

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced, stored, transmitted, or distributed in any form or by any means, whether electronic, mechanical, photocopying, recording, or otherwise, without prior written permission of the Managing Editor of the *International Journal for Legal Research & Analysis (IJLRA)*.

The views, opinions, interpretations, and conclusions expressed in the articles published in this journal are solely those of the respective authors. They do not necessarily reflect the views of the Editorial Board, Editors, Reviewers, Advisors, or the Publisher of IJLRA.

Although every reasonable effort has been made to ensure the accuracy, authenticity, and proper citation of the content published in this journal, neither the Editorial Board nor IJLRA shall be held liable or responsible, in any manner whatsoever, for any loss, damage, or consequence arising from the use, reliance upon, or interpretation of the information contained in this publication.

The content published herein is intended solely for academic and informational purposes and shall not be construed as legal advice or professional opinion.

**Copyright © International Journal for Legal Research & Analysis.
All rights reserved.**

ABOUT US

The *International Journal for Legal Research & Analysis (IJLRA)* (ISSN: 2582-6433) is a peer-reviewed, academic, online journal published on a monthly basis. The journal aims to provide a comprehensive and interactive platform for the publication of original and high-quality legal research.

IJLRA publishes Short Articles, Long Articles, Research Papers, Case Comments, Book Reviews, Essays, and interdisciplinary studies in the field of law and allied disciplines. The journal seeks to promote critical analysis and informed discourse on contemporary legal, social, and policy issues.

The primary objective of IJLRA is to enhance academic engagement and scholarly dialogue among law students, researchers, academicians, legal professionals, and members of the Bar and Bench. The journal endeavours to establish itself as a credible and widely cited academic publication through the publication of original, well-researched, and analytically sound contributions.

IJLRA welcomes submissions from all branches of law, provided the work is original, unpublished, and submitted in accordance with the prescribed submission guidelines. All manuscripts are subject to a rigorous peer-review process to ensure academic quality, originality, and relevance.

Through its publications, the *International Journal for Legal Research & Analysis* aspires to contribute meaningfully to legal scholarship and the development of law as an instrument of justice and social progress.

PUBLICATION ETHICS, COPYRIGHT & AUTHOR RESPONSIBILITY STATEMENT

The *International Journal for Legal Research and Analysis (IJLRA)* is committed to upholding the highest standards of publication ethics and academic integrity. All manuscripts submitted to the journal must be original, unpublished, and free from plagiarism, data fabrication, falsification, or any form of unethical research or publication practice. Authors are solely responsible for the accuracy, originality, legality, and ethical compliance of their work and must ensure that all sources are properly cited and that necessary permissions for any third-party copyrighted material have been duly obtained prior to submission. Copyright in all published articles vests with IJLRA, unless otherwise expressly stated, and authors grant the journal the irrevocable right to publish, reproduce, distribute, and archive their work in print and electronic formats. The views and opinions expressed in the articles are those of the authors alone and do not reflect the views of the Editors, Editorial Board, Reviewers, or Publisher. IJLRA shall not be liable for any loss, damage, claim, or legal consequence arising from the use, reliance upon, or interpretation of the content published. By submitting a manuscript, the author(s) agree to fully indemnify and hold harmless the journal, its Editor-in-Chief, Editors, Editorial Board, Reviewers, Advisors, Publisher, and Management against any claims, liabilities, or legal proceedings arising out of plagiarism, copyright infringement, defamation, breach of confidentiality, or violation of third-party rights. The journal reserves the absolute right to reject, withdraw, retract, or remove any manuscript or published article in case of ethical or legal violations, without incurring any liability.

ILLEGITIMATE CHILD'S PROPERTY RIGHT UNDER HINDU LAW: FURLONGS COVERED, MILES TO GO

AUTHORED BY – KAPIL
UNIVERSITY OF DELHI

CO-AUTHOR - MUHAMMAD IFTEKHAR KHAN
DR. RAM MANOHAR LOHIA NATIONAL LAW UNIVERSITY

Abstract:

The most complex and enduring issue of family law has always been the issue of illegitimacy, particularly the challenge of defining the rights of illegitimate children. This paper investigates the historical and legal dimensions of the right to property of illegitimate children in their parents' estates under Hindu law, emphasising that although much progress has been made on this legal journey, we still have a long way to go. Drawing on ancient Hindu texts and British-era case law, it provides a glimpse into the status of illegitimate children in ancient Hindu society. The paper further explores the codified Hindu laws that govern property rights for illegitimate children and examines how these laws, alongside societal stigma, have created impediments. The Hon'ble Supreme Court, through landmark judgments, has sought to address these challenges, yet societal biases persist. Drawing on diverse data sources, this paper reveals that illegitimacy is not merely an issue documented in records but a lived reality for many children. At last, the paper offers a forward-looking perspective, proposing solutions to safeguard the property rights of illegitimate children while referencing international conventions and best practices.

