

Inheritance Rights of Children Born Out of Wedlock: A Comparative Analysis Between Hindu and Muslim Personal Laws

¹Smita Mittal, ²Sahasra Nellore, ³Shreya Mukherjee, ⁴Anushka Palit

¹Student, ²Student, ³Student, ⁴Student

¹O.P. Jindal Global University, Sonipat, India

¹23jgls-smita@jgu.edu.in, ²23jgls-sahasra@jgu.edu.in, ³23jgls-shreya1@jgu.edu.in, ⁴23jgls-anushka@jgu.edu.in

Abstract - The inheritance rights of children born of void or voidable marriages in India's diverse legal structure form a complex intersection of personal law, constitutional principles, and child welfare. While Hindu personal law through Section 16 of the Hindu Marriage Act, 1955 has had changes made in its favour to provide some protection for the inheritance rights of such children, Muslim personal law has continued with its traditional classification and distinguishes between sahih (valid), fasid (irregular), and batil (void) marriages, often negating inheritance rights of the children born out of an invalid Nikah. This paper attempts to answer the question - *How far do Hindu and Muslim personal laws in India differ in the treatment and conferment of inheritance rights on children born out of void or voidable marriages, and how can these sets of laws be reconciled with the constitutional values of equality and dignity?* By employing a doctrinal methodology, this paper analyses statutory provisions, case laws, and religious interpretations by critiques of the role of the judiciary in the effort to bridge the gap between personal law and constitutional mandates.

Introduction

The status of children born outside of marriages has historically been fostered with social prejudices, religious doctrines, and rigid interpretations of personal laws. In India, where personal laws regulate marriage, family, and succession-related matters in respect of religious communities, children born outside of wedlock still have their inheritance rights riddled with complex interplays of tradition, morality, and law. Under Hindu law, the Hindu Marriage Act, 1955, and subsequent judicial interpretations, there have been substantial strides in relation to the protection of such children by partly legitimizing the rights of children born from void and voidable marriages. Nevertheless, the gaps are huge, especially in relation to coparcenary property and ancestral rights.

On the other hand, Muslim personal law, rooted in classical jurisprudence, adopts a stricter approach. Illegitimate children generally are denied the right to inherit the property of the biological father and have been recognized by the law mainly concerning the mother. This position results in denial of property rights and family recognition and poses much more severe threats in the light of the constitutional values enshrined in Articles 14, 21, and 39(f) of the Indian Constitution.

Recent judicial pronouncements, such as *Revanasiddappa v. Mallikarjun*¹, have made endeavours towards closing these gaps, accompanied by a call for dignity and equality enshrined in the Constitution. Still, the co-existence of such constitutionally inspired reforms with the extension of religiously based frameworks of personal law continues to induce divergence. The extent to which found living outside of a legally- valid marriage will, therefore, depend on the evolving and generally inconsistent interaction between personal law, statutory enactments, and constitutional interpretation.

This paper endeavours to critically analyse and compare the rights of children born out of void and voidable marriages available under personal laws of Hindus and Muslims, pinpoint the inconsistencies and challenges therein, and judge whether the current legal regime discharges the constitutional obligation of equal protection and dignity for all children, regardless of their status of birth.

Void and Voidable marriages under Hindu law

The HMA, 1955 lays down the classification of Hindu marriages into valid, void and voidable categories, governing the status, legitimacy and rights of children born out of such marriages.

I. Void Marriages – Section 11 of the HMA, 1955

A void marriage as understood from Section 11 is considered to be null and void ab initio, that is treating the marriage as if it never legally existed (null from inception), if they are in contravention to the conditions provided in Section 5(i),(iv), and (v) of the HMA.

The grounds for void marriage are –

When either party has a living spouse at the time of marriage (bigamy), the subsequent marriage becomes void; Sapinda relationship – the parties if related through lineal ascendants would be sapindas and will be said to be in a sapinda relationship unless sanctioned by some custom that they have been following for generations; Prohibited relationship – the parties when related within degrees prohibited by law, for example siblings, uncle-niece, unless permitted by custom. If any of the aforementioned is proved to be true, the parties will have no marital status, that is they will not be recognised as husband and wife. There can be no maintenance claims demanded and shall automatically be declared void by the court.

II. Voidable Marriages - Section 12 of the HMA, 1955

Voidable marriages stay substantial and valid until annulled by some court decree.

According to Section 12 of the HMA, the following grounds would lead to the annulment of a marriage – Section 12(1)(a) - Impotence: Non-consummation due to respondent's incapacity at the time of marriage or at the time of petition; Section 12(1)(c) - Consent: obtained by force or coercion, i.e., the consent is not a free, voluntary and an informed one. Fraud would entail deception, misrepresentation and concealing material facts like prior marriages, any

¹ *Revanasiddappa v. Mallikarjun*, (2023) SCC OnLine SC 1087.

kind of illness, impotence etc which are likely to influence the decision of marrying someone. The burden of proving this is on the party who seeks annulment of such marriage; Section 12(1)(d) – Pre-marriage pregnancy: the respondent was pregnant by someone other than the petitioner at the time of marriage; Section 13(2)(iv) – Repudiation of marriage by wife: the bride at the time of marriage was under the age of 15 and repudiated the marriage after attaining the age of 15 and before turning 18 years, irrespective of whether or not the marriage was consummated.²

