitimacy and social acceptance. Legally, such children are defined as those born outside marriage. The Guardians and Wards Act 1890, particularly Section 7, designates the mother as the natural guardian, confirming her primacy over custody in cases where the identity or involvement of the father is uncertain. The Supreme Court has recognised these children's rights to ancestral property with the precedent set in *Revanasiddappa v Mallikarjun*.<sup>6</sup> The Kerala High Court further strengthened protection by ruling that a child has the right to use only the

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<sup>1</sup> 'Country policy and information note: women fearing gender-based violence, India, August 2025 (accessible)' (Gov. UK, 28 August 2025) <<https://www.gov.uk/government/publications/india-country-policy-and-information-notes/country-policy-and-information-note-women-fearing-gender-based-violence-india-august-2025-accessible>> accessed 12 July 2025

<sup>2</sup> 'Know why Bombay HC permitted 12-year-old rape victim to terminate 29 weeks pregnancy' *SCC Online* (23 June 2025) <<https://www.sconline.com/blog/post/2025/06/23/bomhc-permitted-12-year-old-rape-victim-to-terminate-her-pregnancy-scc-times-legal-news/>> accessed 12 July 2025

<sup>3</sup> Bharatiya Nyaya Sanhita 2023, ch V

<sup>4</sup> 'Primacy to Suraksha: Understanding the Bharatiya Nagarik Suraksha Sanhita, 2023' *SCC Online* (05 May 2024) <<https://www.sconline.com/blog/post/2024/05/05/bnss-that-is-to-replace-crpc-explained-with-key-highlights/>> accessed 12 July 2025

<sup>5</sup> *Mohammed Salim (D) through LRs and Ors v Shamsudeen (D) through L.Rs. and Ors.* 2019 (4) SCC 130

<sup>6</sup> *Revanasiddappa v Mallikarjun and Ors* (2011) 11 SCC 1

mother's name in all identity documents, reaffirming the right to privacy, dignity and liberty for children of rape victims or unwed mothers under Article 21.

## OBJECTIVES OF THE STUDY

1. To study constitutional and statutory laws on the rights of children born to rape or to unwed mothers.
2. To check inheritance maintenance and guardianship rights under personal laws.
3. To find problems in laws and how they are followed.
4. To give ideas for better legal and policy changes for protecting these children's rights.

## CONSTITUTIONAL PROVISIONS

**Article 14<sup>7</sup> (Equality before Law):** Article 14 of the Indian Constitution guarantees equality before the law and equal protection of laws to every person, which explicitly includes children born from rape or to unwed mothers. This provision mandates that these children must not be subjected to any discrimination or unfavourable treatment on grounds of their birth status. Laws or actions that attempt to treat such children as different or lesser under the law are unconstitutional. Article 14 acts as a safeguard ensuring that all children, irrespective of their parentage, receive fair treatment and protection, thus countering societal stigmatisation embedded in personal or customary laws.

**Article 15<sup>8</sup> (Prohibition of Discrimination and Special Provisions):** Article 15 prohibits discrimination on grounds such as religion, race, caste, sex or place of birth, further reinforcing protections for vulnerable children. Specifically, Article 15(3) empowers the State to enact special provisions for women and children to address their particular needs. This allows the government to implement supportive measures like scholarships, welfare schemes or identity protections specifically benefiting children born from rape or outside wedlock. These measures aim to alleviate social disadvantages and foster inclusion without violating the principle of equality. Article 15 thus provides constitutional backing for affirmative actions and policies intended to protect and uplift these marginalised groups.

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<sup>7</sup> Constitution of India 1950, art 14

<sup>8</sup> Constitution of India 1950, art 15

**Article 21<sup>9</sup> (Right to Life and Personal Liberty):** Article 21 guarantees the right to life and personal liberty, which Indian courts have expanded to include the right to dignity, education, health and a safe environment for all children. This compellingly affirms that children born from rape or to unwed mothers must be afforded full respect and opportunities to develop in a safe and nurturing environment. The combination of Articles 14, 15 and 21 creates a strong constitutional framework that not only prohibits discrimination but also mandates positive action for the welfare and dignity of these children, securing their fundamental rights in the face of societal prejudices.