Keywords: Illegitimate Child, Right to Property, Hindu Law, Family law, Child rights

1. Introduction

The legal status of children born from void or voidable marriages under the Hindu Marriage Act, 1955, presents a nuanced and evolving area of justice. Section 16 of the Act serves as a significant legislative intervention aimed at addressing the legality of similar children while balancing their rights to property within the confines of the enactment. While the provision unequivocally confers legality on children born from void and voidable marriages, it

contemporaneously circumscribes their property rights under Section 16(3), explicitly limiting them to the property of their parents. The interplay between legality and property rights has given rise to differing judicial interpretations, particularly in cases involving common family property and tonally acquired property. Landmark cases similar to *Revanasiddappa v. Mallikarjun* have unearthed apparent contradictions within the statutory framework, leading to the explanation that, while children born of void or voidable marriages are treated as licit, their property rights remain confined to property acquired by their parents. These children are barred from access to concentrated common family property unless it has been partitioned and converted into the parents' separate property. Also, the courts have held that children of similar ages cannot claim any share in their parents' property during their parents' lifetimes. In India, under Hindu law, property rights and their succession are governed by the HSA 1956. Still, the Mitakshara school of Hindu jurisprudence confers no such right to illegitimate children, i.e., children born out of void or voidable marriages. Although HSA seeks to confer the rights previously denied, these rights apply only to the parent's self-acquired property. In 2011, the Supreme Court ruled that children born outside of wedlock have the right to inherit their parents' property, including both self-earned and ancestral assets. Nevertheless, they remain ineligible for coparcenary status, indicating they do not possess the same rights as those born to legally married parents.

2. Who are Illegitimates?

The term '*illegitimate*' has been derived from the Latin word '*illegitimus*,' which means 'something contrary to the law or not in accordance with the law.' Their parents' marital status defines an illegitimate child and is consequently considered "*nullius filius*," meaning that they have no legal connection to either parent. i.e., children who are not born out of lawful wedlock or children born out of illicit relationships or children born out of annulled or voidable marriages or children born through concubinage, etc.

Here, it is interesting to note that there is no straightjacket formula to delineate the legitimacy from the illegitimacy. Someone legitimate under one societal standard or law might be considered illegitimate under another. For example, a child born out of a live-in relationship is generally regarded as illegitimate in Indian society. Still, it is legitimate under Section 379 of Chapter III of The Uniform Civil Code Bill 2024 of the State of Uttarakhand. So, in a broader sense, illegitimacy can be defined as anything that deviates from recognised and formal standards and criteria.

2.1 Illegitimacy Under Hindu Law

A marriage that meets all the criteria specified in Sections 5 and 7 of the Hindu Marriage Act of 1955 is deemed valid and lawful, and children born within a legally recognised marriage are considered legitimate. In contrast, those born outside of a legally recognised marriage are regarded as illegitimate under section 16 of the Act.

According to Section 5 of the Hindu Marriage Act, a marriage is considered valid only if it fulfils the following criteria at the time it is solemnised:

- 1) **Monogamy:** At the time of the marriage ceremony, neither party may have a living spouse; both must be single, divorced, or widowed.
- 2) **Mental Capacity:** Both individuals must have sound mental health, be able to give legal consent, and not suffer from any mental illnesses that would make them unfit for marriage or childbearing.
- 3) **Minimum Age:** The groom must be at least twenty-one years of age, while the bride must be at least eighteen years old.
- 4) **Prohibited Relationships:** The couple must not be closely related by blood or marriage, unless their particular family traditions allow for such a union.
- 5) **Sapinda Relationship:** The individuals involved must not be direct lineal descendants (Sapindas) of each other, unless established customs permit the marriage.

According to Section 7 of the Hindu Marriage Act, A Hindu marriage ought to be carried out following the customary practices of either the bride's or the groom's family. And when the rituals include Saptapadi (walking around the sacred fire seven times), the marriage is considered legally valid and binding only after completing the seventh step.

The result of non-observation of these provisions renders a marriage void or voidable as per Sections 11 and 12 of the Hindu Marriage Act. The status of a child born out of marriage, which is void or voidable due to Sections 11 and 12, can be derived from Section 16 of the Act, which provides -

- 1) Children born from a void marriage (which is invalid from the start) are considered legitimate under the law, even if there hasn't been an official court declaration of nullity.
- 2) In cases of a voidable marriage (which remains valid until annulled), any child conceived or born before the court's annulment is still deemed legitimate, treated as if the marriage ended in divorce rather than being considered void.

- 3) While these children are acknowledged as legitimate, their inheritance rights are limited; they can inherit from their parents' estate but do not have a claim to property owned by other relatives (such as inherited assets).

Here we can see that the Hindu Marriage Act does not confer illegitimacy on the children born out of void or voidable wedlock.