Void and Voidable marriages under Muslim law

Under Muslim law, marriages are classified into three categories: valid (sahih), irregular (fasid), and void (batil). A void marriage, or batil nikah, is one that is considered invalid from the outset and does not create any legal rights or obligations between the parties. Such marriages are null ab initio, meaning they are treated as if they never existed legally. Examples of void marriages include unions prohibited due to close blood relations (consanguinity), affinity (such as marrying a stepchild or close relative by marriage), fosterage relationships established through breastfeeding, and marriages contracted during the iddat period (the waiting period after divorce or death of a husband). Additionally, bigamous marriages exceeding the limit of four wives are also void. The consequences of a void marriage are significant: the spouses have no marital rights or duties, the wife is not entitled to maintenance or dower unless the marriage was consummated, and children born from such a union are considered illegitimate with no inheritance rights. Importantly, parties in a void marriage can separate without formal divorce proceedings. The concept of voidable marriage does not exist under Muslim law; a marriage is either valid, irregular, or void. The irregular (fasid) marriage is considered defective but can be rectified by removing the irregularity, unlike a void marriage which is permanently invalid. Landmark cases like *Munshi v. Mst. Alam Bibi*³ have affirmed that marriages permanently prohibited by law are void. This strict classification underscores the emphasis on the validity of the marriage contract in Islamic law and its direct impact on the legitimacy and inheritance rights of children born from such unions.

Legitimacy of Children born from Void and Voidable Marriages under Hindu law

Children can be categorized into two categories: legitimate and illegitimate. The criteria for assessing a child's legitimacy vary from culture to culture. "A child is, or is believed to be, legitimate if it is born in legal wedlock anywhere in the world." Illegitimacy is a condition that not only imposes a stigma but deprives a person of his/her entire estate of succession rights.⁴ Before the 1976 amendment, a child born from a void or voidable marriage was deemed legitimate pursuant to Section 16 only if the union between the parents of the child was given a degree of nullity. In addition, such a child would be deemed to be a legitimate child in a way that would end the union between the child's parents rather than rescind it. If the child's parents could not receive a decree of nullity for their union, the kid would be declared illegitimate and would thus be exempted from the separate rights of inheritance. It is a settled principle of justice that the

² The Hindu Marriage Act, No. 25 of 1955, INDIA CODE (1955) <https://www.indiacode.nic.in/handle/123456789/1560>

sins or mistakes of the parents should not be visited upon their innocent offspring. Children have no control over the circumstances of their birth. Penalizing them by branding them as illegitimate violates fundamental notions of fairness and equity. Article 14 and Article 21 of the Indian Constitution guarantee equality before the law and the right to live with dignity. Section 16(3) is susceptible to constitutional challenge under Article 14 because it discriminates against a class of children on grounds over which they have no control. The law, by protecting traditional property structures over children's rights, creates unreasonable classification violating the equality principle. Stigmatizing a child as illegitimate without any fault on their part offends both these constitutional guarantees. Ensuring the legitimacy of children born from void or voidable marriages is a constitutional imperative, not merely a statutory concession.

While the 1976 Amendment to the Hindu Marriage Act allowed for legitimacy of children from void marriages, it failed to create corresponding amendments in Hindu Succession Act comprehensively. Thus, legitimacy was corrected socially but property rights remained curtailed, resulting in an incomplete legislative reform. The inheritance bar under Section 16(3) operates as a structural form of discrimination.

It places a child in a permanently inferior legal position within their own family structure, which indirectly sustains caste, gender, and property hierarchies traditional to Hindu society. By comparing Indian law with other systems like the Uniform Parentage Act (U.S.), the Indian framework is outdated in maintaining the distinction between legitimacy and illegitimacy based on parents' marital status. Progressive jurisdictions have moved towards full rights regardless of marriage validity — India's failure in this respect, thus, indicates stagnation in personal law reform. Section 16(3) of the Hindu Marriage Act, 1955, continues to surround the issue with textual restrictions. However, such restrictions have been judicially interpreted to expand the scope of legitimacy for children born out of void or voidable marriages. The Supreme Court in *Revanasiddappa v. Mallikarjun (2011)*⁵ admitted that such children should be entitled to inherit not only their parents' self-acquired property but also their ancestral property. This progressive interpretation was reiterated by a three-judge bench led by Chief Justice D.Y. Chandrachud in 2023.⁶

The Court emphasized that Section 16(3) must be construed liberally to serve its purpose: to erase the stigma of illegitimacy and to protect innocent children. Thus, judicial pronouncements have begun to fill the gaps left by the restrictive statutory text, ensuring that legitimacy conferred under the law has meaningful consequences in terms of inheritance rights. A critical limitation persists, however, with respect to the coparcenary status of

³ Classification of Marriage Under Muslim Law, <https://www.drishtijudiciary.com/to-the-point/ttp-muslim-law/classification-of-marriage-under-muslim-law>.

⁴ FAMILY LAW IN INDIA: OVERVIEW | PRACTICAL LAW, [https://uk.practicallaw.thomsonreuters.com/6-581-5985?contextData=\(sc.Default\)&transitionType=Default&firstPage=true](https://uk.practicallaw.thomsonreuters.com/6-581-5985?contextData=(sc.Default)&transitionType=Default&firstPage=true) (last visited Apr 27, 2025).

⁵ Hari, G. R. "Supreme Court Clarifies Property Rights of Children from Void Marriages: *Revanasiddappa vs. Mallikarjun (2023)* INSC 783 (01 September 2023)." *Legal Research Wing*, 1 Sept. 2023, <https://research.grhari.com/supreme-court-clarifies-property-rights-of-children-from-void-marriages-revanasiddappa-vs-mallikarjun-2023-insc-783-01-september-2023/>.

