



INTERNATIONAL JOURNAL OF HUMAN RIGHTS LAW REVIEW

An International Open Access Double Blind Peer Reviewed, Referred Journal

Volume 4 | Issue 5 | 2025

Art. 08

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Recommended Citation

Paawni Madan, *Illegitimate but not Rightless: The Expanding Scope of Inheritance in Hindu Law*, 4 IJHRLR 110-119 (2025).
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Illegitimate but not Rightless: The Expanding Scope of Inheritance in Hindu Law

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Manuscript Received
27 Sep. 2025

Manuscript Accepted
30 Sep. 2025

Manuscript Published
07 Oct. 2025

ABSTRACT

The status of children born from void and voidable marriages has been one of the most debated issues in Hindu personal law for a long time. Even though social realities require that these children receive equal treatment, legal provisions and judicial interpretation have frequently placed limitations on this form of equality. Section 16 of the Hindu Marriage Act 1955 grants legitimacy to children of void or voidable marriages; however, the intersection of Section 16 with Section 6 of the Hindu Succession Act, 1956, has delayed the determination of their rights of inheritance in ancestral coparcenary property. Some earlier decisions had limited the rights of the children born from void and voidable marriages to only having rights to the self-acquired property of the parents. Recent developments, in particular the recent landmark judgment led by Chief Justice D.Y. Chandrachud, have changed this as it has recognised children's rights of inheritance to a share that has been developed through a notional partition, even if the children born from void or voidable marriages were not considered coparceners on the basis of birth. This paper seeks to critically analyse the statutory provisions and the implications of legislative enactment, judicial evolution, and constitutional values that contributed to this increasingly evolving legal landscape. The research adopts a doctrinal approach, relying upon statutes, case law, and scholarly commentary to explore how the law has evolved to reconcile tradition with changing societal needs.

KEYWORDS

Illegitimate Children, Hindu Succession Act, Section 16 HMA, Coparcenary Property, Notional Partition, Social

Justice.

INTRODUCTION

The inheritance of property under the Hindu Succession Act 1956 (hereinafter referred to as 'the HSA') is rooted in the notion of kinship. Put differently, the property of a Hindu who dies intestate is inherited by his/her "relatives" in accordance with the relevant provisions of the HSA.¹ Sections 8 and 15 of the HSA prescribe the general rules of succession for males and females, respectively.

The traditional rule of construction of the words "child," "son," or "daughter" appearing in a statute would mean legitimate children, in other words, children born of a marriage. This is too basic a description to require support. No doubt, there might be express provision in the statute itself to give these words a more extended meaning, to include illegitimate children as well, as Section 3(1)(j) of the HSA provides a good example of such a provision.²

According to section 3(1)(j) of HSA, the term "related" means related by legitimate kinship. Further, it is 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 term 'kinship' refers to socially accepted relationships among humans in a culture, which in some cultures are considered biologically connected or are otherwise considered relatives through marriage, adoption, or any other kind of ritual. Kinship is a broad term for any relationships that people are born into or create later in life to be recognized as binding relations known to their society.

Whenever a person is said to be 'related' to another for succession, the relationship must be legitimate. Illegitimate children are not treated as related to anyone except whatever confers in section 3(1)(j) and thus cannot succeed such person.

Under the customary law, an illegitimate son's right to get a share during partition depended upon the caste he belonged to. Among the three castes of Brahmins, Kshatriyas, and Vaishyas, an illegitimate son is not a coparcener but a member of the putative father's joint family, and his rights are limited only to

¹ Hindu Marriage Act, No. 25, Acts of Parliament, 1955.

