Subject Name: Hindu Law
Topic Name: Children of Void and Voidable Marriage

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Introduction

While the distinction between legitimate and illegitimate children persists, many countries, India included, are witnessing a trend towards blurring this line. This trend manifests in two notable ways. Firstly, there is a movement to grant legitimacy status to certain categories of illegitimate children. Secondly, there's a push to bestow upon illegitimate children the rights typically reserved for their legitimate counterparts.

According to Hindu law, an illegitimate child has never been deemed as filius nullius, and their relationship with both parents has been acknowledged. One specific category of illegitimate child, known as dasiputra (son born to a permanently and exclusively kept concubine), was granted a distinct status within his father's family.

However, his position was inferior to that of the aurasa (natural) son, as he lacked inheritance rights or the right of survivorship in the presence of a natural son.

Presumption of Legitimacy

In broad terms, a child born within a lawful wedlock is typically considered legitimate, while a child born outside of such wedlock is deemed illegitimate. Section 112 of the Indian Evidence Act, 1872, establishes a presumption rule regarding this matter. It stipulates that a child born
(i) within the lawful wedlock, regardless of the timing, or
(ii) within 280 days following the dissolution of marriage by death or divorce, will be conclusively presumed to be the child of the father, provided the mother remained unmarried.

In certain countries, such as England, there exists a trend towards granting legitimacy status to illegitimate children, known as "legitimated" children. Legitimation refers to a legal procedure through which the status of legitimacy is bestowed upon children born outside of lawful wedlock, typically through the subsequent marriage of their parents. Legitimation through acknowledgment or recognition by the putative father is also practised in some countries, such as France. However,

in India, the concept of legitimation is not recognized across its legal systems, except in a limited manner under Muslim law, where legitimation by acknowledgment is acknowledged.

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Hindu and Special Marriage Acts

Under the Hindu Marriage Act (Section 16) and the Special Marriage Act (Section 26), the stance on children of void and voidable marriages is as follows:

1. Children of unannulled voidable marriages are considered legitimate in the same manner as children of a valid marriage.
2. Children of annulled voidable and void marriages are also deemed legitimate, but they are entitled to inherit only the property of their parents and no one else's (Section 16(3)).

It's worth noting that prior to the 1976 Amendment to the Hindu Marriage Act, children of void marriages, which were later declared null or void, were granted legitimacy status. However, if a marriage wasn't declared null and void, the children remained illegitimate. This discrepancy was addressed by the 1976 Amendment. Now, a decree of nullity isn't necessary to confer legitimacy status. Similarly, it's immaterial whether the marriage is deemed void for reasons other than a petition under the Hindu Marriage Act.

In the case of Lakshmamma Thuamma (AR 1974 AP), it was determined that while a petition for the annulment of a voidable marriage could be filed by one spouse during the lifetime of the other spouse, a petition for the annulment of a void marriage could be initiated by a spouse even in the absence of the other spouse or after their death. The court emphasised, "If we are to hold that an application under Sec.

11 for a decree of nullity cannot be filed after the death of the other spouse, the result would be that a large number of children from void marriages would be unable to obtain the benefit of this section through no fault of their own, simply because the parents concerned did not choose to file

the petition for annulment during the lifetime of the other parent. The court should, even in cases of ambiguity, lean towards a construction that would enable children to attain legitimate status."

Therefore, under Section 16, through a legal fiction, a child born of a void or voidable marriage is considered the legitimate child of their parents, as if the marriage had been valid. It's important to note that Section 16 applies only if a marriage is proven to have occurred but is subsequently found to be void or voidable.

Consequently, if there has been no marriage at all, meaning no solemnization of marriage took place, Section 16 cannot be invoked, and legitimacy cannot be conferred upon any child.

If a marriage is deemed void or voidable under any provision of the law other than Sections 11 and 12 (which outline the grounds for void and voidable marriages), the children from such unions will be considered illegitimate. An example of such a case would be when a marriage is void due to the absence of valid ceremonies.

Interestingly, the Indian Divorce Act, 1869 (applicable to Christians and individuals married under the Special Marriage Act), stipulates that if a marriage is annulled on the grounds of bigamy, but it is demonstrated that the subsequent marriage was entered into in good faith, with both parties believing the former spouse to be deceased, or if a marriage is annulled due to insanity, children conceived before the decree will be considered legitimate.

Section 16(2) further states that even if a voidable marriage is annulled under Section 12, children conceived or begotten before the decree is issued will be deemed legitimate, irrespective of the nullity decree. This provision applies not only to children begotten but also conceived before the decree, even if they are born after the decree.



Position of Under the Modern Hindu Law

Maintenance
Both the father and mother bear the responsibility to provide maintenance for illegitimate children until they reach the age of majority.

Inheritance
An illegitimate child does not have the right to inherit from their father. However, they are eligible to inherit from their mother or from their illegitimate siblings.

Joint Family Property and Partition
An illegitimate son does not acquire any share in ancestral property held by their father nor do they become a coparcener within the family. While the father is alive, the son's rights are limited to maintenance only, although the father may choose to allocate a portion of his separate property to them. Despite arguments that the legitimacy granted under Section 16 should extend to property inheritance, the Supreme Court ruled in **Jinia Keotin v Kumar Sitaram Manihi (2003) 1 SCC 7301** that the provision expressly restricts the rights of illegitimate children solely to the property of their parents.

Guardianship
The mother is initially granted preferential guardianship rights over an illegitimate child. Upon her demise, the father assumes the role of natural guardian for such a child.

Adoption
The mother of an illegitimate child holds the authority to give the child up for adoption, thus making adoption of such children legally valid. The existence of an illegitimate son does not serve as a hindrance to the adoption of another son.

Live-in Relationship

In the case of D. Velusamy v D. Patchaiammal (2010) 10 SCC 469, after the demise of his wife in 1945, C engaged in a live-in relationship with $, living together as husband and wife until C's death in 1979. The respondents and four other daughters were born from this relationship. Their union was acknowledged not only by society but also by their family members.

The Supreme Court observed that the law tends to presume marriage over concubinage when a man and woman cohabit continuously for an extended period. Under Section 114 of the Evidence Act, there arises a presumption that they are husband and wife, and their children are not deemed illegitimate. However, this presumption can be challenged with compelling evidence.

A long-term live-in relationship cannot be equated to a casual or transient arrangement, and there exists a presumption of marriage, which the appellants failed to rebut.

However, in Baratha Matha v R. Vijaya Refigamzbafl (AIR 2010 SC 2685), it was explicitly stated that children born out of live-in relationships cannot claim the benefits of Section 16.

Common Law Marriage

Some countries recognize common law marriages, also known as de facto marriages or informal marriages. These unions are regarded as marriages even without a formal ceremony, civil contract, or registration in a civil registry.