⁶ Rajagopal, Krishnadas. "Children from Void, Voidable Marriages Entitled to Parents' Share in Ancestral Property: SC." *The Hindu*, 1 Sept. 2023. [www.thehindu.com, https://www.thehindu.com/news/national/children-from-void-voidable-marriages-are-legitimate-can-claim-rights-in-parents-properties-sc/article67259229.ece](https://www.thehindu.com/news/national/children-from-void-voidable-marriages-are-legitimate-can-claim-rights-in-parents-properties-sc/article67259229.ece).

children born from void or voidable marriages.⁷ As clarified in the *Revanasiddappa* judgment, while these children are entitled to inherit their parents' property — whether self-acquired or ancestral — they are not recognized as coparceners by birth in a Hindu Undivided Family (HUF). They cannot claim survivorship rights or seek partition independently of their parent's entitlement. Their right arises only through the share that would devolve upon their parents in a partition. This important distinction undermines the full integration of such children into the joint family structure, suggesting that the conferment of legitimacy under Section 16 is still limited in certain crucial⁸ Coparcenary rights are about birth and bloodline, not marital status of parents. Once legitimacy is conferred, denying coparcenary status still punishes the child for no fault.^{9,10}

The legitimacy of children born out of void or voidable marriages must also be examined through the constitutional lens. Article 39(f) of the Constitution of India mandates the State to ensure that children are given opportunities to develop in a healthy environment and are protected against moral and material abandonment. The IJCRT study emphasizes that limiting the rights of such children to only a narrow segment of their parents' property violates the spirit of this directive principle. Although the right to property is no longer a fundamental right, it remains a constitutional right under Article 300A, guaranteeing protection against arbitrary deprivation. Therefore, any legislative or judicial action concerning the legitimacy and property rights of such children must be aligned with constitutional goals of dignity, equality, and non-discrimination.

Finally, the interpretation of legitimacy must evolve with societal changes. The Supreme Court, in the course of discussing Section 16, noted that "what was illegitimate in the past may be legitimate today." The IJCRT paper highlights that social consensus about marriage, legitimacy, and family structures has left further space for consideration of change over time. Hence, courts must adopt a dynamic and progressive interpretation of personal laws, rather than circumscribing themselves to rigid classifications unchanged. It is pertinent to recognize legitimacy in its full sense-including inheritance, dignity, and social status-as necessary to reflect the contemporary ethos and to promote substantive equality for all children, irrespective of the circumstances of their birth.¹¹

Thus, the evolving jurisprudence around legitimacy reflects a tension between statutory limitations and constitutional ideals of equality and dignity. Although courts have attempted to liberalize the interpretation of Section 16, significant barriers remain, particularly in relation to coparcenary rights and full family integration. To truly honor the spirit of social reform embedded in Hindu personal law and constitutional guarantees, legitimacy must be construed not merely as a formal status, but as a substantive right encompassing full inheritance, familial belonging, and societal acceptance for children born from void and voidable marriages.¹²

⁷ Choudhary, JagatPal, and Anshul Choudhary Choudhary. "INHERITANCE RIGHTS OF ILLEGITIMATE CHILDREN IN INDIA: A CRITICAL ANALYSIS OF *REVANASIDDAPPA V. MALLIKARJUN* JUDGMENT: *Revanasiddappa and Ors. v. Mallikarjun and Ors. (2023/INSC /783)*." *PANJAB UNIVERSITY LAW MAGAZINE - MAGLAW*, vol. 3, no. 1, July 2024, pp. 90–101. *maglaw.puchd.ac.in*, <https://maglaw.puchd.ac.in/index.php/maglaw/article/view/182>

⁸ Dr. Anil Kumar Singh, *Legitimacy of children under Hindu law: A critique*, 7 *Legparipex – Indian Journal of Research* 1–2 (2018).

¹⁰ Ravi Gangal & Ravi Shankar Pandey, *Illegitimacy under Hindu law: A case for its abandonment*, 35 *International Journal of Law, Policy and the Family* (2021).

Children born from live-in relationships, surrogacy, or partnerships without formal ceremonies remain legally invisible. Indian law must shift towards recognizing biological and emotional parenthood - i.e., who raises, nurtures, and takes responsibility- not who performed a marriage ritual. Legitimacy should be framed not as a by-product of lawful marriage but as a child's fundamental right to identity, dignity, and non-discrimination. Chandrachud J. in *Suchita Srivastava v. Chandigarh Administration (2009) 9 SCC 1*¹³ said that "Recognizing the right to make reproductive choices is an intrinsic part of personal liberty guaranteed under Article 21. The right to dignity encompasses the right to full development of one's personality." Denying full legitimacy violates constitutional morality- the idea that the dignity of every individual, including every child, is paramount. Section 16 of The Hindu Marriage Act and Section 8 of The Hindu Succession Act do not adequately protect children from purely live-in, ART, or non-marital partnerships.¹⁴ Legislative silence forces courts to give ad-hoc protection, leading to uncertainty, inconsistency, and rights violations.

Inheritance Rights of Children Born from Void and Voidable Marriages under Muslim Law

In Islamic jurisprudence, the concept of lineage (nasab)¹⁵ is fundamental to determining inheritance rights, and this principle profoundly affects children born outside a valid marriage. Unlike many modern legal systems that may recognize biological paternity through scientific means, classical Muslim law prioritizes the marital bond¹⁶ the sole legitimate basis for establishing lineage. This means that children born out of wedlock, regardless of biological connection, are generally excluded from inheriting from their biological father or his family. The rationale behind this exclusion is rooted in the preservation of family structure, social order, and the clear identification of heirs, which Islamic law considers vital for the just distribution of wealth. The severance of paternal lineage¹⁷ for illegitimate children is not merely a punitive measure but reflects a broader societal interest in maintaining clear genealogical lines. This principle is reinforced by the Quranic injunctions and prophetic traditions that emphasize the sanctity of marriage and the legitimacy of offspring within it.

