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# Succession Rights Of Illegitimate Children Under Modern Family Law

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***Abstract***

*The development of family law has progressively dismantled the traditional legal and social discrimination against children born outside wedlock. This article critically examines the succession rights of illegitimate children born under modern legal frameworks, with particular reference to statutory reforms, judicial trends, and international human rights standards. Historically, illegitimacy operated as a barrier to inheritance, rooted in patriarchal notions of legitimacy and lineage. However, contemporary jurisprudence increasingly recognises the child's right to equality and dignity, irrespective of the marital status of his or her parents.*

*It draws from various comparative legal perspectives: common law jurisdictions, civil law systems, and Indian family law. The article discusses how courts have expanded inheritance rights by applying the principles of equality, constitutional morality and social justice. Important case law development, including the recognition of illegitimate children for intestate succession and property rights accruing from live-in relationships, is illustrative of this increasing child-centric approach. Despite such developments, major gaps remain as regards proof of paternity, succession under personal laws, and testamentary versus intestate rights.*

*The study concludes that, even though modern family law has moved closer towards eliminating the stigma of illegitimacy, comprehensive legislative harmonisation and judicial clarity are still needed in ensuring full and uniform succession rights for all children, irrespective of birth status. The article further proposes reforms aimed at realising substantive equality and reinforcing the constitutional mandate of non-discrimination.*

***Keywords:*** *Illegitimate Children, Succession Rights, Modern Family Law, Equality and Non-Discrimination, Inheritance Reform.*

## 1. INTRODUCTION:

Illegitimate Children born outside of lawful marriage have traditionally been associated with powerful social, religious, and moral bias. For centuries, such children were not granted inheritance rights on the presumption that they were “filius nullius”, children of no one. The consequent exclusion from property rights perpetuated discrimination and social stigma. However, with the rise of constitutionalism, human rights norms and progressive judicial approaches, modern family law has increasingly dismantled these discriminatory barriers.

In the contemporary setting, where live-in relationships, single parenthood and non-traditional families are becoming increasingly common, the inflexible differentiation between legitimate and illegitimate children has become obsolete. But also discriminatory. Contemporary law aims to safeguard the dignity, equality, and welfare of all children without discrimination due to birth status. This paper attempts to examine how the succession rights of illegitimate children are changing worldwide, with a particular focus on India, besides some comparative perspectives.[1]

## 2. HISTORICAL BACKGROUND AND TRADITIONAL LEGAL POSITION

Indeed, across history, illegitimate children were systematically excluded from the inheritance regime due to the confluence of moral, religious, and socio-legal factors. These doctrines influenced the foundational principles of family law in many countries, including India.

### a. Moral and religious doctrines

Legitimacy is typically associated with moral and lawful unions of marriage in traditional legal systems. Thus, children born of non-marital unions would typically be classified as illegitimate or born of immoral unions. Being designated as illegitimate would automatically disqualify such children from any inheritance, including ownership of paternal property. Most religious texts in societies linked legitimacy with pure lines of descent, which likewise provided a basis for the legality of this treatment of children born of non-marital unions.

### b. Patriarchal lineage system

[1] Paras Diwan, Family Law in India (Allahabad Law Agency 2020).

Inheritance structures were primarily patrilineal because paternity was more difficult to establish historically than maternity, legal systems presumed that an unmarried father had no legal obligations towards a child born outside marriage. As a result, illegitimate children were excluded from their father's lineage and also denied rights of inheritance. The law regarded legitimacy as essential for defining clear ancestral lines and the transmission of property.

### c. Influence of English common law

The common law doctrine of nullius filius, in other words, "the child of no one", categorised an illegitimate child as one with no legal father and, accordingly, no inheritance rights. Under this doctrine, such children could not inherit in cases of intestate succession, nor claim lineage-based rights. British colonial administration exported these principles to many territories, including India, where they significantly shaped early statutory and judicial approaches to succession.

### d. Social stigma

In addition to its legal implications, illegitimacy was associated with significant social stigma. Family honour, caste norms, and community perceptions strongly influenced lawmakers, resulting in statutes and judicial interpretations that promoted exclusion. Consequently, the law reflected prevailing societal biases that ostracised Children born outside marriage.