2.2 Status of Children Born out of Live-in Relationship-

A live-in relationship is one in which two individuals agree to live together without a formal marriage ceremony. In the case of *Indra Sharma vs. V.K.V. Sarma*,¹ the honourable Supreme Court categorised the live-in relationship into –

- a. Domestic relationships in a household between an unmarried adult male and an unmarried adult female.
- b. Relationships in which one partner is married.
- c. Relationships that are akin to marriage, lasting for a significant period.

The Hindu Marriage Act 1955 nowhere talks about live-in relationships because u/s s. 7, A formal marriage ceremony is necessary for a valid marriage. Therefore, there is no mention of the legitimacy status for children born out of this marriage living under the Act.

But through several judicial pronouncements, it is now well settled that the offspring of such a relationship shall be treated as legitimate as the offspring of a valid marriage u/s 5 and 7 of the HMA 1955.

In the *Bharatha Matha and Another vs. R. Vijaya Renganathan and Others* case², the Supreme Court ruled that when a man and a woman have cohabited for several years in the same residence, there exists a presumption under section 114 of the Evidence Act 1872 (Section 119 Bharatiya Sakshya Adhiniyam 2023) that they are living together as husband and wife. Their children will be acknowledged as legitimate. In this case, the court reiterated the view of *SPS Bala Subramanyam vs Suruttayan*³.

In *Revanasiddappa*⁴, the Supreme Court emphasised the illegitimacy of a child born out of any relationship other than a valid marriage under HMA 1956. It ensured that no one can be denied

¹ (2014) 6 SCC (Crl) 593

² (2010) 11 S.C.C. 483.

³ A.I.R. 1992 S.C. 756.

⁴ *Revanasiddappa v. Mallikarjun*, (2011) 11 S.C.C. 1.

the right to inheritance as mandated by the Indian Constitution, U/A 39(f). Court observed, “The Court has to remember that the relationship between the parents may not be sanctioned by law, but the birth of a child in such a 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 that are given to other children born in valid marriages⁵.”

However, although a child born out of a live-in relationship or any other relationship other than marriage is referred to as legitimate, this will depend heavily on the facts and circumstances of each case. For example, in *Vidyadhari vs. Sukhrana Bai*, a married person had been living with another woman for 25 years and had children with her. Over these 25 years, he never visited his former wife and also listed the second woman as his credential on all his post-retirement employment documents. The Supreme Court held that the children would be legitimate even if the second marriage were void, and that the children would be recognised as the deceased’s legal heirs.

Again, in *Tulsa and others vs. Durghatiya*⁶, the property right was awarded to a child born from a live-in relationship, and it was determined that this child should not be considered illegitimate if the parents have lived together for a significant duration.

3. Rights of an Illegitimate Child in The Parents’ Estate

During Ancient India:

The ancient Indian society has never absolutely acknowledged the rights of illegitimates. Though some instances were found in various scriptures, smritis, and commentaries granting illegitimate children the right to maintenance and, sometimes, even property rights, these were very vague and largely depended on the father's will. There were no instances of absolute right on par with the legitimate children.

Vedic society placed immense importance on the "seed" (bija) of the father and the continuation of the paternal lineage (gotra). This emphasis naturally disadvantaged those born outside of formal marriage, as their "seed" was considered less pure or less clearly defined within the established lineage⁷.

⁵*Id.* ¶36.

⁶ *A.I.R. 2008 S.C. 1193.*

⁷ *Manusmriti* 9.33-37

The ancient Hindu law categories recognised various categories of sons, such as the *Aurasa* (legitimate son), *Dattaka* (adopted son), and *Kshetraja* (son born through *Niyoga*). However, an illegitimate child, referred to as the *Kunda*, *Gudhaja*, *Kanina* (Son of an unmarried woman), *Paunarbhava* (Son of a widow), *Dāsīputra* (Son of a Dasi). Such a child was not traditionally recognised as a legitimate heir because of the purity of lineage and the sanctity of marriage.⁸ The status of the Dasiputra depended heavily on the nature of the relationship between the father and the Dasi. If the father publicly acknowledged the child and treated him as his own, he might receive some inheritance, especially in the absence of legitimate sons⁹. Although vague under ancient law, the rights of illegitimate offspring were interpreted differently by various courts before the codification of the Hindu Personal Laws.

The Madras High Court, while referring to *the Smriti of Yajnyavalkya* and its exposition in the *Mitakshara*, Chapter I, Section XII, in the case of *Ananthaya vs. Vishnu*¹⁰, held that “an illegitimate son is one of that class of persons who, by reason of their exclusion from inheritance, are allowed maintenance by the Hindu law, and this is clear from the fact that among Sudras he shares his father's property with the legitimate son.” And by this, the Court sought to clarify that, under the *Mitakshara* law, an illegitimate child is entitled to maintenance from his parent but not to a share in the property.

The issue again came before the Bombay High Court in the case of *P.M.A.M. Vellaiyappa Chetty vs. Natarajan*¹¹. And the Court, under paragraph 5 observed that an illegitimate son born to a Shudra father from an enslaved woman or from other non-marital unions-

- a. may get a share in the property of his father, if his father chooses to give him a share; and
- b. If the father died and there are legitimate sons, the illegitimate son may get half the share of a legitimate son's allotment, only if all legitimate sons agree.
- c. If the father died and left no legitimate sons, then the illegitimate son can inherit the entire property.