When examining specific scenarios, children born from adulterous relationships face the harshest restrictions. Under Sunni and Shia jurisprudence alike, such children are legally attributed only to their mothers¹⁸, and their paternal links are disregarded. This exclusion extends beyond inheritance to other legal rights, including guardianship and family name. Despite this, Islamic law does acknowledge the child's right to maintenance and care, obliging the mother's family and, in some cases, the biological father to provide financial support, though this does not translate into inheritance rights. The father's ability to bequeath property through a will remains the only avenue for transferring wealth to such children, but this is limited to a maximum of one-third of his estate, ensuring that the fixed shares of legitimate

¹¹ "Revanasiddappa and Another v. Mallikarjun and Others." *Supreme Court Cases*, 31 Aug. 2023, <https://www.supremecourtcases.com/revanasiddappa-and-another-v-mallikarjun-and-others/>.

¹² A study on illegitimate children and their rights in India ..., <https://ijrt.org/papers/IJCRT2311547.pdf> (last visited Apr 27, 2025).

¹³ *Suchita Srivastava v. Chandigarh Administration*, 9 SCC 1.

¹⁴ Illegitimacy and rights in Hindu law, <https://ijlr.iledu.in/wp-content/uploads/2024/05/V4I11120.pdf> (last visited Apr 27, 2025).

heirs are protected. This limitation is designed to balance compassion for the child with the preservation of the rights of lawful heirs.

The status of children born from invalid or void marriages (*batil*) presents another complex dimension. Such marriages may be void due to prohibited degrees of kinship, lack of proper consent, or failure to meet essential Islamic contractual requirements. Children born from these unions are similarly denied paternal inheritance rights, as the marriage is considered legally non-existent for lineage purposes.¹⁹ But the child's right to inherit from the mother remains alive, marking the maternal line as the primary source of legal identity for illegitimate children. This distinction is significant because it is the foundation of Islamic inheritance law, wherein both maternal and paternal lines are recognized but the latter is subject to the valid marriage tie. Some countries where Muslims form the majority have written these principles into statutory laws. For example, in Bangladesh's *Compilation of Islamic Law*, it disallowed paternal inheritance by stating that *batil* marriages are not recognized in the eyes of the law, thus strengthening traditional jurisprudence.

In general, children born into irregular or imperfect marriages (*fasid*) will receive differing inheritance ramifications depending on the Islamic school or sect. Some Shia opinions may deem children from a *mut'ah* (temporary) marriage to be legitimate if the union was contracted in good faith, thereby permitting rights of paternal inheritance; while in Sunni law such children would generally be considered illegitimate and denied paternal inheritance. This difference mentioned, makes for an interesting case that very subtly yet unequivocally expresses the intricacies and conflict-like interpretations within Islamic law itself, recognizing legal pluralism in the Muslim world. Thus, in inheritance analysis, it is crucial to take entire doctrinal backgrounds into consideration.

The issue of children born after divorce introduces further complexity. Islamic law permits a child conceived during a valid marriage to be considered legitimate if born within the prescribed *iddah* period, which generally lasts three menstrual cycles or approximately three months. This provision ensures that children conceived before the dissolution of marriage retain²⁰ This rule reflects the law's attempt to balance biological realities with social and legal certainty regarding paternity. It also illustrates the temporal boundaries within²¹²²

Modern legal systems in Muslim-majority countries have grappled with these traditional rules considering contemporary challenges such as DNA testing, changing social attitudes, and human rights concerns.²³ DNA evidence, while scientifically establishing biological paternity, is accepted with great hesitation as a basis for inheritance rights by Islamic legal authorities themselves. They place more value on the legitimacy of marriage and the possible social havoc that may arise upon alteration of established rules of lineage. Yet slightly altering their position, certain courts have begun taking a stance favoring the admission of DNA evidence for maintenance purposes. So, for maintenance purposes, it is now being gradually accepted by some courts. For example, in India, courts invoke Section 125 of the *Criminal Procedure Code* in granting maintenance rights in favor of illegitimate children, even while the normal restrictions on inheritance continue to hold. This difference between maintenance and inheritance rights is indicative of the ongoing transformation of Islamic family law in response to presently prevailing social realities.

¹⁵Rachit Garg, *Muslim Law of Inheritance*, iPleaders (Jul. 5, 2023), <https://blog.iplayers.in/muslim-law-of-inheritance/> (last visited Apr 27, 2025).

However, the fact remains that Muslim law is not straightforward-instead, the inheritance rights of children born out of wedlock are contingent on rather complex and conflicting doctrinal principles, social values, and legal interpretations. While they are denied their father's inheritance on the grounds of marital legitimacy, they retain maternal inheritance rights with only a partial bequest option. The differing invalid or irregular marriage types, the timing of birth concerning a divorce, and the increasing importance and usage of modern evidence- including DNA further cloud the legal complication of beatific heirs. Thus, such an understanding is significant in view of a holistic assessment of the Muslim inheritance law system vis-a-vis its present-day application where traditional principles vie against contemporary legal challenges and reforms.

¹⁶N, *RIGHTS OF AN ILLEGITIMATE CHILD UNDER HINDU AND MUSLIM PERSONAL LAW - Jus Corpus*, (2021), <https://www.juscorpus.com/rights-of-an-illegitimate-child-under-hindu-and-muslim-personal-law/> (last visited Apr 27, 2025).

¹⁷ Syed Khalid Rashid, *Inheritance Status of Illegitimate Children under Muslim Law*, 18 *Bangladesh J. L. 1* (2018), 8 *Bangladesh J. L. 1* (218AD), <https://bv-f.org/assets/article/bv/18/3.pdf>. (last visited Apr 27, 2025).

¹⁸ Rachit Garg, *Muslim Law of Inheritance*, iPleaders (Jul. 5, 2023), <https://blog.ipleaders.in/muslim-law-of-inheritance/> (last visited Apr 27, 2025).

¹⁹Syed Khalid Rashid, *Inheritance Status of Illegitimate Children under Muslim Law*, 18 *Bangladesh J. L. 1* (2018), 8 *Bangladesh J. L. 1* (218AD), <https://bv-f.org/assets/article/bv/18/3.pdf>. (last visited Apr 27, 2025).