**International Obligations:** Internationally, India is a party to the United Nations Convention on the Rights of the Child (CRC), which complements constitutional guarantees by emphasising non-discrimination (Article 2), the best interest of the child (Article 3) and the right to identity and family relationships (Articles 7 and 8). Although the CRC is not self-executing in Indian courts, its principles have been adopted as interpretative tools by the Supreme Court and other judicial bodies to strengthen the protection of children's rights, including those born to rape or unwed mothers. The CRC's international framework guides Indian legal standards toward more inclusive and child-centred approaches.<sup>10</sup>

## GENERAL PRINCIPLES OF LEGITIMACY AND ILLEGITIMACY

**Legal Definitions:** In India, an illegitimate child is legally defined as one born outside of a lawful marriage between the parents. Various personal laws apply different standards to decide legitimacy, often affecting matters such as inheritance and maintenance rights. The term illegitimate essentially refers to children conceived from relationships not recognised as valid marriages under statutory or customary law, including children born of void or voidable marriages and extramarital relations. Under Hindu law, for instance, legitimacy depends on the validity of the marriage under the Hindu Marriage Act (1955), with children born from void or voidable marriages historically treated differently from those born in valid marriages. However, recent legal provisions and interpretations have expanded protections, granting inheritance and maintenance rights to such children, though some restrictions remain, especially regarding ancestral property rights or family status in joint Hindu family

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<sup>9</sup> Constitution of India 1950, art 21

<sup>10</sup> Jason M. Pobjoy, 'The Convention on the Rights of the Child as a Complementary Source of Protection' in Jason M. Pobjoy (ed), *The Child in International Refugee Law* (CUP 2017)

property. Apart from Hindu law, other personal laws like Muslim, Christian and Parsi laws also hold variable positions towards illegitimacy, often resulting in different degrees of recognition and rights for such children. Importantly, secular laws such as Section 144 of the Bharatiya Nagarik Suraksha Sanhita (BNSS) confer rights on children born out of wedlock to receive maintenance from biological fathers irrespective of their legitimacy status. Despite the societal stigma attached to illegitimacy in various communities, the Indian legal system increasingly recognises that illegitimacy should not bar children from basic rights and protections under the law.<sup>11</sup>

**Presumption of Legitimacy:** The presumption of legitimacy is a foundational legal principle aimed at establishing paternity and protecting the child's status when born during a marriage. Section 119 of the Indian Evidence Act (Bharatiya Sakshya Adhiniyam) states that a child born during the continuance of a valid marriage between the mother and the husband is presumed to be legitimate, meaning the husband is legally presumed to be the father. This presumption facilitates proving paternity and confers legal rights concerning custody, inheritance, and maintenance. However, this presumption does not apply where the parents were never married, and in such cases, the child's legitimacy is not presumed by law. Nevertheless, Indian secular laws and courts often extend fundamental rights and protections to children born outside marriage to ensure their welfare and prevent discrimination independent of legitimacy presumptions. This legal distinction helps ensure that children born of non-marital relationships are not deprived of essential support and recognition, reflecting an evolving legal approach that prioritises the child's best interests over marital status. The presumption aims to uphold legal certainty for children born within marriage while also recognising the need to protect the rights of all children in diverse family situations.<sup>12</sup>

**Judicial Interpretations:** A child born from rape has the Right to Life with dignity under Article 21, as said in *Francis Coralie v Union Territory of Delhi*<sup>13</sup>, this includes food, home,

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<sup>11</sup> G.K. Goswami and Siddhartha Goswami, 'Live-in Relationships: Social Myths Legal Realities and the Way Forward' SCC Online (30 December 2021) <<https://www.sconline.com/blog/post/2021/12/30/live-in-relationships-social-myths-legal-realities-and-the-way-forward/>> accessed 12 July 2025

<sup>12</sup> Sucheta, 'Legitimacy determines paternity under Section 112 Evidence Act, until the presumption is rebutted by proving 'non-access': SC' SCC Times (29 January 2025) <<https://www.sconline.com/blog/post/2025/01/29/legitimacy-determines-paternity-section112-evidence-act-sc-legal-news/>> accessed 12 July 2025