² Hindu Succession Act, § 3(1)(j), No. 30, Acts of Parliament, 1956.

maintenance. He is not entitled to ask for a partition or a share if the father was in joint ownership with his collaterals. Where the father was separated from his collaterals, a *dasiputra* has no right to demand a partition from him, nor to claim a share if a partition occurs between the father and his legitimate sons. Still, his father can validly give him a share. It is totally the discretion of the father, which he can exercise at his pleasure. He also has the power to decide the quantum of the share. It can be less than or even equal to the share of his legitimate sons, or there can be no share at all, but if the father is dead and the coparcenary comprises only the brothers, then the position is different. Here, not only is the *dasiputra* entitled to enforce a partition, but he can also get a share in his own right and not merely at the discretion of the other brothers. The extent of his share would be one-fourth of what the other brothers (legitimate sons of his father) would take. On the death of the father, he will be a coparcener with the brother, which includes a right of survivorship, a right to ask for a partition of the property, and a right to get a share equal to one-fourth of the latter's share.³

It is pertinent to note, however that the word “illegitimate” has not been defined in the HSA. The dictionary’s literal definition of the word ‘illegitimate’ refers to a child born of parents not married to each other i.e outside the wedlock or while also something not in accordance with law. Consequently, the expression ‘illegitimate child’ may comprise both definitions mentioned, in the first definition, there is no marriage whatsoever, and in the second definition, there is a marriage ceremony (even though the marriage ceremony may be void and not create a valid marital status). In the latter view, the parties who engaged in the marriage ceremony did not satisfy the requirements of applicable law for a valid marriage or violated them.

STATUTORY FRAMEWORK GOVERNING LEGITIMACY

Section 16 of the HMA grants legitimacy to such children born out of void/voidable marriages.

1. *Notwithstanding that marriage is null and void under section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.*

³ SIR DINSHAH FARDUNJI MULLA, PRINCIPLES OF HINDU LAW 403 (LexisNexis, 22d ed. 2016).

2. *Where a decree of nullity is granted in respect of a voidable marriage under section 12, any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties to the marriage if at the date of the decree it had been dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity.*
3. *Nothing contained in sub-section (1) or sub-section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity under section 12, any rights in or to the property of any person, other than the parents, in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents".*

It not only confers legitimacy to such children born out of void/voidable marriages but also recognizes their right in the property of parents.

Section 16 of the HMA provides that illegitimate children are considered legitimate and can thus inherit from their father under section 8 and mother under section 15(1)(a) of the HSA. The term "parent" means father or mother and cannot be interpreted more broadly than that. Parent does not mean parents of the parent or grandparents. Consequently, illegitimate children do not have the right to inherit the estate of their grandparents since they cannot be considered to be related to those grandparents.

In view of the definition of word 'related' in section 3(1)(j) read with Section 15(1) of the HSA, a child born of a void or voidable marriage can succeed and inherit the property of their mother and in view of Section 16(3) of the HMA, they can also succeed to their mother as well as father.

The statute only refers to the separate property which the statutorily legitimate child can inherit without any contention, but the real question still remains about whether the child granted legitimacy according to HMA can inherit from the coparcenary property.

As per Section 16 of the HMA, an illegitimate child has the right to claim inheritance in the property of his/her parents. Now, a point that arises is "Whether, in terms of Section 16 of the HMA, the right of an illegitimate child to succeed to the property of his father will include the right to succeed to ancestral property in the hands of the father?". The matter of illegitimate children's rights in coparcenary property presents a challenge as it necessitates an exploration of whether the nature of coparcenary property is such

that it amounts to "property of the parents" u/s 16(3).

JUDICIAL INTERPRETATION: FROM RESTRICTION TO EXPANSION

(i) Earlier Judicial Approaches:

In *Jinia Keotin v Kumar Sitaram Manjhi*, the Supreme Court responded in the negative, stating that any attempt to grant rights to an illegitimate child, the court concluded, would do "violence to the provision" u/s 16(3), and would render the section redundant. The child born out of a void and an illegal marriage has been specifically safeguarded under Section 16, but they ought not to be held at par with the children born out of a lawful marriage for the purpose of inheritance of the ancestral property of their parents.⁴