From the available sources and through the interpretation of such sources by the Court in different cases, it is evident that –

⁸*Manusmriti* 9.158-160

⁹*Manusmriti* 9.179

¹⁰*Ananthaya v. Vishnu*, (1894) *I.L.R.* 17 *Mad.* 160.

¹¹(1931) 33 *Bom. L.R.* 1526.

- a) The Brahmin, Kshatriya, and Vaishya illegitimate children do not inherit the father's property. But it is entitled only to maintenance, not to a share of the father's estate.
- b) A Shudra illegitimate child may inherit, but only if the conditions as mentioned under the *Smriti of Yajnyavalkya* are satisfied.

Hence, the ancient Hindu laws do not provide proper protection for the illegitimate offspring's right to a share in the parents' property. Keeping this in view and to fulfil the state's obligation, the Indian legislature enacted legislation to codify Hindu Personal Laws and remove the prevailing uncertainty.

4. Codification Which Simplifies the Property Laws Relating to Hindu Society-

In 1955, the Indian Parliament enacted the Hindu Code Bill. Consequently, several laws were passed, including the Hindu Marriage Act, the Hindu Succession Act, and the Hindu Adoption and Maintenance Act. The Hindu Succession Act of 1956 simplified the inheritance rights of heirs.

4.1 Hindu Succession Act 1956

The Hindu Succession Act was enacted to amend and unify the laws governing intestate inheritance among Hindus¹². The Act was intended to simplify the laws relating to succession in accordance with the customs and traditions of the Hindu Society. The Succession Act has been amended several times; one of the most critical changes was made in 2005 by the Hindu Succession (Amendment) Act, 2005 (39 of 2005). This amendment Act substituted the entire Section 6 of the Act.

The newly amended Section 6(3) states that when a Hindu dies without a will, their share of the property in a joint Hindu family, governed by Mitakshara Law, will be divided according to the rules of testamentary or intestate succession outlined in this Act. This replaces the previous distribution method based on the Rule of Survivorship¹³.

Here, it is essential to note that the provision uses the word “his interest.” So, it is clear that the provisions of the Hindu Succession Act shall apply only to the separate property of the person,

¹²Preamble, Hindu Succession Act, No. 30 of 1956, India Code (1956).

¹³A legal arrangement that gives the surviving co-owner(s) the right to property after the death of another owner.

not to coparcenary property. This position can be better understood through an illustration—
Illustration: A is a Hindu who is lawfully married and has 3 children. If A dies intestate, the devolution of the property shall be according to section 6 and other provisions of the Act. There exists a coparcenary between A and his 3 children. As per the explanation of section 6(3), it shall be deemed that a notional partition had taken place immediately before the death of A. So, in such a partition, A and his 3 children shall each get a 1/4 share of the coparcenary property, since Section 6(3) provides that A's interest shall devolve under the Hindu Succession Act, not under the rule of survivorship. The 1/4th share of the A shall devolve to the widow and the 3 children. Now the widow shall get a 1/4th share of the husband's 1/4th share of the coparcenary property, i.e., a 1/16th share of the coparcenary property. And each son shall get a 1/4 share of the father's 1/4 share, i.e., a 1/16 share, plus 1/4 share of the coparcenary property, so each child shall have a $1/16 + 1/4$ share in the property.

4.2 The Hindu Marriage Act, 1955

Another significant legislation that influences the property rights of children born out of wedlock is the Hindu Marriage Act of 1955. This act sought to update and unify Hindu marriage regulations¹⁴. The Act has undergone many changes, and one of the significant changes occurred in 1976 with the Hindu Marriage Amendment Act of 1976 (Act No. 68 of 1976). The conferment of legitimacy on the child of a void or voidable marriage was provided under section 16 of the Act, which was subsequently substituted by the Amending Act of 1976.

5. Rights After Codification

The codification of Hindu law expanded the rights of illegitimate children by including the right to inherit their parents' property. If said, after the codification, an illegitimate child shall have the following rights:

- a. Right to inherit the property of the parent under section 16(3) of the Hindu Marriage Act, 1955
- b. The right to receive maintenance from the parent as stipulated by The Hindu Adoptions and Maintenance Act, 1956, and as outlined in section 144 of The Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023.

So, the codification of Hindu law changed the position of ancient Hindu law; now an illegitimate child can claim a share in the parents' property.

¹⁴Preamble, Hindu Marriage Act, No. 25 of 1955, India Code (1955).