## 3. CONTEMPORARY LEGAL DEVELOPMENTS IN INDIA

Indian family law has dramatically transformed from the protection of children born outside traditional marital unions through constitutional directives, legislative changes, and active judicial interpretation to the level of the rights of the children. The constitutional clauses on equality (Article 14), non-discrimination (Article 15), and the right to life and dignity (Article 21) force the State to deal with all children alike, regardless of their birth status, quite the opposite of what is usually done in the case of most analysts and even some courts.[2]

The Supreme Court has repeatedly turned to these provisions in taking down discriminatory barriers, especially in matters of inheritance, asserting that punishing a child for circumstances of birth is a fundamental rights violation. Reforms under Hindu law have played a decisive role in the extension of

[2] Kusum & MP Singh, Family Law Lectures – Family Law I (LexisNexis 2019).

the rights of children who were born in void, voidable or non-marital relationships[3] Explained under Section 16 of the Hindu Marriage Act, 1955 legitimacy has been conferred on a child born in a void and voidable marriage, thus ensuring his/her rightful inheritance from the parents, namely, the same as that of legitimate children's rights.[4]

In the case of *Revan Siddappa v. Mallikarjun (2011)*[5]*An* interpretation of the Supreme Court was that children born outside a valid marriage were. Have an equal claim to a share in the self-acquired property of their parents; thus, the broad interpretation of the term legitimacy was in favour of these children.

Another case, *Jinia Keotin v. Kumar Sitaram (2003)*[6]*The* Court has ruled that while illegitimate children cannot lay claim to coparcenary rights under the Mitakshara system, they are still entitled to maintenance and the benefits of certain inheritance protections. Though these decisions are progressive, they expose a lot of inconsistencies that still exist, especially with regard to whether such children can take ancestral or coparcenary property as heirs, which leads to a demand for statutory clarification.

### a. Personal Law

India's personal laws vary among different religions, and thus, the different degrees of inheritance rights protection:

- Hindus: The judicial and statutory reforms have led to an increase in rights, mainly through the HMA and the Supreme Court's decisions.
- Muslims: A child born out of wedlock inherits from the mother only and not the father, who is considered to be the father, in accordance with classical Islamic law.
- Christians & Parsis: Even though there is no clear statutory provision, the courts are applying more and more the principles of equality, welfare, and dignity for the fair treatment of the parties involved. The differences among the personal laws call for a unified approach that is based on constitutional morality.

[3] Archana Parashar, 'Illegitimacy and Law Reform in India' (1990) 12 Journal of Legal Pluralism.
[4] Hindu Marriage Act 1955, s 16.
[5] Revanasiddappa v Mallikarjun (2011) 11 SCC 1.
[6] Jinia Keotin v. Kumar Sitaram & Ors., (2003) 1 SCC 730.

### b. Succession Under Live-In Relationships

In *Indra Sarma v. V.K.V. Sarma (2013)*[7]The Supreme Court granted legitimacy to certain live-in relationships, calling them "relationships like marriage." Not only that, but also children born of such unions are treated like those born to legally married couples in terms of the rights and privileges, including the right to inherit. This ruling is a signal for a contemporary and realistic outlook on the changing nature of families and also the judiciary's dedication to children's rights, no matter the marital status.

## 4. INTERNATIONAL AND COMPARATIVE PERSPECTIVES

Current worldwide legal changes show the emergence of an exceedingly clear trend of abolishing the discriminatory treatment of infants depending on their birth conditions. The equality principle in family law and inheritance matters is increasingly being accepted by international human rights instruments and reforms in both common law and civil law jurisdictions.

### a. United Nations Standards

The United Nations Convention on the Rights of the Child (UNCRC) sets the standard for international children's rights. The Convention's Article 2 mandates that state parties are responsible for not allowing any discrimination against children on the grounds of birth, status, or parentage. This norm has a far-reaching effect, influencing nearly all the domestic legal systems worldwide and forcing the legislators and courts to obliterate the distinctions between legitimate and non-legitimate children that are based on statutes and customs. Consequently, the reforms in international family laws are getting more and more child-friendly and non-discriminatory, and based on the principles of human dignity and equal rights.[8]

### b. United States

The United States has experienced extensive constitutional involvement in this area. In the case of *Trimble v. Gordon (1977)*[9], the U.S. Supreme Court abolished the state succession laws that favoured marriage and discriminated against the offspring of marriage as violating the Equal Protection Clause of

[7] Indra Sarma v. V.K.V. Sarma, (2013) 15 SCC 755.
[8] United Nations Convention on the Rights of the Child (UNCRC) 1989, art 2.
[9] Trimble v. Gordon, 430 U.S. 762 (1977)

the Fourteenth Amendment. The majority of states in the U.S. have, therefore, reformed their inheritance laws along with the landmark Trimble case and subsequent rulings to ensure that nonmarital children have the right to inherit from their parents as marital children do, according to the same conditions and only subject to reasonable proof-of-parentage requirements.