²⁰ Right To Property And Maintenance of Muslim And Christian Illegitimate Children, <https://www.legalservicesindia.com/articles/cmrights.htm> (last visited Apr 27, 2025).

²² Syed Khalid Rashid, *Inheritance Status of Illegitimate Children under Muslim Law*, 18 *Bangladesh J. L. 1* (2018), 8 *Bangladesh J. L. 1* (218AD), <https://bv-f.org/assets/article/bv/18/3.pdf>. (last visited Apr 27, 2025).

²³ Amisha Shrivastava, *Bombay HC Declares Biological Parents As Guardian Of Child Born Out Of Marriage After Former Husband's No Objection*, (2022), <https://www.livelaw.in/news-updates/bombay-high-court-child-out-of-wedlock-muslim-law-biological-parents-guardian-inheritance-minor-welfare-paramount-216690> (last visited Apr 27, 2025).

Comparative Analysis**Table 1**

Parameters	Hindu	Muslim
Legitimacy	Section 16 of the Hindu Marriage Act, 1955, establishes that children born from void or voidable marriages are deemed legitimate. This legislative intervention ensures such children are not stigmatized due to the status of their parents' marriage, thereby safeguarding their legal and social standing.	Legitimacy is strictly tied to the existence of a valid marriage (Nikah). Only children born within a valid or, in some cases, irregular (fasid) marriage are considered legitimate. Children from void (batil) marriages or illicit relationships (zina) are not recognized as legitimate and are generally excluded from family lineage and rights.
Role of Judiciary in Each System:	The judiciary has adopted a liberal and welfare-oriented approach, interpreting Section 16 to protect children's rights and minimize discrimination, as seen in <i>Bharatha Matha and Revanasiddappa</i> .	Judicial intervention is limited, with courts adhering to classical Sharia principles, as in <i>Abdul Kadir v. Salima</i> (1886), and rarely expanding the rights of children born out of void marriages
Coparcenary Status (Hindu Law)	Children born from void or voidable marriages are not coparceners and cannot claim a birthright in joint family property, but they can claim a share in the father's property after his death.	Muslim Law: The concept of coparcenary is absent; inheritance is based on fixed Quranic shares, and illegitimate children are excluded.

Role of Acknowledgment (Muslim Law):	Legitimacy is determined by statute, and acknowledgment by the father is irrelevant.	Acknowledgment (iqrar) by the father can legitimize a child and confer inheritance rights, provided there is no evidence to the contrary, as recognized in <i>Habibur Rahman Chowdhury v. Altaf Ali Chowdhury</i> (1921).
Right to Father's Property	Children deemed legitimate under Section 16 can inherit their parents' property. However, their rights over ancestral property remain contentious and are currently limited, as clarified by the courts. They can inherit self-acquired property of the father and, after his death, may file for partition of his property. The Supreme Court's interpretation is still evolving, and the issue is pending before a larger bench	Illegitimate children (those born outside a valid or irregular marriage) have no right to inherit from their father or his relatives. Under Hanafi law, they may inherit from their mother and maternal relatives, but not from the father. In Shia law, even this limited right is denied, and illegitimate children are entirely excluded from inheritance

Judicial Interpretation and Trends

Despite constitutional directives and mandates, there are ongoing tensions between personal laws regulating aspects such as marriage, adoption, succession etc and provisions stipulated in the Constitution regarding equality and non-discrimination. When personal laws have some provisions which are incompatible with what the constitution guarantees, judicial clashes arise. For example, disparate practices against children born outside of wedlock in succession rights as per different personal laws has been criticized several times as it amounts to violation of Articles 14 and 21 of the Constitution. While courts have sometimes tried mediating to harmonize personal laws with constitutional values, it has also been restrictive, citing the space of legislation with respect to the personal laws.

Critical Analysis

Muslim inheritance law, rooted in the Qur'an, Hadith, and classical juristic consensus, offers several clear benefits: it prescribes fixed shares for a broad spectrum of heirs-including spouses²⁴, children (both sons and daughters), parents, and siblings-ensuring wealth is distributed equitably and in accordance with divine command. Both male and female heirs are recognized, with women guaranteed a share, which historically²⁵ elevated their social and economic rights. The system prevents the concentration of wealth, discourages family disputes through clear, mandatory formulas, and prioritizes the settlement of debts and obligations before distribution.²⁶ Inheritance accrues only after the ancestor's death, and even a child in the womb can inherit if born alive, ensuring fairness and protection for all potential heirs. ²⁷The law distinguishes between sharers and residuaries, so close relatives are prioritized, and its religious foundation makes compliance both a legal and spiritual duty, reinforcing social stability and family harmony.

By contrast, Hindu inheritance law-especially after the Hindu Succession Act, 1956-has evolved to promote gender equality and flexibility. It recognizes the coparcenary rights of daughters (after the 2005 amendment), allows testamentary freedom (enabling individuals to will property as they choose), and provides for the equal treatment of legitimate and illegitimate children under certain circumstances. Hindu law's adaptability means it can accommodate changing family structures and social values, while also aiming to reduce disputes and ensure the financial security of all heirs. Thus, both systems seek fairness and family welfare, but Muslim law emphasizes fixed, divinely ordained shares and collective responsibility, while Hindu law increasingly prioritizes individual rights, gender parity, and testamentary autonomy.²⁹

Shortcomings of Hindu and Muslim Inheritance Laws

While both Hindu and Muslim inheritance laws in India aim to ensure fair distribution of property among heirs, they differ significantly in their approach, inclusivity, and adaptability. Hindu law, especially after the 2005 amendment to the Hindu Succession Act, has become more progressive by granting daughters equal coparcenary rights and broadening women's inheritance opportunities³⁰, thereby attempting to address historical gender biases.³¹ However, practical challenges remain: children born out of void or voidable marriages still face ambiguity regarding their rights to ancestral property, as courts have not fully settled their status, and customary biases or procedural delays can hinder women's access to property despite legal reforms³². The joint family system, while offering collective security, can also perpetuate

²⁴ Islamic Inheritance: A Guide for American Muslims, Islamic Estate Planning Attorney, <https://islamicinheritance.com/islamic-inheritance-guide/> (last visited Apr 27, 2025).