But the execution of legislation is never as easy as it is apprehended, and this is evident in this amendment as well. Section 16(3), while acknowledging the rights, uses the term “property, which leads to the dispute of whether the term property includes both ancestral and self-acquired property or only refers to self-acquired property. And with this, the right granted under section 16(3) of the Hindu Marriage Act has always been subject to judicial scrutiny. The bare reading of section 16 suggests that—

1. Section 16 is delinked from section 11 of the Act. (Kalianna case¹⁵)
2. There must be a marriage, whether void or voidable.
3. Section 16(1) gives legitimacy to the child born out of a void marriage, while section 16(2) gives legitimacy to a child born out of a voidable marriage.
4. Such a child shall be entitled to a share in the property of the parent but not in any other person.

The root cause, which emerged as a barrier between the road to property rights, was the term “property” and the words “any right in or to the property of any person other than parent,” which came before the Supreme Court for consideration in the case of *Jinia Keotin et al. v. Kumar Sitaram Manjhi et al.*¹⁶

In this case, the appellant contended that, since Section 16, as amended by Central Act 68 of 1976, safeguards explicitly children born from a void and unlawful marriage, there is no justification for treating them differently from children born to a wife in a valid marriage concerning their rights to inherit ancestral coparcenary property. Additionally, it was argued that the provisions of Section 16(3) of the Act should be interpreted in light of the Act's overall context and purpose regarding inheritance rights, similar to those of children born of lawful marriages. The court concluded that, because the stipulations limit the child's rights exclusively to their parents' assets, granting the child further rights would violate the provision. Additionally, this would suggest that the court is effectively altering the law while claiming to interpret it.

Again in 2010, the Honourable Supreme Court in the case of *Bharatha Matha & Anr. v. R. Vijaya Renganathan & ors*¹⁷. determined that, according to the legal assumption stated in Section 16, children born out of wedlock are deemed legitimate for all essential purposes, such

¹⁵*Kalianna Gounder v. Palani Gounder, A.I.R. 1970 S.C. 1942.*

¹⁶*(2003) 1 S.C.C. 730.*

¹⁷*A.I.R. 2010 S.C. 2685.*

as inheriting their parents' estate; however, they lack the right to inherit from their relatives. As a result, a child born from a marriage that is null or can be annulled cannot inherit ancestral coparcenary property but is entitled to a share of self-acquired assets.

Since equality can never be achieved through unequal treatment, this question persists, and in 2011, these two pronouncements were doubted in the case of *Revanasidappa v Mallikarjun*.¹⁸ And after this case, the story changes completely.

6. Status After *Revanasidappa v Mallikarjun* [2011] 4 S.C.R. 675.

A two-judge panel of the Supreme Court, in interpreting Section 16 of the HMA 1955, observed that the legislature used the term "property" without clarifying whether it referred to ancestral or self-acquired assets. A comprehensive examination of Section 16(3) of the Act indicates that the amended Section clarifies that these children do not have any rights to property belonging to anyone other than their parent, unless that person had rights to the property due to their illegitimacy before the amendment's implementation¹⁹. Despite this, the aforementioned limitation does not apply to their parents' assets. Sections 16(1) and 16(2) explicitly indicate that these children are recognised as legitimate. Once designated as legitimate, they cannot be subjected to discrimination. They will hold an equal status as other legitimate children, enjoying identical rights to their parents' properties, whether obtained or inherited. The limitation specified in Section 16(3) will apply to these children with respect to property belonging to individuals other than their parents.²⁰

The court held that "In the case of joint family property, such children will be entitled only to a share in their parents' property, but they cannot claim it on their own right. Logically, on the partition of an ancestral property, the property falling in the share of the parents of such children is regarded as their self-acquired and absolute property. In view of the amendment, there is no reason why such children will have no share in such property since such children are equated under the amended law with legitimate offspring of a valid marriage. The only limitation, even after the amendment, appears to be that during their parents' lifetimes, such children cannot seek a partition. Still, they can exercise this right only after the death of their parents²¹."

¹⁸(2011) 11 S.C.C. 1.

¹⁹*Id.* ¶25.

²⁰*Id.* ¶26.

²¹*Id.* ¶35.

Moving a step forward, the Court held that the cases of *JiniaKeotin*²² and *Bharath Matha*²³ took a narrow view of section 16(3) of the HMA. The Honourable Supreme Court observed that this matter requires reconsideration and referred it to a larger bench.

6.1 Revanasiddappa & anr v. Mallikarjun & Ors. 2023²⁴

In 2023, the Honourable Supreme Court reconsidered the referred judgment and observed that “the Hindu law recognises a branch of a family as a subordinate corporate entity, within the fold of the larger coparcenary comprising many such branches. However, even such branches can acquire, hold, and dispose of family property subject to certain limitations. The nature of property held by such a branch, until partitioned among its members, does not cease to be that of joint family property of all the coparceners of the branch. Now, since the child conferred legitimacy under Section 16 is not a coparcener, the branch comprises the father and his children born of a valid marriage. As such, the property, once partitioned from the larger coparcenary and placed in the father's hands for his own branch, is not the father's separate property until the partition occurs within the branch. It remains the coparcenary property, with the children of his valid marriage having joint ownership. Thus, in view of the restriction in Section 16(3), in this property—not being the exclusive property of the father—a child covered by Section 16(1) and 16(2) is not entitled.²⁵