### c. United Kingdom

In the United Kingdom, the Family Law Reform Acts of 1969[10] and 1987[11] paved the way for significant reforms that abolished the distinction between "legitimate" and "illegitimate" children to the extent of their legal rights, especially in matters of inheritance. The enactments made it clear that a child's rights are not to be dependent upon the parents' marital status; hence, home law got aligned with the modern human rights concepts and the ruling of the European Court of Human Rights, which granted special place to non-discrimination and equality.[12]

### d. Civil Law Jurisdictions

Civil law countries have been the leaders in the area of elimination of legal discrimination based on legitimacy: France, after enacting reforms to the Civil Code during the 1970s and 2000s, now provides all children with equal inheritance rights, irrespective of their birth status. Germany, by the Law of Parentage Reform (1970) and subsequent amendments, has also eradicated all the discriminatory provisions, granting complete equality in succession and providing for parents' rights. The above-mentioned legal systems embody the rights-based model that is taking root through equal protection constitutional clauses and the human rights law from the wider European principles.[13]

### e. Comparative Evaluation

The comparative analysis very vividly shows a worldwide normative shift towards the abolition of legitimacy-based distinctions in family and inheritance laws. The legal trend of the prevailing situation is thus common over all jurisdictions, whether they are common law or civil law, and is in line with the international human rights obligations by implying that a child cannot be punished for the situation of birth. The global consensus thus provides additional support to the argument that the Indian legal system

[10] Family Law Reform Act 1969 (UK).
[11] Family Law Reform Act 1987 (UK).
[12] German Law of Parentage Reform Act 1970.
[13] Civil Code of France (as amended 1972 and 2001 reforms).

has to, as a matter of course, take a constitutional and harmonious approach to the issue of providing equal rights to all children with respect to the succession laws.

## 5. KEY CHALLENGES AND GREY AREAS

Even though substantial legal reform and judicial activism have occurred to safeguard the rights of children conceived outside the conventional marital union, there are still major uncertainties and structural drawbacks that continue to hinder the full equality of these children in society. These impediments bring to light the complicated interplay of personal laws, social practices, and evidentiary requirements in India's diverse legal system.

### a. Proof of Paternity

Among the various issues regarding children's rights, the most difficult one is the proof of paternity, which is at the same time the source of maintenance and inheritance claims. Indian courts have a longstanding tendency to demand strict and conclusive evidence, which often puts a heavy burden on the child. To some extent, DNA testing has come up as a method that is scientifically reliable, but it comes with serious concerns regarding privacy, questions of bodily autonomy, and the risk of being misused in competing claims. Furthermore, the courts are still hesitant to give a blanket approval for DNA tests, especially where they seem to infringe upon the right to privacy and vie with the presumption of legitimacy as per statutory law.

### b. Unequal Treatment Across Personal Laws

The religion-based personal law system in India is still very rigid, and so it continues to produce divergent results for similar kinds of children. In the case of Hindu law, the existing protections have been expanded through statutory amendments and judicial interpretation. On the other hand, Muslim personal law still denies marriage-born children's rights to inherit the mother's estate. Other communities, like Christians and Parsis, are without any specific statutory guidance, and thus, the courts have to depend on constitutional principles from one case to another. This inconsistent pattern of legal protection results in a violation of the constitutional principle of equality and non-discrimination.

### c. Ambiguities in Coparcenary Rights

The Hindu Succession Act and the law of Mitakshara coparcenary. The consideration of the inheritance

of ancestral or coparcenary property by an illegitimate child is very unclear. The courts have granted such children rights to their parents' self-acquired property, but have so far generally not included joint family property in this aspect. The absence of explicit legislative clarification goes on to cause uncertainty and reinforce the already existing structural disadvantages in the Hindu joint family system. [14]

### d. Social Stigma and Practical Barriers

Even when the law grants substantial rights, the socio-cultural stigma surrounding non-marital birth continues to impede their use. The children might have to suffer from the extended family's hostility, community rejection, and lack of financial or legal support. The barriers caused by practical aspects like limited access to legal aid, lack of documentary evidence, and social pressure may often dissuade them from claiming their rightful inheritance. This detachment between law and living reality highlights the requirement for more extensive awareness in society.

### e. Testamentary Succession

Intestate Succession has been reformed greatly, but the freedom to make testamentary decisions allows a parent to exclude a child born out of wedlock via a will, which raises the issue of fairness and potential misuse. While testamentary Freedom is a well-accepted principle. It also raises the risk of spreading discriminatory attitudes. Hence, the policymakers and the scholars have argued whether the introduction of minimal safeguards or presumptions should be considered for protecting the vulnerable children from being deliberately excluded because of social stigma.