<sup>13</sup> *Francis Coralie Mullin v The Administrator, Union Territory of Delhi & Ors* (1981) AIR 746

school and safety. In 'A' through Father 'F' v State of U.P., the Allahabad High Court gave such children inheritance rights.<sup>14</sup> In ABC v State (NCT of Delhi) and XXXXXXXXXX v Registrar of Births and Deaths, Pathanamthitta Municipality, Kerala High Court, the courts said the mother's name alone can be on documents, and all children have full rights.<sup>1516</sup>

## MAINTENANCE RIGHTS

**Section 144 BNSS:**<sup>17</sup> Section 144 of the Bharatiya Nagarik Suraksha Sanhita (BNSS) authorises Magistrates to order maintenance for wives, children and parents who are unable to maintain themselves. This provision applies equally to legitimate and illegitimate children, including those born from rape or outside marriage. Maintenance can be ordered if the biological father neglects to provide support despite having sufficient means. The scope of Section 144 BNSS is secular and religion-neutral, ensuring all children receive financial support regardless of their birth circumstances. Courts have discretion to grant maintenance from the date of application or order, emphasising the importance of preventing destitution and protecting dignity. The law covers basic needs such as education, health and living expenses and aims to secure a dignified life for the child.

**Hindu Adoption and Maintenance Act 1956:** Under the Hindu Adoption and Maintenance Act 1956, particularly Section 18(1), Hindu parents are legally obliged to maintain their children, including those born outside marriage. This means that children of unwed Hindu mothers have the right to claim maintenance if they cannot support themselves. The Act expands parental responsibilities beyond biological or marital status, reinforcing protection for vulnerable children. Maintenance includes provision for food, clothing, education, and other essentials necessary for the child's well-being. This legal obligation underscores the principle that a child's right to maintenance is not contingent on the parents' marital status under Hindu law.<sup>18</sup>

<sup>14</sup> 'A' through her Father 'F' v State of U.P. Thru Prin. Secy., Med. & Health Ser. & Ors WP No 8210/2015

<sup>15</sup> ABC v State (NCT of Delhi) AIR 2015 SC 2569

<sup>16</sup> Xxxxxx v Registrar of Births and Deaths Pathanamthitta Municipality (2022) LiveLaw (Ker) 373

<sup>17</sup> Bharatiya Nagarik Suraksha Sanhita 2023, s 144

<sup>18</sup> Bhumika Indulia, 'Maintenance - Children and Parents' SCC Online (10 January 2019)

<<https://www.scconline.com/blog/post/2019/01/10/maintenance-children-and-parents/>> accessed 12 July 2025

**Muslim Personal Law:** Muslim personal law traditionally differentiates between legitimate and illegitimate children, generally disallowing inheritance rights for children born outside lawful marriages. However, despite these personal law restrictions, Section 144 BNSS overrides such limitations by granting these children the right to maintenance. This ensures that even if classical Muslim law does not recognise the child's legitimacy, they are not left without financial support. Thus, secular law serves as a protective shield for children born under less recognised relationships, ensuring their survival and dignity regardless of religious personal law.<sup>19</sup>

**Christian Personal Law:** Christian personal law does not specifically provide for the maintenance of children born outside marriage. In such cases, these children cannot claim maintenance under family or church laws. However, Section 144 BNSS applies uniformly, allowing maintenance claims irrespective of personal law. This demonstrates the supremacy of secular law in safeguarding the welfare of all children, particularly those who might be excluded under specific religious laws. Thus, children of unwed Christian mothers rely predominantly on Section 144 BNSS for maintenance rights, reflecting the inclusive and non-discriminatory intent of this legislation.<sup>20</sup>