The Honourable Supreme Court further explained the concept with an illustration—let's assume there are 4 coparceners: C1, C2, C3, and C4. C2 has died and is survived by the widow and two children. One of the children is born from a void or voidable marriage. As explained in section 6 of the HSA 1956, a notional partition took place immediately before C2's death. In such a partition, C2's share shall be 1/4th in the larger coparcenary property. Now, within his own branch, C2, his widow and his child born from a valid marriage would each have a 1/3rd share, i.e., each shall have a 1/12th share. Now the C2's 1/12th share shall be distributed among the widow and both children. Each shall get a 1/36th share in the property. So, the wife and the legitimate son shall each inherit a (1/12 + 1/36)th share of the property, while the illegitimate son shall inherit only a 1/36th share of the entire property.²⁶

²²*Jinia Keotin v. Kumar Sitaram Manjhi*, (2003) 1 S.C.C. 730.

²³*Bharatha Matha v. R. Vijaya Renganathan*, A.I.R. 2010 S.C. 2685.

²⁴2023 INSC 783.

²⁵*Id.* ¶44.

²⁶*Id.* ¶35.

The court also dealt with another issue that was pertinent to resolve, which was the interpretation of the definition of the term “related” u/s 3(1)(j) of HSA 1956, because the proviso of section 3(1)(j) of the HSA was a constraint in the working of section 16(3) of HMA 1955.

Section 3(1)(j): “related” means related by legitimate kinship:

Provided that illegitimate children shall be deemed to be related to their mother and to one another, and their legitimate descendants shall be deemed to be related to them and to one another. Any word expressing a relationship or denoting a relative shall be construed accordingly”.

The Court, while interpreting both the section and harmonising the two legislations, observed that the provision in Section 3(j) indicates that children born outside of marriage are recognised as related to their mother and to one another. This section does not prevent an individual who is eligible for protection under Section 16(1) or (2) of the HMA 1955 from claiming a share of their parents' estate according to Section 6(3) of the HSA, as has been previously interpreted in this ruling. Once an individual attains legitimacy as outlined in subsection (1) or subsection (2) of Section 16 of the HMA 1955, the clause in Section 3(j), which pertains to “illegitimate children,” is no longer applicable to those identified in Section 16(1) and Section 16(2)²⁷. The court then considered the referring judgment and observed that there is a degree of contradiction in the referring judgment. The following are the contradictory observations of the referring judgment:

- I.** The Court states that Section 16(3) prohibits such children from claiming any property other than their parents' property.
This means they cannot claim ancestral or joint family property as a right.
- II.** The Court notes that in the case of joint family property, such children are entitled to a share in their parents' property but not of their own right.
This implies that they have a claim to their parents' share in joint family property upon partition, but cannot demand partition during the parents' lifetimes.
- III.** The Court also holds that once declared legitimate, these children are on par with other legitimate children and can claim property after partition.
This suggests that, after partition, the share allotted to their parents becomes self-

²⁷*Id.* ¶48.

acquired property and can be inherited by them as legitimate heirs.

This court clarified that children born of void or voidable marriages are not entitled to the property of any third person or to claim partition of joint family property during their parents' lifetimes. However:

1. After partition, when the parents' share in the joint family property becomes their self-acquired property, such children can inherit it as legitimate heirs.
2. The observation in Paragraph 29 of the referring judgment—that these children will be on par with legitimate children—is to be understood in the context of their rights to their parents' property, not joint family property or the property of third persons.

Another case came before the Supreme Court for the consideration of the issue of the right of the illegitimate child to the property of the parents. In the case of *Raja Gounder &ors. v. M. Sengodan &ors*²⁸The double bench of the Honourable Supreme Court reaffirmed the propositions laid down in the case of *Revanasiddappa*.²⁹

Here, it is interesting to note that, on the one hand, the court acknowledged rights relating to ancestral property by expanding the scope of section 16(3) of the HMA 1955, but, on the other hand, the court expressly rejected the contention that illegitimate children should also be included in the coparcenary. Honourable Court in *Revanasiddappa*³⁰ judgment, determined that a child born out of wedlock cannot be presumed to be a coparcener merely based on their birth, as the explicit language in section 16(3) indicates that legitimacy does not confer property rights on anyone other than the parents. The court highlighted that the concept of coparcenary fundamentally revolves around acquiring an interest through birth. Granting an illegitimate child a portion of the coparcenary would inevitably affect the rights of individuals beyond just the child's parents. Such an interpretation contradicts the law's purpose. In reality, the unfavourable phrasing in Section 16(3) clarifies the matter. Hence, we need to conclude that if a person is covered by the stipulations of sub-section (1) or sub-section (2) of Section 16, they possess rights to their parents' entire estate, to the exclusion of all others.³¹

Now, although the illegitimate ones have been granted through this judicial pronouncement, what is intended by the statute, but by this exclusion, their absolute right to property at par with

²⁸2024 INSC 47.