This was again reaffirmed in *Neelamma v. Sarojamma*, holding that "an illegitimate child cannot succeed/claim a share in the joint Hindu family property", the appellate court held that the children born out of a void marriage are not on the same pedestal as that of coparceners.⁵

Again, in another landmark case of *Bharatha Matha & Anr. v. R Vijaya Renganathan & Ors.*, the Supreme Court held that children born from void or voidable marriages would inherit only self-acquired property of the father and would not inherit ancestral coparcenary property, or property inherited up to four generations of male lineage. The court also went into discussions about live-in relationships and ruled that no presumption of marriage can exist even if the parents were in a very long period of cohabitation, and thus denied the child any inheritance rights.⁶

Traditionally, the judiciary's practices have included some reluctance to differ from well-established legal norms, with an aspiration to preserve some semblance of legal continuity and predictability in legal precedent, although not wholly apparent in the full recognition of social justice, or of the changes within social configuration. While this resolute commitment to legal precedent provided some comfort in the legal profession, and as a whole, the law became to some extent a failure to align with the speed of social progress, which often created an implicit disregard for what should have been an obvious necessity for doctrinal revisions to adapt and flow with the shifting norms of human existence and

⁴ *Jinia Keotin v Kumar Sitaram Manjhi & Ors.*, AIRONLINE 2002 SC 635.

⁵ *Smt. Sarojamma And Ors. vs Smt. Neelamma And Ors.*, ILR2005KAR3293.

⁶ *Bharatha Matha & Anr. v. R Vijaya Renganathan & Ors.*, AIR 2010 SUPREME COURT 2685.

change in social reality.

(ii) Current Position:

However, in a recent landmark supreme court judgment, delivered by a three-judge bench led by the then chief Justice DY Chandrachud discussed the crucial intersection of section 16(3) of the Hindu Marriage Act, 1955 and section 6 of the Hindu Succession Act, 1956 when it came to reconciling the conflicting interpretations of property rights of children born in invalid marriages in a Mitakshara law governed property in a Hindu joint family household. In holding that such children had the right to inherit their parents' property shares by a notional partition, the ruling at the same time ruled out consideration of those children as coparceners by birth in a Hindu Undivided Family.

The case involved conflicting views from earlier Supreme Court decisions in *Bharatha Matha & another v. R. Vijaya Renganathan & others* and *Jinia Keotin v. Kumar Sitaram*. Where the hon'ble court had taken the view that children born out of void marriages were not entitled to claim inheritance of ancestral coparcenary property and were entitled only to self-acquired property of their father.⁷

Children born from both void and voidable marriages are expressly granted legitimacy under subsections 1 and 2 of section 16. This legislative intent emphasizes a rather protective stance towards the rights and welfare of children resulting from such unions, making sure that they are not at a disadvantage because of their parents' marital status.

However, subsection 3 adds a subtle restriction, limiting these children's inheritance rights by specifically prohibiting them from claiming any property belonging to anyone other than their parents. Due to its intersections with more general concerns about property law and children's rights, this subsection has come to be the focus of legal scrutiny and discussion.

Here, the court interpreted the ancestral property, which would become separate property owing to the notional partition that is assumed to have taken place. A notional partition is a hypothetical division of Mitakshara coparcenary property that is assumed to have occurred just before a coparcener's death. This legal concept, detailed in Section 6 of the HSA, 1956, serves to determine the share of the deceased coparcener that will then devolve to their legal heirs via intestate succession, rather than by

⁷ *Supra* 5.

the rule of survivorship.⁸

While reaching this conclusion, it acknowledged that, under Article 300A of the Constitution, the right in question is the illegitimate child's right to property, i.e., it can be limited only "by authority of law", which requires the existence of a legal prohibition clearly disabling the illegitimate child from succession to property originally coparcenary. It further held that Section 16(3) must be construed in light of Article 39(f) of the Constitution, which provides for the state to direct its policy to provide children "opportunities and facilities to develop in a healthy manner". This required a construction of section 16(3) in the context of the constitutional pursuit of children's rights, achieved by giving the word "property...of the parents" its fullest meaning.^{9 10}

The court affirmed the proposition that an illegitimate child is entitled to succeed to coparcenary property that has become separate from the parents. Simultaneously, it also held that such a statutorily legitimized child cannot himself demand partition.