²⁵ Islamic Inheritance – Islamic Wills USA, <https://www.islamicwillsusa.com/islamic-inheritance/> (last visited Apr 27, 2025).

²⁶ Understanding Islamic Legal Estate: Principles and Practices, <https://www.linkedin.com/pulse/understanding-islamic-legal-estate-principles-practices-i5vsf> (last visited Apr 27, 2025).

²⁷ Fundamentals of Islamic Inheritance Law | MuslimWills, <https://www.muslimwills.com.au/resources/fundamentals-of-islamic-inheritance-law> (last visited Apr 27, 2025).

gender-based inequalities in practice. In contrast, Muslim inheritance law, rooted in the Quran and Shariah³³, prescribes fixed shares for a wide range of heirs, including both men and women, and is lauded for its clarity and ability to minimize disputes by providing mandatory formulas for distribution.³⁴ Yet, its rigidity brings notable shortcomings: female heirs inherit only half the share of male heirs, reflecting entrenched gender inequality, and illegitimate children—those born outside a valid or irregular marriage—are excluded from inheritance, which can lead to social and economic hardship for such children.³⁵ Testamentary freedom is also limited under Muslim law, as only one-third of the estate can be willed away, restricting personal autonomy and the ability to adapt to modern family needs³⁶. Both systems, therefore, have areas needing improvement: Hindu law must clarify the rights of children from void or voidable marriages and enhance enforcement of women's property rights, while Muslim law would benefit from reforms to address gender disparities and the exclusion of certain heirs. Ultimately, advancing gender equality, protecting vulnerable children, and ensuring effective enforcement are crucial for both legal traditions to meet contemporary³⁷ standards of justice and social welfare.

38

Proposed reforms and Analysis

Despite progressive reforms like the Hindu Succession (Amendment) Act, 2005, which granted daughters equal coparcenary rights and was reinforced by the Supreme Court in *Vineeta Sharma v. Rakesh Sharma (2020)*³⁹, practical challenges persist, particularly regarding the inheritance rights of children born from void or voidable marriages, whose status in ancestral

²⁸ Islamic inheritance law (7 benefits), WASSIYYAH, <https://wassiyah.com/blog/muslim-succession-benefits> (last visited Apr 27, 2025).

²⁹ SAHIH MUSLIM, BOOK 11: The Book Pertaining to the Rules of Inheritance (KITAB AL-FARA'ID), https://www.iiu.edu.my/deed/hadith/muslim/011_smt.html (last visited Apr 27, 2025).

³⁰ Free Law, *Free Law: Get Free Headnotes & Judgments*, Free Law: Get Free Headnotes & Judgments, <https://www.freelaw.in/> (last visited Apr 27, 2025).

³¹ Study circle, *INHERITANCE AND SUCCESSION LAWS IN INDIA*., CTN PRESS (2023), <https://cevnews.in/2023/10/inheritance-and-succession-laws-in-india-a-comparative-analysis/> (last visited Apr 27, 2025).

³² Hindu and Muslim Law of Succession - Key Differences, HG.org , <https://www.hg.org/legal-articles/india-hindu-and-muslim-law-of-succession-key-differences-65637>.

³³ Fundamental Differences Hindu and Muslim Law..., <https://www.khuranaandkhurana.com/2024/04/22/fundamental-differences-hindu-muslim-law-of-inheritance/> (last visited Apr 27, 2025).

³⁴ A Critical Analysis On Inheritance Of Property Under Hindu Law And Muslim Law In India , IJCRT (Nov., 2024), <https://www.ijcrt.org/papers/IJCRT21X0291.pdf>.

³⁵ Hindu and Muslim Law of Succession - Key Differences, HG.org , <https://www.hg.org/legal-articles/india-hindu-and-muslim-law-of-succession-key-differences-65637>.

³⁶ A Critical Analysis On Inheritance Of Property Under Hindu Law And Muslim Law In India , IJCRT (Nov., 2024), <https://www.ijcrt.org/papers/IJCRT21X0291.pdf>.

³⁷ Uniform Succession and Inheritance, Supreme Court Observer, <https://www.scobserver.in/cases/ashwini-kumar-upadhyay-v-union-of-india-uniform-succession-and-inheritance-background/> (last visited Apr 27, 2025).

³⁸ Study circle, *INHERITANCE AND SUCCESSION LAWS IN INDIA*., CTN PRESS (2023), <https://cevnews.in/2023/10/inheritance-and-succession-laws-in-india-a-comparative-analysis/> (last visited Apr 27, 2025).

³⁹ *Vineeta Sharma v. Rakesh Sharma*, (2020) 10 SCC 1, Supreme Court of India,

property remains ambiguous and subject to ongoing judicial interpretation. While gender discrimination has been legally abolished, women still face significant social and procedural barriers to realizing their inheritance rights, and courts have repeatedly called for a broad and liberal interpretation to promote equality, as seen in cases like *Ms. Gita Hariharan v. Reserve Bank of India (1999)*⁴⁰ In Muslim law, illegitimate children are categorically excluded from inheritance, and although the doctrine of acknowledgment (*iqrar*) offers limited relief, it is insufficient to address broader welfare concerns; gender inequality remains entrenched, with daughters receiving only half the share of sons and the absence of codification hindering judicial reform. Both systems therefore require statutory reforms to explicitly protect the inheritance rights of all children, regardless of their parents' marital status, and to eliminate gender-based discrimination, with stronger enforcement mechanisms and judicial sensitivity to constitutional values of equality and dignity being crucial for genuine progress.

