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Inheritance by Illegitimate Children in India

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People have often heard the phrase “There are no illegitimate children, there are only illegitimate parents”. A very phrase that is, gives the people a whole new branch of thinking. Bastards and words of sorts convey a completely negative purview of a child who has a rotten luck of not understanding that he is a child born out of wedlock.

Extra marital or pre-marital sex is considered to be a sin in Indian Culture. Consequentially, the child born is therefore considered to be a sin. Even the current day, even if people do not consider the child to be a sin per se, they are uncomfortable with the presence of such a child. Even if people do think liberally, such a culture of terming an illegitimate child to be a sin is deeply rooted and therefore, the child is still treated the same way as ancient times, like an outlaw.

The laws on the other hand have far evolved from ancient times and the legislations are made or amended to keep the illegitimate children on the same pedestal as legitimate children. Article 25 of the Universal Declaration of Human Rights says that children born in or out of wedlock will enjoy the same position in front of the law, on par with everyone else.

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In India, laws governing birth of a child and his rights are governed by personal laws such as Hindu Law and Mohammedan Law. Hence, the laws which govern inheritance, maintenance, guardianship, adoption are vastly different from one another under the two major brackets. The problem starts there. Hindu Law on one side has provisions under Hindu Marriage (Amendment) Laws, 1976 brought in a provision which said that a child from a marriage which is either void or voidable will be considered as a child born through a legal marriage. Muslim Law on the other does not recognize illegitimate children and no state of legitimacy can be given to them through any process. The same applies to Christian Law as well.

Therefore, it is pretty visible to the naked eye that the position of an illegitimate child's inheritance rights would also be unequal across different religions.

Position of Inheritance in Hindu Law

The inheritance rights of illegitimate children have not been provided statutory recognition. The Hindu Succession Act, 1956 only acknowledges lawful kinship and in the case of illegitimate children, they are considered to be related only to their mothers and can inherit the property of their mothers in accordance with the laws of succession that govern women under Section 14 of the HSA. Under Hindu law, the inheritance rights of illegitimate children is provided for under Section 16(3) of the Hindu Marriage Act, 1955 states that the children born out of void or voidable marriages are entitled to property belonging to their parents and no one else's. This section over the years has been interpreted in such a manner to give the illegitimate children a right of inheritance over the self-acquired property of their parents and not the ancestral or coparcenary property. At present however, the section has been interpreted to include the ancestral property of the parents of the illegitimate child and is not only restricted to the self-acquired property of their parents by the Supreme Court of India ("Supreme Court"), as explained further below.

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Rasala Surya Prakasarao v Rasala Venkateswararao¹

The Andhra Pradesh High Court in this case held that the proviso in the Hindu Succession Act for illegitimate children is restricted to the children who are not given the title “LEGITIMATE” by virtue of Section 16 of the Hindu Marriage Act and it is not clothed with the idea of legitimacy under Section 16.

The court although was of the opinion that such succession can only happen if there exists a marriage (void or voidable) between the parents. Therefore, the inheritance of an illegitimate child, if the parents are not married (void or voidable), exists only to the extent of the absolute property of the mother and does not have a stake in the property of the father, even if that father is known.

This case was overruled by an appeal case from Karnataka High Court, Revanasiddappa vs. Mallikarjun². The Supreme Court held the constitutional values which are enshrined in the Preamble of our Constitution focus on equality of statuses, opportunity and also individual dignity. Relationship between the parents should be viewed independently of the birth of children under such circumstances. Therefore, a child born due to such relationship is innocent and should be entitled to all the rights which children who are legitimate have.

The inheritance rights of illegitimate children who have converted to a different religion is also adequately addressed and interpreted by the Courts, through various case laws. In a case where a Hindu converts to Islam or any other religion, then he/she, being an illegitimate child, is still entitled to his/her father's intestate property as the right to inheritance is not a choice but it is by birth and renouncing one and converting to another religion is a matter of choice and cannot cease relationships which are established and exist by birth. Section 26 of the Hindu Succession Act, 1956 also applies to the right of succession of children born to a convert and does not disqualify the convert from succeeding to the property of his parents.