It gave an illustration for clarity, suppose if there are four coparceners, namely C1, C2, C3, and C4. Let's say if C2 died and left behind him a widow, one son, one daughter, and one illegitimate child born out of a null and void marriage in accordance with section 11 of HMA, 1955. If C2 dies intestate, his branch consisting of his widow, son, and daughter each takes 1/4th of his share; the share of C2 will be divided between the widow, son, daughter, and the illegitimate son as well.

The child born out of a null and void marriage under section 11 would also be entitled to such share arising out of notional partition. The court ruled that progeny born out of a marriage considered void/ voidable do not possesss the right to assert a claim on ancestral coparcenary property, however they are entitled to such ancestral property which became separate property.

The court considered amendments to Section 16, which now provide legitimacy to children of void and voidable marriages. The court harmonized the provisions of HMA and the HSA to determine the scope of property rights for children born from a void or voidable marriage.

Given this historic ruling, the law is no longer constrained by the traditional limiting lens of law, and is pursuing not only a juristic capacity closer to common systems of beliefs and modern notions

⁸ Hindu Succession Act, § 6, No. 30, Acts of Parliament, 1956.

⁹ INDIA CONST. art. 300A.

¹⁰ INDIA CONST. art. 39(f).

but is also shaping both what the law is and should be, as it is necessary to align to the best of our ability with social justice and equity. The law is, to some extent, a living organism that acts on behalf of society, and it evolves with societal complexities.

Before this landmark ruling, the legal framework was seen as increasingly inadequate to deal with complexities related to contemporary disputes. The existing legal doctrines, based as they were on doctrines and statutes made in previous centuries, often provided inadequate remedies for the disputes arising from new social and economic relationships. The inadequacies highlighted the serious limitations of sustaining strict compliance with antiquated legal interpretations, which clearly were not prepared to address the modern issues the case represented. The inadequacies of the prior legal system were compounded. This groundbreaking case served as a catalyst for re-evaluating and adapting the legal system for contemporary times.

CONCLUSION

The recognition of the rights of children born from void and voidable marriages marks a slow but necessary evolution away from dogmatic personal law principles and towards a fairer and justice-based framework. Whereas prior judicial pronouncements limited their inheritance rights solely to self-acquired parental property, recent decisions have further expanded this right by recognizing that such children can inherit through notional partition even though they are not by birth coparceners. This nuanced position is an attempt to reconcile Section 16 of the Hindu Marriage Act with Section 6 of the Hindu Succession Act, taking into account doctrinal consistency and the constitutional mandates of equality and dignity. The trajectory of the development indicates the judiciary's role in actively dismantling entrenched discrimination with respect to mothers and establishing a first principle that children should not be punished due to circumstances outside of their control. However, the fact that children born from void or voidable marriages are still expressly excluded from full coparcenary rights emphasizes the ongoing tension between traditional and reform. Finally, this development represents a meaningful advance toward making personal laws more compatible with overall principles of social justice and equity, and simultaneously indicates there is more reform needed for children to have true equality in inheritance.

Nonetheless, this is just the starting point. Children statutorily legitimized still remain out of the coparcenary by only receiving a share through notional partition or devolution of their parent, instead of birth rights. This distinction demonstrates both an unwillingness to completely distance the law from the idea of

legitimacy as it has always been understood, while simultaneously preserving some measure of backward hierarchy among heirs. The law must further develop before it can truly provide equality and dignity as required in our constitutional mandate, beyond simply a menu of options. The path toward equal or equitable inheritance for state-recognized children is a work in progress.