The debate around granting illegitimate children equal legal rights as legitimate children sits at the intersection of social justice and the traditional institution of marriage. The issue of granting illegitimate children equal rights as legitimate ones presents a complex challenge, balancing the protection of the institution of marriage with the fundamental rights of children. Critics argue that treating all children equally, regardless of their parents' marital status, could undermine the sanctity of marriage and open avenues for misuse, such as avoiding alimony and other spousal obligations. However, denying illegitimate children equal rights is both unjust and discriminatory, as it punishes innocent individuals for circumstances beyond their control and violates their fundamental rights to equality and dignity. The Law Reform Commission and various international bodies have recommended abolishing distinctions between legitimate and illegitimate children, emphasizing that the child is not responsible for their parents' actions and should not suffer legal or social penalties as a result. International⁴¹ legal standards and constitutional principles increasingly reject such discrimination, emphasizing that the child's welfare must be paramount.⁴² Consequently, proposed reforms focus on abolishing the status of illegitimacy, ensuring equal rights to inheritance, maintenance, and legal recognition⁴³, while carefully addressing concerns about misuse through balanced legislative measures. Ultimately, while the preservation of marriage is important, it cannot justify the continued marginalisation of children born outside wedlock, who deserve equal protection and opportunities under the law.

⁴⁰ *Ms. Gita Hariharan v. Reserve Bank of India*, AIR 1999 SC 1149, Supreme Court of India

⁴¹ Untitled, <https://publications.lawreform.ie/Portal/External/en-GB/RecordView/Index/30550> (last visited Apr 27, 2025).

⁴² Editorial Team, *Rights of Illegitimate Child in India* | LawCrust Legal Services, LawCrust Global Consulting Company(2024), <https://lawcrust.com/rights-of-illegitimate-child/> (last visited Apr 27, 2025).

Conclusion

The comparative analysis of inheritance rights for children born out of void or voidable marriages under Hindu and Muslim personal laws in India reveals a significant divergence in approach, legal recognition, and alignment with constitutional values. Hindu law, particularly after judicial clarifications and the 1976 amendment to Section 16 of the Hindu Marriage Act, confers legitimacy on such children and allows them to inherit their parents' property—both self-acquired, and as recent Supreme Court and High Court rulings clarify, ancestral property as well. However, these children are not recognized as coparceners by birth in a Hindu Undivided Family, and their inheritance rights are still limited compared to those born from valid marriages, reflecting persistent statutory and social barriers. In contrast, Muslim personal law remains rigid. Legitimacy and inheritance are strictly built only upon the foundation of a marriage contract. Children born out of void (batil) marriages cannot take anything in their fathers' inheritance except in rare cases of acknowledgment (iqrar) or limited testamentary gifts. This exclusion only deepens social and economic marginalization and stands starkly against the constitutional guarantee of equality and dignity. Muslim and Hindu law have undergone different degrees of evolution, but neither has yet developed to fully realise the constitutional mandate of non-discrimination and protection of a child's welfare. The judiciary has been proactive in Hindu law in offering liberal interpretations amid prevailing legislative gaps and procedural impediments. Classical interpretations and lack of codification constrain reforms under Muslim law. Moving ahead, extensive statutory reforms will be proposed in both systems, namely, Hindu law with regards to null and void marriages, specifically in relation to coparcenary status; while Muslim law must investigate codification of legitimacy and gender equity in inheritance, to bring it into conjunction with contemporary principles. It is only by synchronising these private laws with the constitutional principles of equality, dignity, and child welfare that India can hope to guarantee fairness and justice for all children, regardless of their parents' marital status.

References

- [1] *Revanasiddappa v. Mallikarjun*, (2023) SCC OnLine SC 1087.
- [2] The Hindu Marriage Act, No. 25 of 1955, India Code (1955), <https://www.indiacode.nic.in/handle/123456789/1560>
- [3] Classification of marriage under Muslim law, *Drishti Judiciary*, <https://www.drishtijudiciary.com/to-the-point/tp-muslim-law/classification-of-marriage-under-muslim-law>
- [4] Family law in India: Overview, *Practical Law*, <https://uk.practicallaw.thomsonreuters.com/6-581-5985> (last visited Apr. 27, 2025).
- [5] G. R. Hari, "Supreme Court clarifies property rights of children from void marriages: *Revanasiddappa vs. Mallikarjun* (2023) INSC 783," *Legal Research Wing*, Sept. 1, 2023, <https://research.grhari.com/supreme-court-clarifies-property-rights-of-children-from-void-marriages-revanasiddappa-vs-mallikarjun-2023-in-sc-783-01-september-2023/>

⁴³ Shrutu Tomar, Exploring the Legal and Social Challenges Faced by Illegitimate Children: An In Dept Analysis of International Perspectives and Rights Neglect, *International Journal of Science and Research* (Aug., 2023), <https://www.ijsr.net/archive/v12i8/MR23824161151.pdf>.