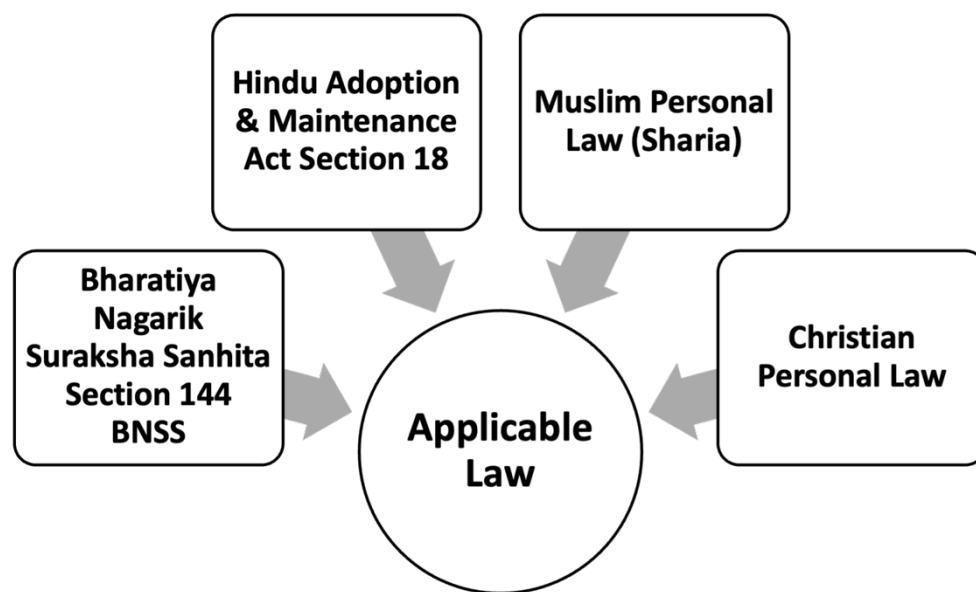
## COMPARATIVE OVERVIEW OF MAINTENANCE SCHEMES

| Applicable Law                                      | Provision                | Coverage for an Illegitimate Child              |
|---|--------------------------|---|
| Bharatiya Nagarik Suraksha Sanhita Section 144 BNSS | Maintenance order        | Includes illegitimate minor & adult if disabled |
| Hindu Adoption & Maintenance Act Section 18         | Parent-child maintenance | Covers illegitimate Hindu children              |

<sup>19</sup> Prachi Bhardwaj, 'SC | Child born out of an irregular marriage is legitimate and entitled to inherit his father's property' *SCC Online* (22 January 2019) <<https://www.scconline.com/blog/post/2019/01/22/sc-child-born-out-of-an-irregular-marriage-is-legitimate-and-entitled-to-inherit-his-fathers-property/>> accessed 12 July 2025

<sup>20</sup> Ashish Kumar, 'Maintenance Rights Under Section 144 of the Bnss: Judicial Interpretations and Legislative Gaps' (*DNLU Student Law Journal*, 18 November 2024) <<https://dnluslj.in/maintenance-rights-under-section-144-of-the-bnss-judicial-interpretations-and-legislative-gaps/>> accessed 12 July 2025

|                                 |                                |                             |
|---------------------------------|--------------------------------|-----------------------------|
| Muslim Personal Law<br>(Sharia) | No explicit provision          | Reliant on Section 144 BNSS |
| Christian Personal Law          | No personal maintenance<br>law | Reliant on Section 144 BNSS |



[Figure 1: Comparative Overview of Maintenance Schemes]

## INHERITANCE RIGHTS

**Hindu Law:** Under Hindu law, Section 16 of the Hindu Marriage Act 1955 legitimises children born from void or voidable marriages, enabling them to be considered legitimate for all legal purposes. The Hindu Succession Act 1956 (especially Sections 8 to 30) entitles these children to inherit property equally as other legitimate children. This includes both self-acquired and family properties, ensuring that such children have the same rights to movable and immovable assets under Sections 6 and 8 of the Act. However, despite these rights, illegitimate children generally cannot claim ancestral property as coparceners under Mitakshara joint family law, but can inherit the property of their mother and other maternal kin. This means that while they have inheritance rights, their position in the ancestral property lineage is limited. Furthermore, the Hindu Adoption and Maintenance Act and the Hindu Minority and Guardianship Act prescribe their maintenance and guardianship protections. Thus, Hindu law provides a broad framework securing inheritance rights for



children born in irregular marital circumstances, but with some restrictions relating to ancestral property coparcenary status.<sup>21</sup>