²⁹*Revanasiddappa v. Mallikarjun*, (2011) 11 S.C.C. 1.

³⁰*Revanasiddappa v. Mallikarjun*, 2023 INSC 783.

³¹*Id.* ¶51.

the legitimate ones, was once again not taken into consideration.

7. Present Position in India

The present position, i.e. the position after the case of *Revanasidappa*, can be summarised as:

1. An illegitimate child shall not be a coparcener by birth.
2. The property initially separated from the larger coparcenary and designated by the father for his heirs is not viewed as the father's personal property until a distribution occurs within that lineage. It continues to be regarded as coparcenary property.
3. After the partition within the smaller coparcenary, the father's share shall be devolved to the heirs as per the Schedule, including the illegitimate son.
4. However, the illegitimate son does not have the right to seek his share till the life of the Father.
5. The proviso of section 3(1)(j) of HSA does not apply to the children covered under section 16(1) and section 16(2).

8. Right In Different Countries

8.1 United States:

landmark cases like *Trimble v. Gordon*³² and *Lalli v. Lalli*³³ established the principle that states cannot create arbitrary distinctions between legitimate and illegitimate children for inheritance purposes. While laws vary slightly by state, the general principle is that illegitimate children have the same inheritance rights as legitimate children.

8.2 England:

In England, the Family Law Reform Act 1969 and the Family Law Reform Act 1987 have provided certain inheritance rights for illegitimate children regarding their parents' assets.

8.3 New Zealand:

The Status of Children Act, 1960, abolished the status of illegitimacy. According to Section 3 of the Act, in any legal matters in New Zealand, the connection between an individual and their parents will be assessed without regard to the parents' marital status or past relationships. In addition, all other familial relationships are to be interpreted in the same manner.

³² 430 U.S. 762 (1977).

³³ 439 U.S. 259 (1978).

9. Balancing Act of State Machinery

It is of considerable interest that there has been a historical reluctance on the part of the legislature and even the judiciary to intervene in entrenched customs, specifically in sensitive domains.

like personal laws. This reluctant, cautious approach aimed to avoid upsetting stakeholders unduly. But this avoidance perpetuates societal discrimination. Illegitimate children also faced the brunt of this, often ostracised and legally discriminated against, due to the non-recognition of rights which were customarily denied.

On the one hand, the Hindu Succession Act modified the devolution of separate property; on the other hand, coparcenary property continued to be devolved according to Mitakshara law. Further, the judiciary, in 2011³⁴, while granting recognition to the rights of illegitimate children, fails to provide the unequivocal right to coparcenary property. This, however, has denied them the right to property on par with that of legitimate owners.

Muslim personal laws are the classic examples of this reluctance. One of the prime examples under this is the Muslim Women (Protection of Rights on Divorce) Act, 1986. While section 6 of this Act endorses reasonable and fair maintenance for divorced women during the subsistence of the iddat period, section 5 renders the application of Sections 125-128 of the CrPC redundant, thereby giving prominence to personal law over the general law of maintenance.

10. Conclusion

The interplay between the law, society, and morality finds its most intense articulation in the debate surrounding the rights of illegitimate children. Despite being a march in the legal reforms and judicial interpretations, the stigma of illegitimacy continued to cast a long shadow over the principles of justice and morality. It is a social stigma affecting the well-being of the child, restricting their induction into mainstream society, leading to societal distortion. This can directly contribute to increasing abortion rates, foeticides, infanticides, and an increase in criminal behaviour in response to the assigned tag of illegitimacy, isolation, poverty, and violence, if survived. Under Hindu law, it has evolved significantly, and significant steps have

³⁴*Revanasiddappa v. Mallikarjun*, (2011) 11 S.C.C. 1.

been taken, but all these were nothing but band-aid solutions. Amendments to the HSA and judicial pronouncements have broadened the scope. However, the nuance of granting them absolute rights over property persists, and the struggle to balance traditional Hindu lineage with evolving notions of family and equality continues.

11. Way forward

The issue of illegitimacy, and especially their property rights, needs to be resolved, as they constitute a substantial part of the population, and neglecting them would amount to a loss for society as a whole. According to available data, on average across OECD countries, 42% of births occur outside marriage³⁵. In 13 OECD countries (Belgium, Chile, Costa Rica, Denmark, Estonia, France, Iceland, Mexico, the Netherlands, Norway, Portugal, Slovenia, and Sweden), more than 50% of children are born outside of marriage, with rates particularly high in Mexico (70%), Costa Rica (73%), and Chile (75%). In four other OECD countries (Israel, Japan, Korea, and Turkey), by contrast, less than 10% of children are born outside of marriage. In Japan, Korea, and Turkey, the percentage is approximately 2-3%³⁶. Around 40 per cent of births in the United States occur outside of marriage, which is up from 28 per cent in 1990.³⁷ However, such trends are indeed very low in India, typically less than 1 per cent, and it cannot be overlooked that the majority of cases in India did not get recognised due to various societal and infrastructural factors.