¹ A.I.R. 1992 A.P. 234.

²(2011) 3 S.C.C. (Civ.) 581.

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In Muslim law, the rights of an illegitimate child are not recognized and therefore are not conferred with any right to inherit their parent's property. The same was held by the Gujarat High Court in the case **Nayanaben Firozkhan Pathan v. Patel Shantaben Bhikhabhai**³. In Shia and Sunni sects, illegitimate children are not entitled to inherit property from either parents but in Hanafi law, they are entitled to inherit property from their mother. Children born because of an irregular marriage are considered to be legitimate children and consequentially possess rights in the property of the parents. But children born out of void marriages are illegitimate children and are not entitled to inherit the property of their parents, unless the parents belong to the Hanafi sect which would confer the child rights in his mother's property.

The law regarding succession in Indian Christians or those domiciled in India is governed by the Indian Succession Act, 1925. By virtue of Section 21 of the Indian Divorce Act, children begotten from void marriages, which were annulled under the basis given in Section 19, other than the base that the former spouse was living and the later marriage was settled in good faith and with the belief that the former spouse was dead and on the base of insanity, are considered to be illegitimate children and do not have a right to inherit their parents property. Therefore, there is a difference on the grounds on which a marriage has been annulled to confer children a status of legitimacy and thereby giving inheritance rights. It is important to note that children begotten out of any other form of wedlock, void or voidable, which is not encompassed by the provisions of the Indian Divorce Act, are considered to be illegitimate children.

The Indian Succession Act excludes an illegitimate child from inheriting his/her parents' property. Under Section 32 of the Act, intestate property devolves upon the husband, wife or the kin of the deceased. Kin of the deceased refers to those who are related to persons who are descendants of the same stock or common ancestor. Further, the Indian Succession Act openly excludes an illegitimate child from inheriting any property of his/her parents by specifying that unless it is specifically stated in a Will, the word child, son, daughter or any relationship denotes only a legitimate relative and in the absence of such a legitimate relative, a person who has acquired at the date of the Will, the reputation of being such relative. The only mention of

³(2017) S.C.C. OnLine 1271.

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illegitimate children in the Indian Succession Act is to determine domicile, which would be determined according to the country in which his/her mother is domiciled. Further, if a bequest under Section 109 of the Indian Succession Act, 1925 falls, then an illegitimate child cannot be construed as a “lineal descent”. This was stated in the judgment given in the case **Raja Jagdish Chandra Deo Dhabal Deb v. Rai Pada Dhal**⁴. Therefore, the Indian Succession Act solely defines certain relations and does not extend to other relations than those flowing from lawful wedlock.

Conclusion and What Ought to Happen

The rights given to illegitimate children are limited and the natures of these rights are very discriminatory. Illegitimate children suffer the outcomes of the decisions of the parents and because of them suffer due to reasons beyond their control. Furthermore, societies are being unkind and very oblivious to their welfares; and adding on to the suffering of these children by stigmatizing and actively discriminating against them in terms of social acceptance and interactions. The law, being unequal adds to the already huge difficulties faced by these children by not entitling them from several rights that are given to their legitimate counterparts. India, being a religiously diverse country, has to account for the religious sentiments of all and therefore the law regarding the rights of illegitimate children is contemplative of this and is very biased towards protecting the rights of legitimate children. However, India is yet to eradicate any form of discrimination faced by illegitimate children, as compared to several other foreign jurisdictions. Only time will tell the people whether the rights will be given to illegitimate children. There ought to be some liberal thinking on the part of the policy makers so that the existing laws can be amended and also new laws protecting the interests of an illegitimate child will take place.

⁴A.I.R. 1941 Pat. 458.