**Muslim Law:** In Muslim Personal Law (Shariat), only children born in a valid nikāḥ can inherit. Children born outside marriage cannot get property through Shariat laws. According to Muslim personal law (Shariat), only children born in a valid Islamic marriage (nikāḥ) have automatic inheritance rights. Children born outside lawful marriage are generally not entitled to inherit property under Shariat law. However, the Bharatiya Nagarik Suraksha Sanhita (Section 144 BNSS) mandates maintenance support from biological fathers irrespective of legitimacy, protecting such children financially despite inheritance limitations. Muslims can provide for these children via wills or gifts, as the Shariat does not recognise inheritance rights for illegitimate children; thus, any property transfer to them is discretionary rather than automatic under religious law. Muslim personal law continues to apply despite the presence of this secular maintenance provision, showing a dual legal regime where maintenance is enforceable but inheritance rights remain restricted.<sup>22</sup>

**Christian and Parsi Law:** Under Christian and Parsi personal laws, governed primarily by the Indian Succession Act 1925, children born outside of marriage do not have automatic inheritance rights from their parents. Such children cannot claim property through intestate succession under these religious personal laws unless explicitly named in a valid will. Maintenance provisions under these personal laws do not extend to children born out of wedlock, so Section 144 BNSS is the primary legal mechanism for their support. The secular provision thereby ensures that these children's financial maintenance needs are met, but inheritance rights remain limited without a testamentary disposition. Thus, both Christian and Parsi laws rely on secular law for maintenance but restrict inheritance to legitimate children unless otherwise provided by will or gift.<sup>23</sup>

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<sup>21</sup> Aishwarya Agrawal, 'Legitimacy of Children Born Under Void and Voidable Marriages' (*Law Bhoomi*, 28 May 2025) <<https://lawbhoomi.com/legitimacy-of-children-born-under-void-and-voidable-marriages/>> accessed 12 July 2025

<sup>22</sup> Saanvi Singla, 'Illegitimate Children under Muslim Law' (*iPleaders*, 24 August 2024) <<https://blog.ipleaders.in/illegitimate-children-muslim-law/>> accessed 12 July 2025

<sup>23</sup> 'Christian Law of Succession in Indian Law' (*Law Teacher*, 02 February 2018) <<https://www.lawteacher.net/free-law-essays/property-trusts/christian-law-of-succession.php>> accessed 12 July 2025

**Child Born of Rape:** Children born from rape are treated as illegitimate under most personal laws, but are entitled to legal rights nevertheless. Under Hindu law, they gain inheritance rights through the Hindu Succession Act if the mother is Hindu. For children of other religions, inheritance rights exist mainly through wills or private arrangements, as their status typically excludes automatic intestate succession rights. Section 144 BNSS ensures that such children receive maintenance from the biological father regardless of their birth circumstances. Given the vulnerability of these children, the law mandates their protection and inclusion in inheritance and maintenance regimes to prevent discrimination, ensuring they receive financial support and legal recognition comparable to other children.

## CUSTODY GUARDIANSHIP AND ADOPTION

**Guardians and Wards Act 1890:** The Guardians and Wards Act 1890, particularly under Sections 7 and 17, empowers courts to appoint guardians for children regardless of their birth circumstances, including those born outside of marriage. Section 7 explicitly allows a guardian to be appointed for such children, recognising the mother as the natural guardian initially, while Section 17 authorises courts to choose a guardian based on the child's welfare as the paramount consideration. This legal framework is designed to ensure that all children receive appropriate care and protection, irrespective of legitimacy, focusing primarily on the child's best interests and safety. It also distinguishes between the rights of guardianship and custody, emphasising that the welfare of the child overrides parental claims. The Act applies universally without discrimination based on birth status, thereby providing a secure legal basis for protecting children born to rape or unwed mothers.<sup>24</sup>

**Juvenile Justice (Care and Protection of Children) Act 2015:** The Juvenile Justice (Care and Protection of Children) Act 2015 complements guardianship laws by providing a comprehensive protective mechanism for children in need of care and protection. Under Sections 2(14) and 31, the Act defines children requiring care, including those abandoned, orphaned or needing rehabilitation categories that encompass children born from rape or to unwed mothers who may be vulnerable. Child Welfare Committees (CWCs) established under Section 27 are charged with the responsibility for such children's welfare, including

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<sup>24</sup> Arjun Gaur, 'Maintenance Under the Guardians & Wards Act 1890: An Interpretative Analysis' SCC Online (15 January 2025) <<https://www.scconline.com/blog/post/2025/01/15/maintenance-under-the-guardians-wards-act-1890-an-interpretative-analysis/>> accessed 12 July 2025

providing shelter, medical care, psychological support and ensuring their protection and rehabilitation. The Juvenile Justice Act lays down procedures for securing the child's safety, placing the child's best interests at the core and aiming for eventual restoration to family or appropriate care settings under diligent supervision.