What can be said, if not an irony, is that the act of the two people, who might have acted just for their pleasure, is deciding the fate of someone who has not even taken birth. Firstly, we are sinning by denying status to the creature of God, and secondly, a greater sin by not acknowledging the property rights of such a creature.

The denial of the property right to the illegitimate child being on par with the legitimate ones under Hindu law is not only a violation of their natural rights but also a violation of the spirit of the Indian Constitution.

³⁵OECD, *Family Database, SF2.4, Share of Births Outside of Marriage*, https://www.oecd.org/content/dam/oecd/en/data/datasets/familydatabase/sf_2_4_share_births_outside_marriage.pdf (last visited Mar. 7, 2025).

³⁶*Id*

³⁷Elizabeth Wildsmith, Jennifer Manlove & Elizabeth Cook, *Dramatic Increase in the Proportion of Births Outside of Marriage in the United States from 1990 to 2016*, *Child Trends* (Aug. 8, 2018), <https://www.childtrends.org/publications/dramatic-increase-in-percentage-of-births-outside-marriage-among-whites-hispanics-and-women-with-higher-education-levels> (last visited Feb. 16, 2025).

The Indian Constitution, under Article 14, guarantees equality between men and women as a fundamental right. It is the violation of the right to a dignified life³⁸ U/A 21 of the Constitution. Article 19(1)(f) initially recognised the right to property as a fundamental right, but it has since been modified; it is now recognised as a legal right under Article 300A of the Indian Constitution. Article 39(f) states that children should be given opportunities to develop healthily. It also states that children should be protected from exploitation and abandonment. Further in the international arena, special focus has also been given towards the protection of the rights of children, including illegitimate ones.

In 1924, the "*Geneva Declaration*"³⁹ highlighted the importance of protecting children from all forms of degradation and emphasised the need to foster their physical and mental development properly. Article 25(2) of the Universal Declaration of Human Rights (1948) notes that motherhood and childhood deserve particular attention and assistance. Every child, irrespective of whether they are born in or out of wedlock, is entitled to equal societal protection. The United Nations Convention on the Rights of the Child, established in 1989, states that every child, regardless of their parent's or legal guardian's race, color, gender, language, religion, political views, or any other opinions, as well as their national, ethnic, or social backgrounds, property, disability, birth, or any other status, should not experience discrimination. Additionally, it safeguards children from all forms of discrimination or punishment based on their status, activities, and various other factors.

So, although judgments are passed by the judiciary from time to time, especially in *the Revanasiddappa case*, the amendments to HSA that give illegitimate children equal status with legitimate children are praiseworthy. The HSA needs further modifications, particularly to acknowledge illegitimate children alongside legitimate ones regarding property rights in the joint family, thus equalising their status with that of legitimate children.

The constitutional mandate that the court has iterated in the *Revanasiddappa*⁴⁰. The case should be adopted in full to align the statutory laws with the mandate. The court in this case said -

1. Article 37 states that it is the responsibility of the State to adhere to the principles outlined in Chapter IV when creating laws. It is now broadly accepted that the higher

³⁸*Maneka Gandhi v. Union of India*, A.I.R. 1978 S.C. 597.

³⁹*League of Nations, Geneva Declaration of the Rights of the Child pmbL., Sept. 24, 1924, L.N.T.S. No. 17 (1924).*

⁴⁰*Id.*

judiciary is viewed as part of the State in this country.

2. Although the property right is no longer deemed fundamental, it is still recognised as a constitutional right, and Article 300A offers protection against the loss of property rights unless done through lawful authority.

In *Uttam Singh vs Saubhag Singh*⁴¹, the Court has established a framework or an alternative to attain equality in this context. It concluded that when a portion of coparcenary property is transferred under section 8 of the HSA, the property's nature shifts from coparcenary to separate, and any further inheritance will be understood as originating from this now separate property. This can also be taken into consideration while formulating the statutes and additional amendments.

To overcome these challenges, a multifaceted approach is required. The judiciary must continue its proactive role by adopting a broad interpretation of the existing laws of the country to ensure that the rights of illegitimate children are neither marginalised nor diluted. Secondly, legislatures should employ such measures to harmonise domestic laws with international conventions, particularly those conventions on non-discrimination and child welfare. This alignment will reinforce India's commitment to global standards of justice.

Society's role is also crucial in combating the entrenched stigma surrounding illegitimacy. There must be public awareness campaigns, education, and sensitisation programs to foster a more balanced social ethos. Although law and morality are distinct, their intersection can be used to create a narrative that recognises the inherent dignity of every child, whether legitimate or illegitimate. By embracing such measures, we can make a society where every child, legitimate or otherwise, enjoys the unalienable rights and respect they deserve.

⁴¹ A.I.R. 2016 S.C. 1169.