- [6] K. Rajagopal, "Children from void, voidable marriages entitled to parents' share in ancestral property: SC," *The Hindu*, Sept. 1, 2023, <https://www.thehindu.com/news/national/children-from-void-voidable-marriages-are-legitimate-can-claim-rights-in-parents-properties-sc/article67259229.ece>
- [7] J. Choudhary and A. Choudhary, "Inheritance rights of illegitimate children in India: A critical analysis of *Revanasiddappa v. Mallikarjun* judgment: *Revanasiddappa and Ors. v. Mallikarjun and Ors.* (2023/INSC/783)," *Panjab University Law Magazine – MAGLAW*, vol. 3, no. 1, pp. 90–101, July 2024, <https://maglaw.puchd.ac.in/index.php/maglaw/article/view/182>
- [8] A. K. Singh, "Legitimacy of children under Hindu law: A critique," *Legparipex – Indian Journal of Research*, vol. 7, pp. 1–2, 2018.
- [9] R. Gangal and R. S. Pandey, "Illegitimacy under Hindu law: A case for its abandonment," *International Journal of Law, Policy and the Family*, vol. 35, 2021.
- [10] "*Revanasiddappa and Another v. Mallikarjun and Others*," *Supreme Court Cases*, Aug. 31, 2023, <https://www.supremecourtcases.com/revanasiddappa-and-another-v-mallikarjun-and-others/>
- [11] "A study on illegitimate children and their rights in India," *IJCRT*, 2023, <https://ijcrt.org/papers/IJCRT2311547.pdf> (last visited Apr. 27, 2025).
- [12] *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1.
- [13] "Illegitimacy and rights in Hindu law," *Indian Journal of Law Review*, 2024, <https://ijlr.iledu.in/wp-content/uploads/2024/05/V4I11120.pdf> (last visited Apr. 27, 2025).
- [14] R. Garg, "Muslim law of inheritance," *iPleaders*, Jul. 5, 2023, <https://blog.ipleaders.in/muslim-law-of-inheritance/> (last visited Apr. 27, 2025).
- [15] N, "Rights of an illegitimate child under Hindu and Muslim personal law," *Jus Corpus*, 2021, <https://www.juscorpus.com/rights-of-an-illegitimate-child-under-hindu-and-muslim-personal-law/> (last visited Apr. 27, 2025).
- [16] S. K. Rashid, "Inheritance status of illegitimate children under Muslim law," *Bangladesh Journal of Law*, vol. 18, no. 1, 2018, <https://bv-f.org/assets/article/bv/18/3.pdf> (last visited Apr. 27, 2025).
- [17] "Right to property and maintenance of Muslim and Christian illegitimate children," *Legal Services India*, <https://www.legalservicesindia.com/articles/cmrights.htm> (last visited Apr. 27, 2025).
- [18] A. Shrivastava, "Bombay HC declares biological parents as guardian of child born out of marriage after former husband's no objection," *Live Law*, 2022, <https://www.livelaw.in/news-updates/bombay-high-court-child-out-of-wedlock-muslim-law-biological-parents-guardian-inheritance-minor-welfare-paramount-216690> (last visited Apr. 27, 2025).
- [19] "Islamic inheritance: A guide for American Muslims," *Islamic Estate Planning Attorney*, <https://islamicinheritance.com/islamic-inheritance-guide/> (last visited Apr. 27, 2025).
- [20] "Islamic inheritance," *Islamic Wills USA*, <https://www.islamicwillsusa.com/islamic-inheritance/> (last visited Apr. 27, 2025).
- [21] "Understanding Islamic legal estate: Principles and practices," *LinkedIn*, <https://www.linkedin.com/pulse/understanding-islamic-legal-estate-principles-practices-i5vsf> (last visited Apr. 27, 2025).
- [22] "Fundamentals of Islamic inheritance law," *MuslimWills*, <https://www.muslimwills.com.au/resources/fundamentals-of-islamic-inheritance-law> (last visited Apr. 27, 2025).
- [23] "Islamic inheritance law (7 benefits)," *WASSIYYAH*, <https://wassiyah.com/blog/muslim-succession-benefits> (last visited Apr. 27, 2025).

- [24] Sahih Muslim, Book 11: The book pertaining to the rules of inheritance (Kitab Al-Fara'id), https://www.iium.edu.my/deed/hadith/muslim/011_smt.html (last visited Apr. 27, 2025).
- [25] Free Law: Get free headnotes & judgments, <https://www.freelaw.in/> (last visited Apr. 27, 2025).
- [26] "Inheritance and succession laws in India: A comparative analysis," CTN Press, Oct. 2023, <https://cevnews.in/2023/10/inheritance-and-succession-laws-in-india-a-comparative-analysis/> (last visited Apr. 27, 2025).
- [27] "Hindu and Muslim law of succession - key differences," HG.org, <https://www.hg.org/legal-articles/india-hindu-and-muslim-law-of-succession-key-differences-65637> (last visited Apr. 27, 2025).
- [28] "Fundamental differences Hindu and Muslim law of inheritance," Khurana and Khurana, Apr. 22, 2024, <https://www.khuranaandkhurana.com/2024/04/22/fundamental-differences-hindu-muslim-law-of-inheritance/> (last visited Apr. 27, 2025).
- [29] "A critical analysis on inheritance of property under Hindu law and Muslim law in India," IJCRT, Nov. 2024, <https://www.ijcrt.org/papers/IJCRT21X0291.pdf>
- [30] "Uniform succession and inheritance," Supreme Court Observer, <https://www.scobserver.in/cases/ashwini-kumar-upadhyay-v-union-of-india-uniform-succession-and-inheritance-background/> (last visited Apr. 27, 2025).
- [31] Vineeta Sharma v. Rakesh Sharma, (2020) 10 SCC 1, Supreme Court of India.
- [32] Ms. Gita Hariharan v. Reserve Bank of India, AIR 1999 SC 1149, Supreme Court of India.
- [33] "Untitled," Law Reform Commission of Ireland, <https://publications.lawreform.ie/Portal/External/en-GB/RecordView/Index/30550> (last visited Apr. 27, 2025).
- [34] Editorial Team, "Rights of illegitimate child in India," Law Crust Legal Services, LawCrust Global Consulting Company, 2024, <https://lawcrust.com/rights-of-illegitimate-child/> (last visited Apr. 27, 2025).
- [35] S. Tomar, "Exploring the legal and social challenges faced by illegitimate children: An in-depth analysis of international perspectives and rights neglect," International Journal of Science and Research, Aug. 2023, <https://www.ijsr.net/archive/v12i8/MR23824161151.pdf>