**Adoption Law:** Adoption laws under the Hindu Adoption and Maintenance Act 1956 regulate the legal adoption of children through Sections 7 to 12, specifying that only legally free children, i.e. without living natural parents or with parents legally terminating guardianship, can be adopted. While unwed mothers may relinquish guardianship rights, the adoption of children born from rape presents complexities, especially if parental consent or legal clearance is not settled.<sup>25</sup> The Central Adoption Resource Authority (CARA) provides guidelines applicable across religions to standardise adoption practices, ensuring ethical procedures and safeguarding the rights of children during adoption. These regulations work to facilitate adoption while protecting the rights and identity of vulnerable children born in difficult circumstances.<sup>26</sup>

**Role of Child Welfare Committees and State Agencies:** Child Welfare Committees, State agencies such as the Integrated Child Development Services (ICDS), Juvenile Welfare Boards, and various NGOs play crucial roles in the care and protection of children born from rape or to unwed mothers or born from rape. These bodies coordinate efforts to provide foster care, shelter homes, education, health services and psychological counselling. Under the JJ Act, they monitor and evaluate the quality of care provided, ensuring compliance with legal safeguards and the child's best interest. Such multi-agency involvement is vital for addressing the complex needs of these children and for creating a safety net that promotes their well-being and integration into society.<sup>27</sup>

## COMPARATIVE AND INTERNATIONAL PERSPECTIVES

**Comparative Analysis:** In the United Kingdom, laws such as the Children Act 1989 and the Family Law Act 1996 ensure that all children, regardless of whether they are born within wedlock or not, are entitled to equal rights regarding maintenance and inheritance. The

<sup>25</sup> The Hindu Adoptions and Maintenance Act 1956, s 7

<sup>26</sup> Shaivy Maheshwari, 'Essentials of Hindu Adoption and Maintenance Act 1956' (*iPleaders*, 09 June 2020) <<https://blog.ipleaders.in/essentials-hindu-adoption-maintenance-act-1956/>> accessed 12 July 2025

<sup>27</sup> Arush Mittal, 'Powers and Functions of the Child Welfare Committee' (*iPleaders*, 11 April 2020) <<https://blog.ipleaders.in/powers-and-functions-of-child-welfare-committee/>> accessed 12 July 2025

Children Act 1989 specifically reforms the law relating to children with a focus on welfare, parental responsibility, and protection. It removes distinctions based on legitimacy, allowing biological fathers of children born out of wedlock to acquire parental responsibility either by agreement with the mother or court order, thereby securing the child's right to financial support, custody considerations and inheritance. The Family Law Reform Act 1987 (amended in 1989) further clarifies that parent-child relationships and rights are to be recognised without regard to the marital status of the parents when the child was born. These laws work together to abolish the historical differences and stigmatisation faced by children born from irregular or non-marital unions by ensuring their entitlement to support, guardianship, and property rights on par with legitimate children. This approach exemplifies a comprehensive legal framework aimed at promoting equality and protecting the best interests of all children. Australia similarly upholds the principle of equality for all children under the Family Law Act 1975, which establishes maintenance and inheritance rights for children without distinction based on their legitimacy.<sup>28</sup> Australian law ensures that the psychological, physical and financial welfare needs of children born out of wedlock receive equal importance, and it reflects a progressive stance by focusing on the child's welfare above parental marital status. These statutes provide mechanisms through family courts and child support agencies to enforce maintenance orders and legal provisions for property rights. Both Australia and the UK represent jurisdictions where the law explicitly eliminates discriminatory treatment towards children born outside marriage, promoting social inclusion and legal certainty for such children, which contrasts with jurisdictions that retain differential rules based on legitimacy.<sup>29</sup>