## 6. JUDICIAL TRENDS AND PROGRESSIVE INTERPRETATION

The judicial system in India has been instrumental in re-evaluating the ideas and rules regarding the rights of children from relationships that are not considered traditional marriage. The recent court cases show a clear change in the direction of a child-centred and rights-led framework, which is the opposite of the historically moralistic and exclusionary methods.

a. Emphasis on Substantive Equality under Articles 14 and 21: The courts are increasingly relying on the values of the Constitution of India, which are equality, dignity, and non-

[14] Werner Menski, *Hindu Law: Beyond Tradition and Modernity* (OUP 2008).

discrimination, while making their decisions, thereby ensuring that the rights of a child are not reduced because of the place and conditions of birth. The judiciary has asserted that punishing a child due to the misconduct of the parents does not align with constitutional morality.[15]

b. Judicial Activism Filling Statutory Gaps: Despite the existence of ambiguous or non-existing statutory provisions, courts have still used purposive interpretation to expand inheritance rights of the heirs. This tendency signifies the readiness of the court to redesign the personal law doctrines in accordance with the progressive social values and the human rights norms prevailing in the world.

c. Shift from Morality-Based to Rights-Based Reasoning: The previous legal reasoning was often a reflection of the moral standards in the society regarding illegitimacy and non-marital relationships. Nevertheless, the contemporary court is now giving precedence to the individual rights, autonomy, and dignity, thereby asserting that legal status should not be determined by the moral standards of the past.

d. Recognition of Live-In Relationships and Non-Traditional Families: The court's recognition of some live-in relationships as "relationships like marriage" is a sign that it has acknowledged the modern-day family structure. This change in attitude has increased the number of children born to such couples who fall under the protection of the law, thus preventing them from being disadvantaged due to non-traditional family arrangements. It is indeed the continuation of these trends that will lead to more progressive reforms in the future.

## 7. SUGGESTIONS TO REFORM

In order to live up to the constitutional commitment of equality and dignity for every child, India has to implement comprehensive and visionary reforms without delay. Although the courts have played a major role in extending the range of protections, still, the old structural and legal constraints still do not allow full equality to be realised. The following reforms should be done in children's law to grant children who are born outside the traditional marriage legal structures the same, and even more substantial protection:

[15] Constitution of India 1950, arts 14, 15, 21.

a. Adoption of a Uniform Civil Code Approach for Children's Rights: The adoption of a child-centred Uniform Civil Code The framework, which will be applied only to children, will prevent any child from being treated differently due to religion or personal law. A complete overhaul of all personal laws is not required for this approach, but what is needed is the establishment of uniform standards regarding legitimacy, maintenance and inheritance, which in turn will sync family law with the constitutional mandates laid down in Articles 14, 15 and 21.

b. Statutory Recognition of Equal Inheritance Rights in All Forms of Property: The laws need to be changed in a way that makes it clear that the children born out of wedlock have the same rights as the offspring of the marriages in self-acquired, ancestral, and coparcenary properties of their parents. The Hindu Succession Act should be revised to remove its ambiguities, and rights under other personal laws should be made clear so that the judges will not come to different conclusions, and equality will be reinforced.

c. Simplified and Rights-Based Procedures for Establishing Paternity: The determination of paternity must be made easier and faster, consisting of regulated DNA testing protocols, which are privacy-comprehensive, and the use of evidence that does not put an excessive burden on the child, thus making the process easier for him or her. The families, the courts, and the scientists must all be made responsible for using the scientific evidence in an ethical way and protecting the rights of the child through making the process fair and ensuring the right to the body and privacy is respected.

d. Public Awareness and Social Sensitisation Measures: Legal reform should not only focus on the lawyers and courts, but also communicate to society about the positive changes that took place. Such updates would eventually lead to the recognition of children's rights and to the possible future birth of a child without stigma or even being ostracised.

e. Stronger Safeguards in Testamentary Succession: The freedom to make a will should be considered only if a child's rights are guaranteed by the law. Measures to consider may be setting up a minimum share for children's heirs, stating that children can take a rebuttable presumption against being excluded from the will, or, if the will looks to be discriminatory, letting the court take a look at it. The above-mentioned measures would play a big role in

preventing stigma or family pressure-led injustices.

## 8. CONCLUSION

Family law of the present time has no doubt taken giant strides in recognising and safeguarding the rights of the progeny. Of non-traditional unions to inherit. The earlier, very often harsh and punitive differentiations have been completely or at least considerably diminished by means of progressive legislation, intentional judicial interpretation, and the impact of international human rights standards to an extent.

The prevailing legal situation is one of a growing agreement that a child's value, personality, and legal rights are not to be determined by the marital choices of their parents. However, the road to total equality still exists incompletely. The differences between different personal laws, the difficulties involved in establishing the paternity of a child, and rejection by society lead to the continuous undermining of the enjoyment of rights in the true sense. The areas of divergence illustrate the need for unified laws, judicial standards that are child-focused, and changes in attitudes in society at large. An Indian family law that is to be a true reflection of constitutional morality would have to adopt the principles of equality, dignity, and non-discrimination as laid down in Articles 14, 15, and 21.

In this case, succession rights will be granted to the child as the original claimant of rights, not as a result of parental marital status. Thus, providing equal rights to all children is not just a matter of correcting the law but a quest for justice, an ethical responsibility that would help create a fair, inclusive, and constitutionally compatible society.