**International Human Rights Standards:** At the international level, the United Nations Convention on the Rights of the Child (CRC) establishes globally recognised human rights standards protecting all children equally. Articles 2 and 7 of the CRC prohibit discrimination against any child based on birth status and guarantee the child's right to identity, including nationality and family relations. Article 3 mandates that the best interests of the child shall be a primary consideration in all actions concerning children. Complementing the CRC, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),

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<sup>28</sup> David Foster, 'Parental Responsibility in England and Wales' (*House of Commons Library*, 16 July 2024) <<https://commonslibrary.parliament.uk/research-briefings/cbp-8760/>> accessed 12 July 2025

<sup>29</sup> Australian Law Reform Commission, *Multiculturalism and the Law* (ALRC Report 57, 1992)

notably Article 16, urges states to ensure equal rights for children regardless of their legitimacy and parentage. These international instruments underpin national laws and judicial interpretations by promoting inclusive child rights frameworks that guard against stigma, discrimination, and denial of legal protections. Indian courts frequently refer to CRC and CEDAW principles to interpret constitutional guarantees of equality, non-discrimination, and dignity under Articles 14, 15 and 21, thereby reinforcing protection for children born from rape or unwed mothers in line with international standards. These conventions serve as guiding frameworks encouraging states to enact and implement laws that safeguard children's rights irrespective of their birth circumstances.<sup>30</sup>

## RECOMMENDATIONS

1. Change personal laws like the Hindu Succession Act, the Muslim Personal Law and the Indian Succession Act.
2. Check maintenance orders often.
3. Start big legal awareness programs using the Legal Services Authorities Act 1987.
4. Give Child Welfare Committees under the JJ Act 2015 more money, training, and monitoring systems.

## CONCLUSION

**Summary of Key Findings:** Articles 14, 15(3), and 21 of the Indian Constitution collectively guarantee fundamental rights such as equality before the law, prohibition of discrimination and protection of life and personal liberty to all children, including those born from rape or to unwed mothers. These constitutional provisions forbid discrimination based on birth status and emphasise dignity, privacy, and the best interests of the child. Section 144 of the Bharatiya Nagarik Suraksha Sanhita (BNSS) is a crucial secular provision that mandates maintenance payments by biological fathers to their children, regardless of legitimacy or marital status, ensuring financial support for vulnerable children. Under Hindu law, Section 16 of the Hindu Marriage Act and Sections 8 to 30 of the Hindu Succession Act grant children born in void or voidable marriages full inheritance rights, securing their access to both movable and immovable property. However, personal laws governing Muslims, Christians

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<sup>30</sup> Aoife Daly et al., 'UN Convention on the Rights of the Child, Article 2 and Discrimination on the Basis of Childhood: The crc Paradox?' (2022) 91(3) Nordic Journal of International Law 419  
<<https://doi.org/10.1163/15718107-91030007>> accessed 12 July 2025

and Parsis exhibit gaps and restrictions related to inheritance and maintenance for children born outside marriage. These gaps are mitigated in part by the secular maintenance provisions of Section 144 BNSS. The Guardians and Wards Act (Sections 7 to 17) further supports the mother's status as the natural guardian and empowers courts to appoint guardians to protect the welfare of such children. Altogether, the existing legal framework combines constitutional guarantees, secular statutes and personal laws to safeguard the rights and well-being of children born from rape or unwed mothers, though some disparities and practical challenges persist.

**Future Directions:** Looking forward, future legal reforms should focus on harmonising personal laws with the more inclusive and non-discriminatory secular rules to eliminate unjust limitations based on legitimacy or marital status. Effective enforcement mechanisms, such as dedicated enforcement cells for maintenance claims, periodic verification of birth registrations to uphold identity rights and robust action plans for legal compliance, are essential to ensuring these rights are practically realised. Further interdisciplinary research and policy analysis are needed to understand the local socio-cultural barriers and stigma that hinder these children's access to welfare schemes, education, and healthcare facilities. Efforts should be made to sensitise the community and judiciary to promote inclusive attitudes and dispel discrimination. Additionally, strengthening institutional collaboration among child welfare agencies, legal authorities, and social organisations can improve service delivery and protection. Overall, a child-centred policy emphasis that prioritises the dignity, privacy and best interests of children born in challenging circumstances must guide future statutory reforms and implementation strategies to guarantee equitable rights and opportunities.